

Deregistration decision: Association of Local Government Engineering New Zealand Incorporated (CC20446)

Summary

1. The Charities Registration Board (the Board) has determined that the Association of Local Government Engineering New Zealand Incorporated (the Society) is not qualified for registration as a charitable entity and that it is in the public interest that it be removed from the Charities Register.¹
2. The Board considers that the Society has an independent (non-ancillary) purpose to promote the interests of members of the public asset engineering and management profession. This purpose is not charitable in law, and as such, the Society is not qualified for registration as a charitable entity. The grounds for removal from the Charities Register are satisfied.²
3. The Board's reasons appear below, organised under the following headings:
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A. Background

4. The Society was registered as a charitable entity under the *Charities Act 2005* (the Act) on 11 January 2008.

¹ That is, the register established under section 21 of the *Charities Act 2005* and published at <http://www.charities.govt.nz>.

² Sections 32(1)(a) and 35(1)(a) of the *Charities Act 2005* refer. See text at para 10 below.

5. The Society's purposes are set out in clause 5 of their rules:

Objectives

- 5.1 Uphold and improve the status of engineering and management of public assets in New Zealand.
- 5.2 Promote and encourage appropriate engineering and asset management standards for all public assets.
- 5.3 To be the principal engineering and asset management advisory body for local government.
- 5.4 Foster the sharing of knowledge among:
 - Members;
 - Engineers, asset managers and others working with public assets;
 - Local government elected members;
 - Associations and organisations with similar objectives within New Zealand and overseas.
- 5.5 Encourage, sponsor and promote research into all aspects of public asset engineering and management.
- 5.6 Provide benefits for Members, including opportunities for education, networking and personal development.
- 5.7 Take any other action which in the opinion of the Board will be to the benefit of Members or to local government or public asset engineering and management generally.

6. The Society's rules at clause 3 and 4 read:

3. Vision Statement

Leaders in engineering and asset management for sustainable communities.

4. Mission Statement

We will champion integrated management of services for communities through excellence in engineering and asset management.

7. The Society submitted a notice of change to the Charities Commission in November 2011 which led to a registration analyst reviewing the Society's purposes and activities. A registration analyst wrote to the Society on 14 February 2012, requesting further information about the Society's activities and the proportion of its time and resources dedicated to advancing the objectives at clause 5.1, 5.4 and 5.6 of the Society's rules. The Society provided a detailed response on 17 April 2012. In light of that response, a registration analyst sent a notice of intention to remove the Society on 22 May 2012.
8. The Society submitted an objection to the removal dated 25 June 2012, and was given an opportunity to elaborate on its objection at a meeting with registration staff on 3 October 2012. The Society submitted:
- The Society's charitable purpose was set out in its vision, namely to have sustainable, safe and healthy communities in New Zealand, which is to benefit communities in New Zealand.
 - The Society's objectives show the things that the Society does to achieve its vision.
 - The Society's objectives at clause 5.1, 5.4 and 5.6 are the means of achieving the vision.

B. Legal framework for deregistration

9. Section 50 of the Act provides that the chief executive of the Department of Internal Affairs may examine and inquire into any registered charitable entity, including into its' activities and proposed activities, and its' nature, objects and purposes.
10. Section 32(1)(a) of the Act provides that the Board may direct that an entity be removed from the register if the entity is not, or is no longer, qualified for registration as a charitable entity, provided that the entity has been given notice under section 33. Under section 35(1)(a) of the Act, if an objection to the removal of an entity from the register is received, the Board may proceed with the removal if it is satisfied that it is in the public interest to proceed with the removal and at least one ground for removal has been satisfied. If the Board decides to proceed with removal, section 35(2) of the Act stipulates that the chief executive must give the entity notice and must not proceed to remove the entity from the register earlier than 20 working days after the date on which the notice is given to the entity.
11. The essential requirements for registration as a charitable entity are set out at section 13 of the Act. Under section 13(1)(b), a society or institution cannot qualify for registration unless it is established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual.
12. 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".³
13. In addition, to be charitable at law a purpose must be for the public benefit.⁴ This means that the *direct* benefit⁵ of the entity's purposes must flow to the public or a sufficient sector of the public. 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.⁶ In addition, proof that

³ This statutory definition does not alter the scope of charitable purposes recognised in New Zealand law but rather adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) and previous common law: *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [11].

⁴ 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 at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 at [30]; *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [23].

⁵ See discussion of the case-law distinction between 'direct' and 'downstream' benefits at para 49 below.

⁶ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.⁷

14. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not prevent qualification for registration if it is merely ancillary to a charitable purpose. Section 5(4) of the Act states that a non-charitable purpose is ancillary to a charitable purpose of the trust, society or institution if the non-charitable purpose is:⁸

- (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.*

C. Charities Registration Board's analysis

C.1 Overview

15. The Board has identified the Society's stated purposes (as set out in the Society's rules read in light of information about the Society's activities provided by the Society and published on the Society's website⁹) and has analysed these purposes in light of the case law definition of charitable purpose.

16. The Board is satisfied that a main (non-ancillary) purpose of the Society is to promote the profession of public asset engineering and management for the benefit of members of that profession.¹⁰ The Board considers that this purpose is not charitable in law. Specifically, the purpose provides a private benefit to members of the profession,¹¹ and is not analogous to the limited class of professional purposes that have been recognised as charitable in law.¹²

⁷ *Gilmour v Coats* [1949] AC 426; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

⁸ Section 5(3) and (4) of the *Charities Act 2005*. The question whether a purpose is ancillary requires both a quantitative and qualitative assessment: *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011]. The assessment involves a 'situation specific analysis of the relative relationship between public and private benefits': *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [44].

⁹ In considering whether an entity is established and maintained exclusively for charitable purposes, the courts examine the entity's stated purposes in light of its activities, see: *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] 1 All ER 747 at 751-752; *Attorney-General v Ross* [1986] 1 WLR 252 at 263; *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204 at [70]; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818 at [57] - [67]; *Re The Grand Lodge Of Antient Free And Accepted Masons In New Zealand* HC WN CIV 2009-485-2633, 23 September 2010 at [59], [71]; *New Zealand Computer Society Inc* HC WN CIV-2010-485-924, 28 February 2011 at [60] and [68]; *Greenpeace of New Zealand Incorporated* HC WN CIV 210-485-829 6 May 2011 at [75].

¹⁰ See text at paras 40 - 42.

¹¹ See text at paras 26 - 30.

¹² See text at paras 32 - 34.

C.2 Law on charitable purposes

17. The Society has submitted that its purposes are charitable under the fourth general law classification, namely “any other matter beneficial to the community”. The Board has also considered the purposes in relation to advancement of education. The Society’s purposes do not show any intention to relieve poverty or advance religion.

C.2.1 Advancement of education

18. The modern concept of education covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding.¹³

19. In order to advance education, there must be a genuine attempt to transmit knowledge and advance learning. It is not enough to put forward opinion and information about a topic. What is required is some endeavour to provide a structured method of transmitting information or analysis, so as to train the mind or improve a useful branch of human knowledge.¹⁴

20. Education does not include advertisements for particular goods or services or promotion of a particular point of view.¹⁵ The courts have held that the provision of information and materials that readers can use to educate themselves does not advance education.¹⁶ The provision of information (which is available to the public in a variety of places) in one place “does not have any independent educational value. It does have high convenience value. But it is essentially the provision of information.”¹⁷

21. Further, the courts have held that activities designed to promote professional proficiency may not advance education in the sense used in charities law. In *Chartered Insurance Institute v Corporation of London*, the Court held that a purpose to promote “efficiency, progress and general development among persons engaged or employed in insurance” was not a purpose to advance education; the main object was to enable members of the profession to practise their profession to greater advantage.¹⁸ Subsequent cases have recognised that the promotion of professional proficiency does not advance education in the sense used in charities law.¹⁹

¹³ *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

¹⁴ See *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [42] - [43], [74]; *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] 1 SCR 10 at [171] (Iacobucci J; Cory, Major and Bastarache JJ concurring).

¹⁵ *In re Shaw (deceased)* [1956] 1 WLR 729 as interpreted in *Re Hopkins’ Will Trusts* [1964] 3 All ER 46; See also *Re Collier* [1998] 1 NZLR 81; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011].

¹⁶ *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [41], and see also [38] – [41], [73] – [77].

¹⁷ *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [41], and see also [41].

¹⁸ *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR 867 at 873.

¹⁹ *In Re Mason* [1971] NZLR 714 at 724 – 728, McMullin J reviews authorities that a purpose to promote the professional efficiency of members of a profession lies outside

C.2.2 Other matters beneficial to the community

22. The fourth head of charity, described in section 5 of the Act as “any other matter beneficial to the public” has a specific meaning in law.²⁰ It is not intended to indicate that all purposes that provide public utility qualify as charitable: In order to qualify as charitable under this head, the purpose must be both for the benefit of the community and beneficial in a way that the law regards as charitable. More particularly, the purpose must be within the spirit and intendment of the purposes set out in the Preamble to the *Charitable Uses Act 1601* (the Statute of Elizabeth):²¹

- 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
- 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.

23. This two stage test for charitable purposes beneficial to the community (requiring that a purpose be both beneficial to the community and within the spirit and intendment of the Preamble) is well-established in law.²² In *Queenstown Lakes Community Housing Trust*, MacKenzie J explained:²³

“Not every purpose beneficial to the community will be charitable under this head. Lord Simonds, in Williams Trustees v Inland Revenue Commissioners, noted two propositions which must be borne in mind.

the legal concept of a charitable purpose to advance education, including *Society of Writers to Her Majesty’s Signet v Commissioners of Inland Revenue* (1886) 2 TC 257 at 271, 276; *Commissioners of Inland Revenue v Aberdeen Medico-Chirurgical Society* (1931) 16 TC 237 at 250; *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR 867 at 876.

²⁰ See generally Gino Dal Pont, *Charity Law* (Lexis Nexis Butterworths, 2010) at [11.3] – [11.8], and authorities at notes 22 and 23 below.

²¹ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

²² *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at 208-209 (CA). See also *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 at [20] (Joseph Williams J); *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157 (Somers J); *Re Tennant* [1996] 2 NZLR 633 at 638). This is consistent with the approach taken in other jurisdictions, see for example *Re Jones* [1907] SALR 190 at 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447 at 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138 at 146-148; *Brisbane City Council v Attorney-General for Queensland* [1979] AC 411 at 422 (PC); *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659 at 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304 at 305.

²³ *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818 [24 June 2011] at [48].

The first is that the purpose must be within the spirit and intendment of the preamble to the Statute to Elizabeth I. The second is that Lord Macnaghten's fourfold classification in Pemsel's case must be read subject to the qualification that it does not mean that every object of public general utility must necessarily be a charity. He concluded that the purpose must be both for the benefit of the community and beneficial in a way which the law regards as charitable. The somewhat circular requirement that to be charitable, a purpose must be beneficial in a way which the law regards as charitable, reflects and restates the requirement that the purpose must be within the spirit and intendment of the preamble. [footnotes omitted]"

24. Over the years, the courts have recognised many new charitable purposes that are substantially similar to those listed in the Statute of Elizabeth, acknowledging that what is accepted as a charitable purpose must change to reflect current social and economic circumstances. So for example, the courts have held that the protection of the health and safety of the community by ensuring proper standards in the practice of medicine, surgery and nursing is a charitable purpose within the category of purposes beneficial to the community.²⁴ The courts have also recognised that the advancement of the science of engineering is beneficial to the general public.²⁵

C.2.3 Purposes to promote a profession

25. The courts have held that a society will not be charitable if it is founded for the advantage and in the interests of those practising in a particular profession.²⁶ This extends to training for the attainment of professional efficiency by members of the profession,²⁷ and activities intended to

²⁴ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 at 309-310 (McKay J), 320-321 (Thomas J).

²⁵ *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 at 580; *Commissioners of Inland Revenue v Forrest (Institution of Civil Engineers)* (1890) TC 117 at 131 (Lord MacNaghten).

²⁶ *Re Mason (deceased)* [1971] NZLR 714 (held that a significant purpose of the Law Society was to provide benefits to members in the conduct of their professional practices); *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 (held that a significant and non-incidental purpose of the Institution of Professional Engineers New Zealand Inc was to act as a professional organisation for the benefit of engineers); *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] (held a non-ancillary purpose of the New Zealand Computer Society was to benefit the profession, or members of that profession). See also: *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR 867 (held that the main object was to promote professional proficiency not advance education); *Society of Writers to Her Majesty's Signet v Commissioners of Inland Revenue* (1886) 2 TC 257 (held that purpose of the Society was to promote the exercise of the profession for pecuniary gain); *General Medical Council v Commissioners of Inland Revenue* (1928) 13 TC 819 (CA; approved [1959] AC 540 (HL) (Council established to maintain a register of qualified medical practitioners held not charitable); *General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540 (HL) (held that council established under legislation to maintain a register of nurses and exercise supervisory power in training and examination was not charitable).

²⁷ In *Re Mason* [1971] NZLR 714 at 724 – 728, McMullin J reviews authorities that a purpose to promote the professional efficiency of members of a profession lies outside the legal concept of a charitable purpose to advance education, including *Society of Writers to Her Majesty's Signet v Commissioners of Inland Revenue* (1886) 2 TC 257 at 271, 276; *Commissioners of Inland Revenue v Aberdeen Medico-Chirurgial Society*

increase the status of a particular profession and the esteem in which it is held.²⁸

(a) The general principle

26. The courts recognise that some professional associations operate as learned societies that have a charitable purpose to advance education or provide some other benefit to the public that is charitable under the fourth *Pemsel* category.²⁹ Nevertheless, the general principle is that the provision of charitable benefits to the public will not suffice to establish the charitable status of an entity if the entity has an independent purpose to provide benefits to the profession. In *Re Mason*,³⁰ McMullin J explained:³¹

“... there is an established line of authority which draws a distinction between two kinds of institutions – the one which regulates a profession for the advantage of those practising it and the other whose interests include the advancing of some branch of science in a wide sense. The first class of institution has been held to be not charitable; the second class has been held to be charitable.”

27. His Honour considered that, while the objects of the Auckland District Law Society were “entirely wholesome and likely to lead to the ultimate benefit of the public in that the members of the legal profession in this country will be encouraged to be more competent and more ethical in the practice of the law, they fall short of making the Society a charity.”³²

28. Similarly, in *Inland Revenue Commissioners v City of Glasgow Police Athletic Association*,³³ Lord Normand stated that, in order for a professional association to be charitable, it must show that “viewed objectively, the association is established for a public purpose; and that the private benefits to members are the unsought consequences of the pursuit of the public purpose, and can therefore be disregarded as incidental.”

29. In *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*,³⁴ the High Court held that although the advancement of the science of engineering was beneficial to the general public, a function of the institution was to perform a significant professional role which produced

(1931) 16 TC 237 at 250; *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR 867 at 876. See also *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 at 578; *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [48] – [56], [59] – [61].

²⁸ *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [41], citing *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 at 580 and *Re Mason* [1971] NZLR 714 at 722.

²⁹ See for example *Royal College of Surgeons of England v National Provincial Bank* [1952] AC 631 (HL) (held that the College of Surgeons was established for the purpose of promoting the science of surgery and that professional protection for members was merely ancillary); *Royal College of Nursing v St Marylebone Corporation* [1959] 3 All ER 663 (CA) (held that the College’s purpose was to advance the science of nursing for the relief of human suffering and not to promote the interests of nurses as members of the nursing profession).

³⁰ [1971] NZLR 714.

³¹ [1971] NZLR 714 at 723.

³² [1971] NZLR 714 at 725.

³³ [1953] AC 380 at 896 (Lord Normand).

³⁴ [1992] 1 NZLR 570.

private benefits to engineers, and therefore it could not be said that the institution was established exclusively for charitable purposes. Tipping J identified the issue as being whether the non-charitable purposes were "significant in themselves or simply inevitable and unsought consequences of the pursuit of the principal public and charitable object."³⁵ His honour concluded that in that case, "the private benefits [could not] be disregarded as incidental".³⁶

30. In *New Zealand Computer Society Inc*,³⁷ the High Court held that the New Zealand Computer Society Incorporated had independent non-charitable purposes that were aimed at benefiting the profession and that they were not ancillary to a purpose of advancing information technology as a discipline.³⁸

(b) Exceptions to the general principle

31. While the courts have recognised that it may be charitable to promote industry or commerce for the public benefit, this refers to purposes to promote industry or commerce in general terms and not to promote individuals involved in industry or commerce.³⁹ Where the purpose is to raise standards of proficiency in an occupational group, this will only be charitable if any private benefits conferred on members of that occupational group are incidental;⁴⁰ and that occupational group provides a public benefit that is charitable in law.

32. The occupational groups whose promotion is regarded as charitable in law are limited to those that provide a public benefit within the spirit and intendment of the Statute of Elizabeth I.⁴¹ These include occupations involved in medicine, surgery and nursing.⁴²

33. In *Commissioner of Inland Revenue v Medical Council of New Zealand*,⁴³ the New Zealand Court of Appeal held by majority (McKay, Thomas and Keith JJ; Richardson P and Gault J dissenting) that the Council was established for a charitable purpose, to protect the public in respect of the quality of medical and surgical services.⁴⁴ This decision rested on two

³⁵ [1992] 1 NZLR 570 at 583.

³⁶ [1992] 1 NZLR 570 at 583.

³⁷ HC WN CIV-2010-485-924 [28 February 2011]

³⁸ HC WN CIV-2010-485-924 [28 February 2011] at [68].

³⁹ See *Crystal Palace Trustees v Minister of Town and Country Planning* [1951] 1 Ch 132 (held control and management of a public place for the promotion of industry, commerce and art was charitable); *Commissioners of Inland Revenue v White* (1980) 55 TC 651 (held that preservation and improvement of fine craftsmanship was a charitable purpose and benefits to craftsmen were incidental).

⁴⁰ See discussion at paras 25-30 above.

⁴¹ See discussion of the 'two stage' definition of charitable purposes under the fourth *Pemsel* head at paras 22-24 above.

⁴² *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 (held that the Council's purpose was to promote standards of medical and surgical care for the benefit of the public and relief of human suffering); *Royal College of Nursing v St Marylebone Corporation* [1959] 3 All ER 663 (CA) (held that the College's purpose was to advance the science of nursing for the relief of human suffering and not to promote the interests of nurses as members of the nursing profession).

⁴³ [1997] 2 NZLR 297.

⁴⁴ [1997] 2 NZLR 297 at 309 (McKay J), 320-321 (Thomas J), 321-2 (Keith J).

findings. The first was that the primary purpose of the Council was to give security to the public in relation to the quality of medical and surgical services and that the benefits to the medical profession were incidental to that primary benefit to the public.⁴⁵ The second was that the protection of the public in respect of the quality of medical and surgical services was a benefit to the community within the fourth *Pemsel* category.⁴⁶

34. The ruling in *Commissioner of Inland Revenue v Medical Council of New Zealand* does not generalise to all industries that have public utility. The protection of the public in respect of the quality of medical and surgical services is part and parcel of protection and promotion of the health of the community, which manifestly falls within the category of charitable purposes “beneficial to the community”.⁴⁷
35. In *New Zealand Computer Society Inc*,⁴⁸ the Society had submitted that its main purpose was to provide a benefit to the community by ensuring high standards in the IT profession. McKenzie J rejected that submission, and went on to add:⁴⁹

‘It is undoubtedly the case that IT is important in modern life. However, I do not consider that its importance is such that the IT profession can be equated with the medical profession or the nursing profession so far as the public interest in the maintenance of high standards in the profession is concerned.’

36. Further, in *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*,⁵⁰ the High Court held that the Institution was not charitable despite the Institution dealing with professional conduct and discipline and requiring all members to conduct themselves with due regard to the public interest especially in matters of health and safety.⁵¹

C.3 The public benefit requirement and benefits for members of a profession

37. An entity cannot be considered charitable unless it provides public benefit, that is, it must benefit the community or a sufficient sector of the community.⁵²
38. The courts have held that a professional association that provides benefits only to its members shows insufficient public benefit to be charitable in law. So for example, educational activities to promote the professional proficiency of members of a professional association are not charitable in law as they confer a private and not public benefit.⁵³

⁴⁵ [1997] 2 NZLR 297 at 309-310 (McKay J), 319-320 (Thomas J).

⁴⁶ [1997] 2 NZLR 297 at 309-311 (McKay J), 320-321 (Thomas J).

⁴⁷ [1997] 2 NZLR 297 at 309-311 (McKay J), 320-321 (Thomas J).

⁴⁸ HC WN CIV-2010-485-924 [28 February 2011].

⁴⁹ HC WN CIV-2010-485-924 [28 February 2011] at [56].

⁵⁰ [1992] 1 NZLR 570.

⁵¹ [1992] 1 NZLR 570 at 574.

⁵² See text at para 13 above.

⁵³ See *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 at 578; *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [48] – [56], [59] – [61].

39. In *New Zealand Computer Society Inc*, MacKenzie J rejected a submission that the New Zealand Computer Society's educational purposes were exclusively for the benefit of the public, holding that the Society had an independent purpose "aimed at educating IT professionals rather than members of the public, and would thus lead to limited public benefit".⁵⁴ The Society's educational events programme seemed "to have a strong professional, as opposed to a public benefit, focus"⁵⁵ and that many of the events were designed "for professionals rather than the public".⁵⁶ His Honour held that the Society's "professional society functions" include "promotion of professional proficiency, accrediting and training of professional engineers",⁵⁷ and that there is insufficient public benefit in "education for the advancement of a particular profession".⁵⁸

C.4 The Society's purposes

C.4.1 The Society's purpose to promote professional interests

40. The Board considers that the Society has a purpose to provide benefits to members of the engineering and public asset management profession. The Board considers that this purpose is evident in the following:

- the stated object at clause 5.1, to "uphold and improve *the status of* engineering and management of public assets in New Zealand";⁵⁹
- the stated object at clause 5.2, to "be the principal engineering and asset management *advisory body* for local government";⁶⁰
- the stated object at clause 5.6 to "provide benefits for Members, including opportunities for ... networking and personal development" read with the provision at clause 8 that membership is available to persons qualified or regularly employed in the provision of public asset engineering and/or management services;⁶¹
- the Society's activities⁶² that confer private (non-charitable) benefits on engineering and public asset management practitioners, including: the NZ Engineering Excellence Awards and INGENIUM Excellence Awards for Public Infrastructure, and conferences, seminars, fora and workshops for public asset practitioners.

41. The Society's stated objectives at clause 5.4 and 5.5 indicate an intention to advance education in the fields of public asset engineering and

⁵⁴ HC WN CIV-2010-485-924 [28 February 2011] at [54].

⁵⁵ HC WN CIV-2010-485-924 [28 February 2011] at [60].

⁵⁶ HC WN CIV-2010-485-924 [28 February 2011] at [61].

⁵⁷ HC WN CIV-2010-485-924 [28 February 2011] at [40].

⁵⁸ HC WN CIV-2010-485-924 [28 February 2011] at [41].

⁵⁹ Compare *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [41].

⁶⁰ Compare *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [62].

⁶¹ Compare *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [60] – [61].

⁶² In reviewing the Society's activities, the Board has considered information provided by the Society in its letters of 17 April 2012 and 25 June 2012, information published on the Society's website, <http://www.ingenium.org.nz> [accessed 20 September 2012], and information provided by the Society in its annual returns and published to the Charities Register.

management. The Society's activities to advance education include holding conferences, seminars, fora and workshops for public asset practitioners, providing study tours for members, and hosting study visits from members of the International Federation of Municipal Engineering.

42. The Board considers that the Society's educational activities are for the private professional benefit of engineers and public asset management practitioners. The Society's seminars do not focus on the science of engineering but rather on the professional development of engineers and public asset management practitioners. Thus, the topics addressed in the Society's 2012 seminars are contract planning and documentation, administration of contracts under specific New Zealand Standards, and using software tools to turn technical data into meaningful visual presentations.⁶³ The Board considers that, as in *New Zealand Computer Society Inc*, the Society's educational activities have a strong professional, as opposed to a public benefit, focus.⁶⁴

C.4.2 The Society's purpose to promote professional interests is not ancillary

43. An entity may qualify as a charity if it has a non-charitable purpose that is *ancillary* to an independent valid charitable purpose of the entity.⁶⁵
44. As the cases on professional associations illustrate, associations that are formed for the purpose of benefiting their members are not charitable unless they also hold purposes benefiting the public and the private benefits are merely incidental to those purposes.⁶⁶
45. The Board considers that the Society's purpose to promote the 'private' professional interests of engineers and public asset management practitioners is so pervasive and predominant it cannot realistically be considered ancillary.

C.4.3 Relevance of the 'vision statement' at clause 3

46. The Society has submitted that its 'purpose' is as stated in the vision statement at clause 3, and that the objectives at clause 5 are merely means by which it achieves that purpose.

(a) Vision statement does not define Society's exclusive purpose

47. The Board does not consider that the 'vision statement' at clause 3 determines the Society's purposes.
48. The Board notes that the Society's submission is inconsistent with the express terms used in the Society's rules document, where clause 5 appears under the title 'objectives' and clauses 3 and 4 appear under the titles 'vision statement' and 'mission statement' respectively.

⁶³ <http://www.ingenium.org.nz/pages/54/calendar-of-events.htm> [accessed 20 September 2012].

⁶⁴ *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [60].

⁶⁵ See text at para 14 above.

⁶⁶ See text at paras 26-30 above.

49. The Board considers that clauses 3 and 4 state the Society's *motivation* and/or the 'downstream' benefits of its activities. Neither motives nor downstream benefits are relevant in determining whether an entity is established for exclusively charitable purposes. Speaking in general terms regarding motive, purposes and powers, Dal Pont states:⁶⁷

Merely because an association is established for a charitable (say religious or educational) motive does not ... confer upon it charitable status if its expressed non-ancillary objects and powers are not charitable. The relevant inquiry here, and in charity law generally, is not motive but purpose.

50. Similarly, the 'downstream' benefits of an entity's activities do not constitute the entity's independent purposes. In *New Zealand Society of Accountants v Commissioner of Inland Revenue*, the Court of Appeal had to decide whether the purpose of fidelity funds operated by the New Zealand Society of Accountants and the New Zealand Law Society was to ensure peace of mind in the community in respect of the provision of legal and accounting services or, more restrictively to underwrite private clients who had been defrauded by their professional advisors. The Court held that the purpose of the fidelity funds was to establish a co-operative insurance scheme, and that the benefit to the public was too speculative and remote to determine the purpose of the funds.⁶⁸ In *Travis Trust v Charities Commission*, Joseph Williams J explained that it is inappropriate to define the purpose of an entity by reference to alleged downstream benefits.⁶⁹

⁶⁷ Gino Dal Pont, *Law of Charity* (LexisNexis Butterworths, Australia, 2010) at [13.18], and see also the discussion at [2.8] – [2.11]. This statement accords with judicial authorities, see for example *Latimer v Commissioner of Inland Revenue* [2004] 3 NZLR 157 at 168 (PC) ("whether the purposes of the trust are charitable does not 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?"); *Keren Kayemeth Le Jisroel Ltd v Inland Revenue Commissioners* [1932] AC 650 at 657 (Lord Tomlin), 661 (Lord Macmillan); *Commissioner of Inland Revenue v Oldham Training and Enterprise Council* (1996) 69 TC 231 at 251 (Lightman J).

⁶⁸ *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 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).

⁶⁹ *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) 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 Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 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); *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 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); *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [42]; *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [23]; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [32].

51. Even if clauses 3 and 4 were read as stating purposes rather than motivations, the Board considers that those clauses would not take priority over clause 5 when it came to ascertaining the Society's purposes. This is for two reasons.
52. First, 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.⁷⁰ The terms used in clauses 3 and 4 are vague and aspirational, and there is ample justification for looking to the whole context, including clause 5, to determine the Society's purposes.
53. In *Travis Trust v Charities Commission*, Joseph Williams J determined that a purpose to "support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes" was not charitable. Relevantly for present purposes, 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.⁷¹
54. It would be inconsistent with judicial authorities to favour the Society's vision statement at clause 3 over the Society' objectives at clause 5. In *Commissioners of Inland Revenue v White and Others and Attorney General*,⁷² the court considered limitations in the constitution of the Clerkenwell Green Association. The court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:⁷³

*The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because **clause 2(b) limits the field in which the charitable intention is to be effectuated**. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purposes **within the specified field** and the Association would not be entitled to registration as a charity. [emphasis added]*

55. The general point made in the case is that the purpose of the entity is identified by looking at the constitution as a whole and the specific field within which the purposes are to be effectuated.
56. Second, even if the 'objectives' at clause 5 are viewed as the 'means' by which the Society achieves its purpose, it is legitimate to take those 'means' into account in determining whether the Society is established exclusively for charitable purposes. At its highest, the Society's argument is that clause 5 sets out the *activities* the Society undertakes in pursuit of its mission or vision. It is legitimate to take activities into consideration when

⁷⁰ Gino Dal Pont, *Law of Charity* (LexisNexis Butterworths, Australia, 2010) at [13.17].

⁷¹ *Travis Trust v Charities Commission* HC WN CIV 2008-485-1689 [3 December 2012] at [30] – [35], [58].

⁷² (1980) 55 TC 651.

⁷³ (1980) 55 TC 651 at 653. See also *Royal College of Nursing v St Marylebone Corporation* [1959] 3 All ER 663 at 667 (CA).

determining whether an entity qualifies for registration under the Act.⁷⁴ The High Court has consistently taken activities into consideration in determining whether an entity qualifies for registration under the Act.⁷⁵ This accords with the approach taken in other jurisdictions.⁷⁶ In determining qualification for registration under the Act, substance must prevail over form.⁷⁷

57. Accordingly, the Board does not consider that clause 3 states the exclusive purpose of the Society. Specifically, the Board considers that clause 3 states the Society's motivation and not its purpose. Moreover, even if clause 3 were read as stating a purpose of the Society, the statement in clause 3 would not provide a comprehensive definition of the Society's purpose nor establish that it is the exclusive purpose of the Society.

(b) A purpose in terms of clause 3 would not be charitable in law

58. The Board has considered whether the Society would qualify for registration if, contrary to the determination above, the vision at clause 3 ("to be leaders in engineering and asset management for sustainable communities") stated the exclusive purpose of the Society. The Board considers that such a purpose would not be charitable in law.

59. In its terms, the vision statement combines a public benefit (engineering and asset management for sustainable communities) and a private benefit to the members of the association (to be leaders in engineering and asset management). It does not state an exclusive purpose to provide a public benefit.⁷⁸

60. Further, the public benefit (engineering and asset management for sustainable communities) is not a benefit the promotion of which is charitable in law. As discussed above, not all benefits to the community are charitable in law under the fourth *Pemsel* head.⁷⁹ The Board considers that the public benefit in advancing engineering and asset management for

⁷⁴ See section 18(3)(a)(i) and (ii) and 50(2)(a) of the Act, and authorities at notes 75 – 77 below.

⁷⁵ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818 at [57] - [67]; *Re The Grand Lodge Of Antient Free And Accepted Masons In New Zealand* HC WN CIV 2009-485-2633, 23 September 2010 at [59], [71]; *New Zealand Computer Society Inc* HC WN CIV-2010-485-924, 28 February 2011 at [35] – [39], [60] and [68]; *Greenpeace of New Zealand Incorporated* HC WN CIV 210-485-829 6 May 2011 at [75].

⁷⁶ See for example: *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] 1 All ER 747 at 751-752; *Institution of Mechanical Engineers v. Cane* [1961] A.C. 696 (HL) at 723; *Attorney-General v Ross* [1986] 1 WLR 252 at 263; *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] 1 SCR 10 at [194] (Iacobucci J; Cory, Major and Bastarache JJ concurring); *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204 at [70] (Gummow, Hayne, Heydon and Crennan JJ).

⁷⁷ G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) at [2.12], [13.19], [13.20].

⁷⁸ That is, the purpose is not analogous with the *exclusive* purpose to provide a public benefit identified *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 at 309-310 (McKay J), 319-320 (Thomas J) and *Royal College of Nursing v St Marylebone Corporation* [1959] 3 All ER 663 at 667 (CA).

⁷⁹ See text at paras 22-24 above.

sustainable communities does not fall within the spirit and intendment of the preamble to the Statute of Elizabeth I. First, such a purpose is not analogous with purposes to relieve human suffering through ensuring high standards of medical, surgical and nursing care that have been recognised as charitable by the courts.⁸⁰

61. Second, while the provision of public utilities may be charitable under the fourth head,⁸¹ a purpose to advance engineering and asset management for sustainable communities would not be charitable by analogy with that charitable purpose. One reason is that such a purpose does not have an exclusive focus on provision of public utilities. Moreover, even if the Society's purpose focuses on public assets this does not serve to focus the purpose on the kinds of utilities, the provision of which may be charitable in law. Specifically, the charitable purpose recognised in law is not present in every case where utilities are owned and operated by a public authority.⁸²

'There are instances in the books in which particular funds held by a public authority, and even a municipal authority, have been held by the Courts to be held upon a charitable trust; but there is no reported case that I have been referred to, or that I myself have found, which has decided that all the assets and funds of a municipal or public body possessing powers of local government and charged with duties of providing and maintaining services for the public benefit have been held by the Courts to be assets and funds held upon a charitable trust.'

62. Thus, a purpose to advance engineering and asset management for sustainable communities does not relate solely to the provision of 'public utilities' in the sense recognised as charitable in law.
63. Accordingly, even if (contrary to our determination), the Society were established exclusively for the purpose of advancing engineering and asset management for sustainable communities, we do not consider that purpose would be charitable in law.

C.5 Removal from register is in the public interest

64. For the reasons given above, the Society does not have exclusively charitable purposes and does not meet the requirements for registration.
65. Section 10(1)(a) of the Act obliges the Board to promote public trust and confidence in the charitable sector. The Board considers that public trust and confidence in registered charitable entities would not be maintained if

⁸⁰ See discussion at paras 31-36 above.

⁸¹ By analogy with the 'repair of bridges, ports, havens, causeways, churches, seabanks and highways' in the preamble to the Statute of Elizabeth I, see generally Gino Dal Pont, *Charity Law* (2nd ed., Lexis Nexis Butterworths, 2010) at [11.25].

⁸² *Auckland Harbour Board v Commissioner of Inland Revenue* [1959] NZLR 204 at 210. In that case, the Supreme Court rejected an argument that the Auckland Harbour Board held its assets and funds for exclusively charitable purposes, noting that the purposes for which property is held by a public authority are set out in the governing legislation and that the courts' jurisdiction to control the use of such property does not flow from any assumption that the property is held for charitable purposes.

entities which did not meet the essential requirements for registration remained on the register.

66. Accordingly, the Board considers that it is in the public interest to remove the Society from the register as this will maintain public trust and confidence in the charitable sector.
67. The Society has requested that its removal from the register be deferred until the start of the new financial year on the grounds that a deregistration part-way through the financial year will be disruptive to the accounting process and also may cause financial embarrassment where the Society has not budgeted for payment of tax. The Board considers that these consequences do not outweigh the public interest in maintaining the integrity of the register, and in particular the public interest in the removal of entities that do not qualify for registration.

D. Charities Registration Board's determination

68. The Board determines that the Society is not qualified for registration as a charitable entity because it is not established and maintained for exclusively charitable purposes as required by section 13(1)(b)(i) of the Act. The Board considers that the Society has an independent (non-charitable) purpose to promote the interests of members of a profession, which is not a valid charitable purpose in New Zealand law.
69. As the Society has independent (i.e. non-ancillary) non-charitable purposes, it does not meet registration requirements and it is in the public interest to proceed with the Society's removal from the Charities Register. As such, the grounds for removal under section 32(1)(a) of the Act are satisfied in relation to the Society.
70. The decision of the Board is therefore to remove the Society from the register, pursuant to section 31 of the Act, with effect from 19 November 2012.

For the above reasons, the Board determines to deregister the Society as a charitable entity by removing the Society from the Register.

Signed for and on behalf of the Board



.....
Brendon Ward
General Manager, Charities

18/10/12

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Date

