

## Deregistration decision: The Cellar Club Incorporated (CC39348)

### Executive Summary

1. The Charities Registration Board (the Board) has determined that the Cellar Club Incorporated (the Society) is no longer qualified for registration as a charitable entity and that it is in the public interest that it be removed from the Charities Register.<sup>1</sup>
2. The Board considers that the Society no longer qualifies for registration as it is no longer established and maintained for exclusively charitable purposes, as required by section 13(1)(b) of the Charities Act 2005 (the Act). The Board has considered the Society's rules document in the light of its activities, information in its annual returns, and its submissions. We consider that the Society is primarily for recreational purposes for the private benefit of members.
3. The Board is satisfied that it is in the public interest that the Society be removed from the Charities Register.<sup>2</sup> The purposes of the Act include purposes to promote public trust and confidence in the charitable sector, and the effective use of charitable resources.<sup>3</sup> The Board considers that it would not promote these purposes if an entity that does not qualify for registration were allowed to remain on the Charities Register.
4. The Society has submitted that it continues to qualify for registration and that it is established for charitable purposes to promote education.
5. The Board's reasons for its decision are organised as follows:
  - A. Background
  - B. Legal Framework for Deregistration
  - C. Charities Registration Board's Analysis
  - D. Section 5(3) of the Act
  - E. Public Interest

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

<sup>2</sup> Section 32(1)(a) of the Act provides, 'The Board may direct that an entity be removed from the register if – (a) the entity is not, or is no longer, qualified for registration as a charitable entity.' Section 35(1) further provides that, if an objection to removal is received, the Board must not proceed with the removal unless satisfied that it is in the public interest to proceed with the removal.

<sup>3</sup> See section 3(a) and (b) of the Act.

## F. Determination

### A. Background

6. The Society was incorporated under the Incorporated Societies Act 1908 on 7 July 1981. It was registered as a charitable entity on 20 April 2009 with an effective registration date of 30 June 2008. The Society filed a notice of change with the Department of Internal Affairs on 27 January 2014. This notice of change advised of an administrative amendment to the Society's constitution dated April 2013. The April 2013 version of the constitution was updated with the Registrar of Incorporated Societies on 6 June 2014. Although the rules change was administrative only, a concurrent examination of the annual returns submitted by the Society indicated expenditure predominantly on wine, food and social activities for members of the Society. The Society's purposes and activities were therefore reviewed on current law taking into account developments of charities law since the time the Society was registered.
7. The Society's stated purposes at clause 2 of the constitution are:

#### **Primary purpose:**

- (a) To promote the furtherance, understanding and appreciation of wine through wine tastings, meetings, visits to vineyards, and such other related activities as dinners which, from time to time, are considered to assist in the furtherance of the Club's appreciation of wine.

#### **Other purposes, provided they are consistent with the primary purpose:**

- (b) To liaise with persons concerned either directly or indirectly with the production and promotion of wine either in New Zealand or overseas, in order to further the primary interests of the Club.
- (c) To assist in the education and appreciation of wine in the wider community as opportunities arise.
- (d) To liaise with organisations having similar aims with a view to the exchanging of ideas and the entering into arrangements of mutual assistance to the Club.
- (e) To purchase, take on lease or exchange, hire or otherwise acquire any real or personal property, any rights or privileges which the Club may think necessary or convenient.
- (f) To fund its activities by raising money from subscriptions, meeting charges and other means approved by the club and to grant any right or privileges that may attach to such subscriptions.
- (g) To borrow, raise or secure the payment of money in such manner as the Club shall think fit and in particular, by mortgages, debentures, or debentures charged upon all or any of the Club's undertaking, property and assets.

- (h) To make, draw, accept, discount, and execute any promissory notes, bills of exchange, debentures, or other negotiable instruments.
  - (i) To invest, lend and deal with the moneys of the Club not immediately required upon such Trustee Securities as the Club may think fit.
  - (j) To appoint, remove or suspend any secretaries, treasurers, clerks, agents or servants.
  - (k) To make, adopt, vary, and publish rules, by-laws and regulations dealing with any of the matters comprised in the above mentioned objects and to take all such steps as shall be deemed necessary or advisable for enforcing such rules, regulations, by-laws and conditions.
8. The Society has filed annual returns, as required under the Act, for its financial years ending 31 March 2009, 2010, 2011, 2012 and 2013. The annual return for the year ending 31 March 2014 was due on 30/9/2014, but has not yet been filed. The Society also maintains a website that documents its activities.<sup>4</sup>
9. On 10 March 2014, after reviewing the amended purposes and the activities of the Society, a request for further information was sent to the Society pursuant to section 51 of the Act. No response was received to this request. On 14 April 2014, Charities Services sent a notice of intention to remove the Society from the Charities Register, on the grounds that it no longer qualified for registration. The notice explained that Charities Services considered that the Society is maintained for recreational purposes for the private benefit of members, that are not charitable in law; and its non-charitable purposes are not ancillary to charitable purposes.
10. On 13 June 2014, the Society submitted a written objection to the notice of intention to remove. The Society's submission is discussed in part C of this decision.
11. On 3 July 2014 Charities Services sent a response to the Society outlining that, after considering the Society's submission, Charities Services continued to consider that the Society no longer qualifies for registration. The email provided a further opportunity for the Society to provide any further submissions by 4 August 2014. No further submissions have been received.

## **B. Legal framework for deregistration**

12. 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.
13. 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

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<sup>4</sup> <http://cellarclub.co.nz>.

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.

14. The power under section 32(1)(a) is to be exercised on the grounds set out in sections 32 and 35, and for the purposes of the Act as set out in section 3.<sup>5</sup>
15. The essential requirements for registration as a charitable entity are set out in 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.
16. 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.<sup>6</sup>
17. To be charitable at law a purpose must be for the public benefit.<sup>7</sup> Public benefit must be expressly shown where the claimed purpose is under the fourth head of charity, “any other benefit to the community”.<sup>8</sup> Further, in every case, the benefit of the entity’s purposes must flow to the public or a sufficient sector of the public.<sup>9</sup> If a

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<sup>5</sup> *Greenpeace of New Zealand Incorporated* [2012] NZCA 533 (“*Greenpeace, CA*”) at [34], [37], [38].

<sup>6</sup> This statutory definition adopts the general law classification of charitable purposes as stated in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531. See: *Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“*Greenpeace, SC*”) at [12],[15] and [17]; *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] at [11].

<sup>7</sup> 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 Commissioners 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 (“*Travis Trust*”) at [54]-[55] (Joseph Williams J); *Queenstown Lakes Community Housing Trust* HC WN CIV-2010-485-1818 [24 June 2011] (“*Queenstown Lakes*”) at [30]; *Education New Zealand Trust* at [23].

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

<sup>9</sup> 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*

purpose is to benefit a private group, the consequential downstream benefits to the public will not suffice.<sup>10</sup>

18. 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. Pursuant to section 5(4) of the Act, 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.

19. Determining whether a non-charitable purpose is ancillary includes a qualitative assessment of whether it is a means to advance the charitable purpose.<sup>11</sup> It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity's overall endeavour.<sup>12</sup>

#### ***Relevance of entities' activities in registration decision-making***

20. Section 50(2) permits the chief executive to examine and inquire into the activities and proposed activities when reviewing charitable entities.<sup>13</sup> Section 18(3)(a)(i) and (ii) of the Act requires that an entity's activities are taken into consideration when determining whether it qualifies for registration under the Act. The courts

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*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).

<sup>10</sup> 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 Training and Enterprise Council* (1996) STC 1218 (“*Oldham*”); *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

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

<sup>12</sup> 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].

<sup>13</sup> The Courts have also confirmed that consideration of activities is a mandatory aspect of decision-making under the Act. Refer *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].

have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.<sup>14</sup>

21. Activities are not to be elevated to purposes,<sup>15</sup> 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;<sup>16</sup>
- whether the entity is acting for an inferred or unstated non-charitable purpose<sup>17</sup>
- whether the entity's purposes are providing benefit to the public;<sup>18</sup> and
- whether a non-charitable purpose is ancillary within the section 5(3) of the Act.<sup>19</sup>

22. In the light of the above, we consider there is a statutory mandate supported by case law for the Board to consider an entity's current and proposed activities when determining whether it remains qualified for registration. In determining qualification for registration under the Act, substance must prevail over form, and an entity cannot qualify for registration, even if its stated purposes are exclusively charitable, if its activities belie its stated charitable purposes.<sup>20</sup>

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<sup>14</sup> *Greenpeace SC* at [14]. See also the approach taken in the High Court in *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *QLCHT* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] - [39], [60] and [68]; *Greenpeace HC* at [75].

<sup>15</sup> See: *McGovern v Attorney-General* [1982] 1 Ch 321 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 at 616; *Vancouver Society of Immigrant and Visible Minority Women v the Minister of National Revenue* [1999] 1 SCR 10.

<sup>16</sup> See *Professional Engineers* at 575 (Tipping J).

<sup>17</sup> *Greenpeace SC* at [14] "The purposes of an entity may be expressed in its statement of objects or may be inferred from the activities it undertakes, as s 18(3) of the Charities Act now makes clear". *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* [2005] HCA 55 at [25] (Gummow, Hayne, Heydon and Crennan JJ).

<sup>18</sup> 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].

<sup>19</sup> See for example *Greenpeace, CA* at [40], [48], [87] - [92], [99] and [103]. Earlier authorities to same effect include *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 ("*Molloy*") at 693 and the authorities cited there.

<sup>20</sup> G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) at [2.12], [13.19], [13.20].

### **Characterisation of an entity's purposes**

23. Once an entity's purposes are established as a matter of fact, the question whether they are charitable is a question of law.<sup>21</sup> The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.
24. 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.<sup>22</sup> Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.<sup>23</sup>

## **C. Charities Registration Board's Analysis**

25. The Board considers that the Society's primary purpose is a recreational purpose for the private benefit of members. Such a purpose is outside the scope of charity.

### **Recreational purposes and the Society**

26. Courts have held that sporting, entertainment and social activities are not charitable in their own right. In *Travis Trust v Charities Commission* (Travis Trust), Williams J made the following comments concerning sport, leisure and entertainment:<sup>24</sup>

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

27. The decision in *Travis Trust* is consistent with previous decisions.<sup>25</sup> For example the House of Lords in *Inland Revenue Commissioners v Baddeley* determined that the provision of entertainment and amusement per se were inconsistent with accepted notions of charity.<sup>26</sup>

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<sup>21</sup> *Molloy* at 693.

<sup>22</sup> *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

<sup>23</sup> G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) at [13.18], and see also the discussion at [2.8] – [2.11]. See for example *Latimer, PC* at 168; *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).

<sup>24</sup> *Travis Trust* at 23, 281. The Board notes that the common law position in *Travis Trust* in relation to sport were subsequently adopted into section 5(2A) of the Act on 28 February 2012.

<sup>25</sup> Refer also to *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447 and *Glasgow Police Athletic Association*.

<sup>26</sup> *Inland Revenue Commissioners v Baddeley* [1955] AC 572 .

28. The Board considers that the primary purpose of the Society is recreational in nature, and not in furtherance of any deeper purpose which may be considered charitable. The Society's stated primary purpose is to 'promote the furtherance, understanding and appreciation of wine through wine tastings, meetings, visits to vineyards, and other such related activities as dinners which, from time to time, are considered to assist in the furtherance of the Club's appreciation of wine' (refer clause 2(a)). However, as stated by the entity on its website:

Our membership includes those who are keen to learn about wine and others who simply enjoy sharing good wine in good company. Get a taste of who we are by visiting one of our monthly meetings. One of our committee will welcome you and introduce you to other people. We're a friendly bunch!<sup>27</sup>

29. As indicated on the website, regular events include a barbeque in January, AGM in May and mid-winter and Christmas dinners at a Wellington restaurant each year, along with regular wine tasting sessions and vineyard visits.

30. The financial statements provided by the entity for the 2009 – 13 financial years indicate that the three categories of expenditure 'Food and Wine', 'Dinner subsidy' and 'BBQ Subsidy' when taken together account for between 65% and 80% of total expenditure over the years in question. The only other category of expenditure of any significance is room hire accounting for between 7.5% and 12.9% of total expenditure over the period.

### ***Educational purposes and the Society***

31. The Society has submitted that it has advanced educational purposes promoting aesthetic education such as in the arts for public benefit.<sup>28</sup> We have therefore considered whether the Society could be considered charitable under "advancement of education".

32. The Society has argued in its submission that the volume of wine consumed at tastings is minimal, and that "the purpose of our consumption of alcohol is to gain understanding and not enjoyment." The Society further argues that its educational purpose is further evidenced by the presence of a guest speaker at tastings, spittoons and marking sheets and that "these are not the characteristics of a social club".

33. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. 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, as long as there is

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<sup>27</sup> <http://cellarclub.co.nz>, accessed 5 March 2014.

<sup>28</sup> Society's submission dated 13 June 2014.



a balanced and systematic process of instruction, training, and practice.<sup>29</sup> Further, in order to advance education, learning must be passed on to a broad section of the public.<sup>30</sup>

34. In its submission the Society has argued that its activities are educational in “the same way as some other person might learn to appreciate art or music”. The courts have held that a purpose to foster, promote and increase public interest in the arts is a charitable purpose to advance aesthetic education.<sup>31</sup> Examples of activities that may advance aesthetic education include holding public exhibitions of works of art or craftsmanship and preservation of works of good craftsmanship.<sup>32</sup> However, the essential requirement is that there is an overriding purpose to educate, as distinct from facilitating the participation of a limited number of individuals in the arts for their private entertainment.<sup>33</sup> The Board considers that the Society’s dominant purpose is recreational and for the private entertainment of its members. Further, we do not consider that wine tasting meets the requirements to be considered aesthetic education in law.
35. The Board does not consider that the activities of the Society meet the threshold required to be educational in a way that is charitable at law.<sup>34</sup> Although information is presented at wine tastings and vineyard visits, the Society has provided no information which shows a structured attempt to educate those attending.
36. The Society also argues in its submission that it is providing a public benefit through educating people on the responsible use of wine, and on the merits of healthier wine options such as organic wine.
37. The Board considers that education that “impacts consumer choice and how they view and use wine” as referred to in the Society’s submission is not a public benefit for the purposes of charities law. It is acknowledged that information that encourages drinking alcohol responsibly is of public benefit, however, the Club has not provided any evidence that it is promoting responsible drinking to the general public. Further, it is considered that “highlighting the qualities of organic wine...are promoting healthier alternatives...” is not a public benefit. Public health authorities have consistently advised of the negative effects of alcohol consumption

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<sup>29</sup> *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.

<sup>30</sup> See *CDC and Computer Society*.

<sup>31</sup> *Associated Artists v IR* [1956]. See also *Commissioners of Inland Revenue v White*, (1980) 55 TC 651 holding that a purpose to foster, promote and increase the interest of the public in craftsmanship was a valid educational purpose.

<sup>32</sup> *Re Cranstoun* [1932] 1 Ch 537.

<sup>33</sup> *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787 at 795; see also *Re Ogden* (1909) 25 TLR 383.

<sup>34</sup> *Vancouver Society* (1999) 169 DLR (4<sup>th</sup>) 34 (SCC). Judge Iacobucci “To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study, or otherwise”.

therefore influencing consumer choice or promoting other alcoholic alternatives is not considered to be of public benefit.

### ***Public versus Private Benefits***

38. As above, the benefit of the entity's purposes must flow to the public or a sufficient sector of the public. If a purpose is to benefit a private group, the consequential downstream benefits to the public will not suffice. Further, private benefits are more than just monetary benefits.<sup>35</sup>
39. Private benefits available to members of the Society include wine discounts, prize draws of wine at club meetings and social events. As outlined on the Society's website:<sup>36</sup>

As part of the club experience you get to purchase the wines tasted on the night which are often discounted just for us. We also have negotiated discounts from selected outlets in the Wellington, Wairarapa and Marlborough regions.

We also have a number of social events during the year including two dinners (mid-winter and Christmas), and a well-attended barbecue in January.

40. The Society has submitted that it endeavors to run each tasting as a break even exercise and that the champagne tasting usually runs at a deficit (with the remainder of the costs for the champagne tasting being covered by membership fees and any surpluses from other tastings). The Society has also submitted that private benefits are not being derived from donations or from outside people, rather it is the members' own money being used to reduce the amount they would otherwise have to pay on the night.
41. The Board does not consider that this means that the Society continues to qualify for registration. As above, the Society's activities confer private benefits on its members. The fact that the members fund these activities does not mean that the benefits are public or charitable.
42. In relation to the public benefit requirement the Society submits that the activities are available to the general public. "These visitor numbers vary between one and eight persons at club events, though this is significantly less than the member numbers attending these same events which vary between 19 and 44."<sup>37</sup> Therefore, it is primarily members benefitting from the events. It is noted also that as per clause 3(d) of the rules of the Society, visitors must become members after

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<sup>35</sup> The Board notes that cases post the registration of the Society have provided greater clarity on the assessment of public and private benefits. These cases include *Queenstown Lakes, CDC, Computer Society and Education New Zealand Trust* (discussed above in paragraph 17).

<sup>36</sup> <http://cellarclub.co.nz>, accessed 5 March 2014.

<sup>37</sup> Society's submission dated 13 June 2014.

attending two events in order to keep coming. This suggests that the accommodation of visitors is focussed on increasing membership of the Society.

43. In summary, it is considered by the Board that the private benefits provided to members of this entity are more than incidental to any wider public benefit.

#### ***The Society's other submissions***

44. The Society has submitted that it provides a public benefit through its fund raising activity for charity, the collection of wine bottle screw caps.

45. The Board recognises that providing assistance and funding to charities and charitable causes (such as bottle caps for cancer) advances a charitable purpose. However, it is considered that the Society's activity to fund and assist charities in this manner is incidental to its overall endeavor. The Society has stated that most of the events break even, and cannot therefore be seen as fundraising for charity at a level that is any more than incidental.

#### **D. Section 5(3) of the Charities Act**

46. The Board is satisfied that the Society's primary purpose is recreational and for the private benefit of members. It is both an independent purpose and the primary purpose of the Society (see above at section C). This purpose is so pervasive and predominant it cannot realistically be considered ancillary to any valid charitable purpose. The Society's non charitable purpose is therefore not 'ancillary' within the provision of section 5(3) of the Act.

47. Laudable though certain aspects of the Society's activities may be (such as the bottle caps for cancer fundraiser), they are not significant enough as a proportion of the Society's overall endeavour to constitute evidence of charitable purposes which are conducted for the benefit of the public. Rather, they are ancillary to the Society's primary recreational purpose.

#### **E. Public Interest**

48. Section 35(1) of the Act states, where an objection to a notice of intention to remove is received, the Board must not proceed with the removal of an entity from the register unless the Board is satisfied that it is in the public interest to do so.

49. Section 10(h) of the Act obliges the chief executive to monitor charitable entities and their activities to ensure that they continue to be qualified for registration as charitable entities. The purposes of the Act include, in section 3(a), to promote public trust and confidence in the charitable sector and in section 3(b), to promote the effective use of charitable resources.

50. In the light of the purposes of the Act, the Board considers that it is in the public interest that only entities qualified for registration remain on the Charities Register. The Board considers that public trust and confidence in registered charitable entities would not be maintained if entities which did not meet the essential requirements for registration remained on the register. Further, the Board considers that it would not promote the effective use of charitable resources for non-qualifying entities to remain on the register.

51. 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.

## F. Determination

52. The Board determines that the Society is no longer qualified for registration as a charitable entity because it is no longer established and maintained for exclusively charitable purposes as required by section 13(1)(b) of the Act. The Board considers that the Society is primarily for recreational purposes for the private benefit of members. This purpose is outside the scope of charity. Further, the Society's non-charitable purpose is not ancillary to any charitable purpose within section 5(3) of the Act.

53. As the Society has an independent (non-ancillary) non-charitable purpose, it does not meet registration requirements and it is in the public interest to proceed with the Society's removal from the Charities Register. The grounds for removal under section 32(1)(a) of the Act are satisfied in relation to the Society.

54. The decision of the Board is therefore to remove the Society from the register, pursuant to section 31 of the Act, with effect from 27 January 2015.

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

Signed for and on behalf of the Board

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Roger Holmes Miller

19<sup>th</sup> December 2014

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Date