

**Registration decision: Ellerslie Residents' Association Incorporated  
(ELL44856)**

*Executive Summary*

1. The Charities Registration Board (**the Board**) has determined to decline the application for registration of Ellerslie Residents' Association Incorporated (**the Applicant**) under the Charities Act 2005 (**the Act**).<sup>1</sup>
2. The Applicant applied for registration on the basis that it has exclusively charitable purposes, namely: relief of poverty, advancement of education, and other matters beneficial to the community.
3. The Board has determined that the Applicant is not qualified to be registered as a charitable entity under the Act as it has been established and maintained for independent (non-ancillary) purposes that are not charitable in law. As such the Applicant does not qualify for registration under section 13(1) of the Act.
4. The Board considers that the Applicant's independent purposes to promote community wellbeing and preserve the character of Ellerslie Village are not exclusively charitable purposes. The Board also considers that the Applicant furthers its purposes by seeking central and local government decisions that benefit Ellerslie residents. In New Zealand law, a purpose to procure governmental actions is a "political" purpose which is not charitable.
5. The Board's reasons are organised as follows:
  - A. Background
  - B. Legal Framework for Registration Decision
  - C. The Board's Analysis
  - D. The Applicant's Proposed Rules Amendment
  - E. Section 5(3)
  - F. Determination

A. *Background*

6. The Applicant was incorporated under the *Incorporated Societies Act 1908* on 17 December 2008 under the name Ellerslie Racecourse Rezone Opposition Society Incorporated. The Applicant changed its name to Ellerslie Residents' Association Incorporated on 26 March 2012.
7. The Applicant's purposes are set out at clause 3 of its rules document:

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<sup>1</sup> This decision is made under section 19 of the Charities Act 2005 [the Act].

3.1 The purposes of the Society are:

- a) To promote the wellbeing of the residents of Ellerslie North and South (2006 Census boundaries) and its environs through programmes or events that support child and adult education, recreation, health, fitness, social wellbeing, environmental protection, historical preservation, community togetherness, a fair distribution of community resources, and just outcomes for all residents regardless of ethnicity, religion and culture;
- b) To preserve the character of Ellerslie Village;
- c) To ensure that heritage sites are acknowledged and protected;
- d) To do anything necessary or helpful and/or incidental to the above purposes.

8. The Applicant applied for registration under the Act on 18 July 2012.
9. On 25 September 2012, Department of Internal Affairs, Charities Services (**Charities Services**) wrote to the Applicant to request further information about the Applicant's activities.<sup>2</sup>
10. On 20 December 2012, the Applicant provided a response to this information request, stating that the Applicant "would care for all aspects of the Ellerslie Borough and take a long term view of its development" and that the rules "represented the broad scope of the well-being of all Ellerslie Residents". The letter detailed activities including: preparing submissions to Auckland Transport on traffic and street issues in the locality; making representations to a local school Board, Ministry of Education and Members of Parliament seeking action to address overcrowding at a local school; preparing requests for a library and community centre for Ellerslie; and making submissions to Auckland Council about the "unequal spend on revenue to rates collected in the Orakei Ward"; opposing a proposed Vector substation for a residential area; conducting community surveys to ascertain primary concerns of residents; developing community togetherness by residents activities such as the annual Fairy Festival and Clean Up Ellerslie days.
11. On 15 March 2013, 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.<sup>3</sup> The letter explained that purposes to bring a community together, advance the welfare of a community and preserve the character of a village are not exclusively charitable. The letter also explained that pursuing these purposes by seeking local and central government decisions for the benefit of Ellerslie residents is a political purpose outside of the scope of charity in New Zealand law. The letter stated that the Applicant's activities showed that it has non-charitable purposes which

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<sup>2</sup> Under section 18(3)(a) of the Act.

<sup>3</sup> Under section 18(3)(c) of the Act.

are not within the allowance for ancillary non-charitable purposes set out in section 5(3) of the Act.

12. The Applicant submitted a written response on 30 April 2013. The Applicant submitted that:

- The Applicant promotes social wellbeing or welfare by supporting projects in Ellerslie “that will provide healthy social activities as opposed to those that harm residents’ health”.
- The Applicant’s support of community wellbeing or welfare is not a political purpose as the Applicant “is devoid of any political bias and does not support any particular political party but invites political parties to support the surveyed concerned of Ellerslie Residents”.
- The preservation of the character of Ellerslie Village by residents is “primarily concerned with the look, feel and aesthetics of the pre 1950’s Village atmosphere of Ellerslie as contrasted to a large commercial shopping centre site”.
- “Any unforeseen non-charitable purpose will be ancillary to the main purposes of the Society” as “no non-charitable activity equates to anything more than vocal or written support by the Society. It does not raise funds or expend funds on those activities”.

13. The Applicant also proposed changes to the wording of clause 3 of its rules document:

3.1 The purposes of the Society are to [sic];

- a) To promote the welfare of the residents of Ellerslie North and South (2006 Census boundaries) and its environs through activities that support education, recreation, health, safety, positive interpersonal values, environmental protection, and just outcomes for all Residents regardless of race, religion or culture
- b) These activities of the Society in a) above must be charitable within the meaning of the current legislation and common laws of New Zealand
- c) To preserve the historical significance and heritage of Ellerslie
- d) To do anything charitable that is necessary or helpful to fulfil the above purposes

3.2 Pecuniary gain is not a purpose of the Society

**B. *Legal Framework for Registration Decision***

14. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(b) of the Act, a society qualifies for registration if it is established and maintained for exclusively charitable purposes and not for private pecuniary profit.

15. 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>4</sup>
16. To be charitable at law a purpose must: (i) provide a benefit recognised in law; (ii) to the public.<sup>5</sup> As to the first limb, a purpose to relieve poverty, advance education or advance religion is assumed to provide a benefit recognised in law unless the contrary is shown.<sup>6</sup> No such assumption applies for purposes falling under the fourth head of charity (any other matter beneficial to the community), and for purposes in this category it is necessary to establish positively that the purpose provides a benefit of the kind recognised in this area of law.<sup>7</sup> Further, in every case, the direct benefit of the entity’s purposes must flow to the public or a sufficient sector of the public.<sup>8</sup> 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.<sup>9</sup>
17. 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:

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<sup>4</sup> This statutory definition 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: *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].

<sup>5</sup> Authorities include: *Oppenheim 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].

<sup>6</sup> See for example: *Molloy* at 695 (Somers J). See also *Computer Society* at [14]

<sup>7</sup> See for example: *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342 at 350 (Hammond J); *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 (“*CDC*”) at [45].

<sup>8</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 ; *Travis Trust* at [30] – [35]; *Queenstown Lakes* at [68] – [76]; *CDC* at [67].

<sup>9</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.

- (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.

18. 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.<sup>10</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>11</sup>

### **B.1. Relevance of entity's activities in registration decision-making**

19. 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.<sup>12</sup> The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.<sup>13</sup> Section 13 of the Act focuses attention on the purposes for which an entity is at present established,<sup>14</sup> and that this focus is justified in the broader scheme of the Act and the fiscal consequences of registration under the Act.<sup>15</sup>

20. Activities are not to be elevated to purposes,<sup>16</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>17</sup>

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<sup>10</sup> For recent judicial comment on the qualitative test see *Greenpeace, CA* at [62], [83] – [91].

<sup>11</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]. The Board notes the Court of Appeal's observation in *Greenpeace, CA* at [92], including footnote 95.

<sup>12</sup> See also section 50(2)(a) of the Act.

<sup>13</sup> *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].

<sup>14</sup> *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.

<sup>15</sup> 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.

<sup>16</sup> *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*”).

<sup>17</sup> See *Professional Engineers* at 575 (Tipping J).

- whether the entity is acting for an unstated non-charitable purpose;<sup>18</sup>
- whether the entity's purposes are providing benefit to the public;<sup>19</sup> and
- whether a non-charitable purpose is within the savings provision at section 5(3) of the Act.<sup>20</sup>

21. 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.<sup>21</sup>

### **B.2. Characterisation of an entity's purposes**

22. Once an entity's purposes are established as a matter of fact, the question whether they are charitable is a question of law.<sup>22</sup> The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.

23. 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>23</sup> Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.<sup>24</sup>

## **C. The Board's Analysis**

### **C.1. Overview**

24. The Applicant has submitted that it is established to relieve poverty, advance education and to be beneficial to the community. The Board has therefore considered whether the Applicant is established for these charitable purposes.

<sup>18</sup> *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).

<sup>19</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>20</sup> 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.

<sup>21</sup> Gino Dal Pont, *Law of Charity in Australia and New Zealand* (2<sup>nd</sup> ed., LexisNexis Butterworths, Australia, 2010) ("*Dal Pont*") at [13.17]. See for example, *Travis Trust* at [30] - [35], [58].

<sup>22</sup> *Molloy* at 693.

<sup>23</sup> *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

<sup>24</sup> *Dal Pont* at [13.18], and see also the discussion at [2.8] - [2.11]. See for example *Latimer, PC* at 168 (PC); *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).

We have determined that the Applicant does not have exclusively charitable purposes.

**C.2. Relief of poverty**

25. The Applicant has submitted that its purposes provide relief of poverty, age and infirmity by advocating for the provision of services that will be conducive to those purposes within Ellerslie.<sup>25</sup> For the reasons given below (C.5), we consider that advocating for the provision of services in Ellerslie is a political purpose which is not charitable in law. The Applicant's activities (advocating for the provision of services in Ellerslie) promote the Applicant's political purpose (to procure government actions beneficial to Ellerslie).

**C.3. Advancement of education**

26. The Applicant has submitted that it advances education by educating residents on how to make submissions to the Auckland Council, and by encouraging educational institutions to provide excellent educational services.<sup>26</sup> The Applicant met with a local school Board, Ministry of Education and Members of Parliament to raise awareness of overcrowding at a local school, and seek relocation of the school to a different site.<sup>27</sup>
27. We consider that the Applicant's activities in meeting with government advance the Applicant's political purpose (to procure governmental actions beneficial to Ellerslie).
28. We consider that the Applicant's activities in informing residents on how to make submissions to Council do not qualify as advancing education. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. Education may be advanced through formal tuition or training, and research that improves a useful branch of human knowledge and is disseminated to the public.<sup>28</sup> Further, it may include "information or training provided in a structured way for a genuinely educational purpose – that is, to advance the knowledge and abilities of the recipients – and not solely to promote a particular point of view".<sup>29</sup>
29. Raising awareness of issues, or promoting debate and discussion of those issues, is not itself an educational purpose.<sup>30</sup> The provision of information about local and central government does not in itself have any independent educational

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<sup>25</sup> Letter from the Applicant to Charities Services dated 30 April 2013, page 3.

<sup>26</sup> Ibid.

<sup>27</sup> Letter from the Applicant to Charities Services dated 20 December 2012.

<sup>28</sup> See for example in *Re Shaw's Will Trusts* [1952] Ch 163; *Re Besterman's Will Trust* (January 21, 1980, unreported) referred to in *McGovern* at 352-3; *Taylor v Taylor* (1910) 10 CLR 218; *Re Hopkins' Will Trusts* [1965] Ch 669.

<sup>29</sup> *Vancouver Society* at [169]. See also *Draco* at [42] - [43], [74];

<sup>30</sup> *Greenpeace, CA* at [59].

value.<sup>31</sup> Further, facilitating citizens' attempts to sway the government by letter writing and other methods on specific issues advances a political purpose.<sup>32</sup> In *In re Draco Foundation (NZ) Charitable Trust*, the High Court considered a submission that the Draco Foundation advanced education in forms of government and good citizenship, but held that the Foundation's activities advanced a purpose to influence local or central government or other officials to a particular point of view, and that this did not fall within the charitable purpose to advance education:<sup>33</sup>

In a democracy citizens are free to pursue [advocacy] but the activity is essentially political and therefore not a charitable purpose.

30. The Board considers that the Applicant's activities to inform citizens about how to engage with Council do not advance education and do advance a political purpose (to procure government actions beneficial to Ellerslie).

**C.4. Fourth head of charity**

31. The Applicant submits that its purposes are beneficial to the Ellerslie community.
32. It is settled law in New Zealand that not all purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. In order for a purpose to qualify as charitable under the fourth head, it must: (i) be beneficial to the community; and (ii) within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).<sup>34</sup> The Court of Appeal has recently stated the scope of the fourth head of charity in these terms.<sup>35</sup>

... the retention of the fourth category of charitable purpose, namely "any other matter beneficial to the community", confirms that the decisions of this Court relating to its interpretation and application remain applicable. In particular, the purpose must be for the public benefit and charitable in the sense of coming within the spirit and intendment of the preamble to the Statute of Charitable Uses Act 1601 (43 Eliz I c 4) (the Preamble). The public benefit requirement focuses on whether the purpose is beneficial to the community or a sufficient section of the public. The requirement to be charitable within the spirit and intendment to the preamble focuses on analogies or the presumption of charitable status. Even in the absence of an analogy, objects beneficial to the public are prima facie within the spirit and intendment of the preamble and, in

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<sup>31</sup> *Draco* at [36] - [41], [74] - [77].

<sup>32</sup> *Draco* at [55].

<sup>33</sup> *Draco* at [54].

<sup>34</sup> For the requirement that the benefit be within the spirit and intendment of the Preamble, see: *Greenpeace, CA* at [43], *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 (CA) at 302 (Richardson P and Gault J; dissenting), 310 (McKay J), 320-321 (Thomas J), 321 (Keith J, agreeing with McKay and Thomas JJ); *Latimer* at [39]-[40], *Travis Trust* at [20].

<sup>35</sup> *Greenpeace, CA* at [43].



the absence of any ground for holding that they are outside its spirit and intendment, are therefore charitable in law ...

C.4.1. Promotion of community wellbeing not an exclusively charitable purpose

33. The Board recognises that the Applicant has some purposes which may be beneficial to the community under the fourth head of charity, including environmental preservation and heritage protection. However, the Applicant's purposes to promote the welfare of residents, viewed holistically, are not exclusively charitable. The courts have held that the moral, social and physical wellbeing of the community or any part of it "is a laudable object of benevolence and philanthropy, but its ambit is far too wide to include only purposes which the law regards as charitable".<sup>36</sup> This is consistent with many court decisions denying charitable status to entities established to advance community welfare or similar.<sup>37</sup>
34. Further, the courts have held that promotion of good community relations is not a charitable purpose.<sup>38</sup> We consider that this reasoning applies also to purposes to develop a greater sense of community, community cohesion, community engagement, and community identity.<sup>39</sup> In addition, for the reasons given below (C.5), the Board considers that the Applicant's purposes to promote the wellbeing of the residents of Ellerslie are political purposes which are not charitable in law.

C.4.2. The Applicant's purpose to preserve the character of Ellerslie Village

35. The preservation for the public of places and artefacts of established heritage value is a recognised charitable purpose in New Zealand law.<sup>40</sup> The Applicant's purpose is to preserve "the look, feel and aesthetics of the pre-1950s village atmosphere of Ellerslie as contrasted to a large commercial shopping centre site".<sup>41</sup> The Applicant has not provided independent evidence that the village character of Ellerslie has heritage value, and accordingly the Board determines

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<sup>36</sup> *Inland Revenue Commissioners v Baddeley* [1955] AC 572 at 589.

<sup>37</sup> *Re Blyth* 2 Qd R 567 at 583 (raising the standard of life); *Re Belcher (deceased)* [1950] VLR 11 at 15 (welfare of youth); *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447 (promotion of moral, social, spiritual and educational welfare).

<sup>38</sup> *Taxation Review Authority Case 46* (1980) 2 TRNZ 665 (promotion of good community relations).

<sup>39</sup> Compare, for example, Charities Commission Registration Decision: Focus Paihia Community Charitable Trust, 16 April 2012; Charities Commission Registration Decision: Alexandra Blossom Festival Committee Incorporated, 26 November 2009, at [21]. These decisions are available at <http://www.charities.govt.nz/the-register/registration-decisions/>.

<sup>40</sup> New Zealand courts have recognised that the preservation of heritage artefacts for the public is a charitable purpose, provided that there is independent evidence that the artefacts are of sufficient historical or architectural interest *Re Verrall* [1918] NZLR 16; see also *Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER 705 at 710; *Re Cranstoun* [1932] 1 Ch 537 at 545. The Charities Commission applied this requirement in its decision to decline the application for registration of Otago Heritage Bus Society Incorporated, published at <http://www.charities.govt.nz/the-register/registration-decisions/>, at [45]-[53].

<sup>41</sup> Letter from the Applicant to Charities Services dated 30 April 2013.

that this preservation purpose does not meet the threshold requirements for a charitable preservation purpose.

**C.5. Purposes to procure government action as (non-charitable) political purposes**

36. In New Zealand 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 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.
37. The proposition that political purposes lie outside the scope of charity derives from English authorities,<sup>42</sup> and has been approved and applied in New Zealand by the Court of Appeal<sup>43</sup> and the High Court.<sup>44</sup>
38. The proposition 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.<sup>45</sup>
39. 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 law<sup>46</sup> and English case law; and dissimilar to the position in Australian law.<sup>47</sup>
40. The courts have recognised three categories of political purposes excluded from the scope of charity.<sup>48</sup> These are first, purposes to further the interests of a particular political party or representative;<sup>49</sup> secondly, purposes to procure governmental actions, including through legislation,<sup>50</sup> and other regulatory,

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<sup>42</sup> *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].

<sup>43</sup> *Molloy, Greenpeace, CA* esp at [63] (note leave to appeal granted by Supreme Court).

<sup>44</sup> *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].

<sup>45</sup> Compare *Greenpeace, CA* at [45].

<sup>46</sup> See Income Tax Act RSC 1985 c 1 (5<sup>th</sup> 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*”).

<sup>47</sup> See *Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539.

<sup>48</sup> See *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.

<sup>49</sup> *Collier* at 90, and see also *McGovern* at 337.

<sup>50</sup> 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.

administrative and/or judicial actions;<sup>51</sup> and thirdly, purposes to promote a point of view, the public benefit of which is not self-evident as a matter of law.<sup>52</sup>

41. 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.<sup>53</sup>
42. A purpose to procure government actions (including legislation, policies and other governmental decisions) *may be indicated* by actions such as:<sup>54</sup>
  - 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.
43. In *Notre Dame de Grace Neighbourhood Association v Revenue Canada, Taxation Section*,<sup>55</sup> the tenants association failed to be registered as a charitable organisation because of its purpose to secure local and central government decisions to benefit residents. Its actions include writing a letter to fight cutbacks in government funding and campaigns for inter alia the abolition of water tax and against the conversion of rental properties to condominiums. A number of

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<sup>51</sup> 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].

<sup>52</sup> *Collier* at 90; *Molloy* at 697; *Greenpeace, CA* at [61], [72], [76]; *Draco* at [67]. Compare Canadian authorities recognising this category of political purpose: *Human Life* at [12]; *Action by Christians for Abolition of Torture v Canada* [2002] 225 DLR (4<sup>th</sup>) 99 (“ACAT”) at [38]-[42] (obiter); *Human Life International in Canada Inc v Minister of National Revenue* [1998] 3 FC 202.

<sup>53</sup> *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).

<sup>54</sup> 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].

<sup>55</sup> [1988] 2 CTC 14,88 DTC 6279, (FCA).

residents' associations have been unsuccessful in seeking registration under the Act for similar reasons.<sup>56</sup>

44. The Board considers that the Applicant has a political purpose, i.e. a purpose to procure government actions to advance the wellbeing of residents of Ellerslie.
45. 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 3.1(a) refers to promoting the wellbeing of the residents of Ellerslie through fair distribution of community resources and just outcomes for all residents; clause 3.1(b) refers to preserving the character of Ellerslie Village.
46. In addition, the Board considers that the Applicant's activities (summarised above<sup>57</sup>) indicate its purpose to procure government actions.
47. The Applicant has submitted that it "is devoid of political bias and does not support any particular political party but invites political parties to support the surveyed concerns of Ellerslie Residents".<sup>58</sup> The Board acknowledges this submission. However, as explained above, the definition of "political purposes" in this area of law is not exhausted by partisan purposes, but rather includes purposes to procure governmental actions.

#### *D. The Applicant's Proposed Rules Amendment*

48. The Board notes the Applicant's proposal to amend its stated purposes in response to the matters notified by Charities Services. The proposed amendment would not be sufficient to establish that the Applicant qualifies for registration. The proposed statement that activities will be charitable in law would not in itself be determinative of the question whether the Applicant is established and maintained for exclusively charitable purposes.<sup>59</sup> The proposed amendment to the Applicant's stated purposes to promote wellbeing and preserve the historical significance and heritage of Ellerslie would not be sufficient to establish charitable status where the Applicant's activities advance non-charitable purposes, including a political purpose to procure governmental action for the benefit of Ellerslie.

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<sup>56</sup> See e.g. Registration decisions: Focus Paihia Community Charitable Trust; Paihia Ratepayers and Residents Association Incorporated (24 August 2010); Bayswater Community Committee Incorporated (29 November 2010). These decisions are available at <http://www.charities.govt.nz/the-register/registration-decisions/>.

<sup>57</sup> See para 10 above.

<sup>58</sup> Letter from the Applicant to Charities Services 30 April 2013, page 2.

<sup>59</sup> See note 23 above.

*E. Section 5(3)*

49. The Board considers that the Applicant's non-charitable purposes are not "ancillary" purposes within the terms of section 5(3) of the Act. The Applicant's political purpose and its purpose to promote community wellbeing are independent purposes of the Applicant and not means to advance the Applicant's charitable purposes.

*F. Determination*

50. 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 purposes to promote community wellbeing and preserve the character of Ellerslie which are not exclusively charitable; and a non-charitable political purpose to procure government actions. These non-charitable purposes are not ancillary purposes within section 5(3) of the Act. 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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Brendon Ward



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Date

