

**Registration decision: Southern Zone of NZRL Incorporated
(SOU43893)**

Executive Summary

1. The Charities Registration Board (the Board) has determined to decline the application for registration of the Southern Zone of NZRL Incorporated (the Zone) under the *Charities Act 2005* (the Act).¹ The Board considers that the Zone is not established and maintained for exclusively charitable purposes, as required by section 13(1)(b) of the Act.
2. In New Zealand law, a purpose to promote sport as an end in itself is not charitable, but a purpose to promote amateur sport as a means to advance charitable purposes may be charitable. We consider that the Zone's purpose is to promote rugby league in New Zealand as an end in itself, and not as a means to advance valid charitable purposes. As such, the Zone's purpose lies outside the scope of charity articulated by the courts in decisions binding on this Board, and recognised in section 5(2A) of the Act.
3. In addition to this, even if the Zone's purpose were to promote rugby league as a means to advance a number of ends, some of those ends would lie outside the scope of charity. For example, the promotion of sporting success for elite athletes; recreation and entertainment of audiences and supporters; and professional advancement of players, coaches and administrators are not charitable purposes. We consider that the Zone's promotion of rugby league for such non-charitable purposes is not ancillary to its promotion of rugby league as a means to advance any valid charitable purpose.
4. The Board's reasons for decision are organised as follows:
 - A. Background
 - B. Legal framework for registration decision
 - C. Law on promotion of sport and charity
 - D. Zone's purpose to promote rugby league as an end in itself
 - E. Zone's purpose to promote rugby league for mixture of charitable and non-charitable purposes
 - F. Zone's non-charitable purposes not ancillary
 - G. Determination

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

A. Background

5. The Zone was incorporated under the *Incorporated Societies Act 1908* on 18 March 2010, and applied for registration as a charitable entity under the Act on 5 April 2012.
6. The Zone is one of seven regional-based organisations formed in 2010 for the purpose of administering rugby league in their regions, as members of New Zealand Rugby League Incorporated (the NZRL). The Zone promotes and administers rugby league within the geographic regions of Canterbury, Otago, Southland, Tasman and the West Coast.
7. The Zone's objects are set out at clause 3.1, which reads:

3.1 Objects: The objects of the Zone are, as a member of the NZRL and subject to the rules, by-laws, regulations and resolutions of the NZRL and the strategic plan adopted by the NZRL from time to time, and subject to Rule 4 relating to the general purpose and capacity of the Zone, to:

- (a) Promote Rugby League: administer, promote, foster and develop Rugby League throughout the Zone and New Zealand, from "grass roots" level to national representative level and govern Rugby League throughout the Region;*
- (b) Arrange Matches: arrange, participate in and promote regional competitions and Rugby League matches and to participate in and promote national and other Rugby League competitions, matches and tours both within New Zealand and overseas;*
- (c) NZRL Requirements and Representation: comply with the rules, by-laws, regulations and resolutions of the NZRL and submit to the NZRL any amendments to the Laws of the Game and the by-laws and regulations if the NZRL that the Zone considers appropriate;*
- (d) Meet RLIF Requirements: subject to domestic safety law variations adopted by the NZRL, comply with the Laws of the Game and the by-laws, regulations and resolutions of the RLIF, and require Members to similarly comply;*
- (e) Representative Teams: form and manage representative Rugby League teams for the Region;*
- (f) Affiliated Body Matches: foster and support Rugby League competitions amongst its members;*
- (g) Regional Competitions: foster and support Rugby League competitions between representative teams of the Zone and representative teams of the members of the NZRL;*
- (h) Good Management: encourage and support good fiscal management and sporting practices by all persons under its authority;*
- (i) Guidance and Leadership: provide guidance and exercise leadership in relation to Clubs, District Leagues and their members; and*
- (j) Promote Interests of Rugby League: do all such other things to promote, and encourage activities conducive to, Rugby League.*

8. Additional provisions in the Zone's rules that are relevant to the Board's assessment are set out below.²
9. Membership of the Zone comprises district leagues, clubs, life members and the president (clause 5.1 of the Zone's rules).
10. On 16 July 2012, Charities Services wrote to notify the Zone that its application may be declined on the ground that the Zone was not established for exclusively charitable purposes as required by the Act.³ The letter explained that a purpose to promote sport as an ends in itself, or to further purposes that are not charitable, is not a charitable purpose. The letter advised that the Zone's rules document and activities showed that it has non-charitable purposes which are not within the saving provision set out in section 5(3) of the Act.
11. In September 2012, the Zone's solicitor wrote to request a meeting to discuss the Zone's application, together with applications by another zone of the NZRL and the NZRL. Registration analysts held a telephone conference with the solicitor and an officer of the NZRL on 12 September 2012. At that meeting it was agreed that the applications for registration of the other NZRL entities would be placed on hold until the application for registration of the Zone was determined, and that the Zone would submit a response to the notice sent on 16 July 2012.
12. On 21 December 2012, the Zone's solicitors submitted a seven page written response to the notice sent on 16 July 2012. The letter set out:
 - the background to the establishment of the Zones in 2010;
 - key functions of the Zones;
 - the organisational structure and expenditure of the Zones;
 - the Zone's involvement in elite, representative, professional rugby league;
 - the Zone's relationship with the NZRL;
 - the NZRL's promotion of rugby league to support the sport at the grassroots level.
13. The Zone submitted that it and other NZRL zones are established and maintained to support rugby league at the grassroots level, citing the recommendations leading to the establishment of the zones in 2010. The Zone submitted that quantitatively, the principal activities of the Zones are focused on development and administration of the sport at the grassroots level (i.e. support and assistance to member clubs and districts) and kiwisport programmes focused on the participation of youth in the sport. The Zone submitted a table collated by the NZRL, showing that each zone's expenditure on representative football comprises between 5 and 15% of the Zone's expenditure, and on average 9%. The details given for the Zone were:

<i>Kiwisport</i>	\$200	47%
<i>Administration</i>	\$150	35%

² See paragraphs [46]-[54] below.

³ This notice was sent under section 18(3)(c) of the Act

<i>Rep Football</i>	\$40	9%
<i>Other</i>	\$35	9%

14. The Zone submitted that its involvement in elite and representative rugby league is a necessary part of promoting participation in the sport at the grassroots level:

With Rugby league, as with any other competitive sport, initial and ongoing participation in the sport is promoted by offering participants the opportunity to compete at the right level for their age and ability, and the opportunity to improve their game and test themselves against other players who are at or above their own level.

15. Finally, the Zone submitted that its relationship with the NZRL and the NZRL's promotion of rugby league does not derogate from the conclusion that the Zone's purpose is to promote participation in amateur rugby league at a grassroots level. This was because: (i) the Zone's focus is on promoting participation in amateur rugby league at the grassroots level; and (ii) even the NZRL's involvement in the elite/representative/professional side of sport can be viewed as a means to that end. Expanding on this second point, the Zone submitted:

Indeed, NZRL's involvement in the professional side of the sport, and in particular the Kiwis Rugby League team, is ultimately all about promoting amateur Rugby League at grassroots level, by:

- *showcasing the sport and its best exponents, which is crucial to encouraging people, and especially young people, to take up the sport; and*
- *generating revenue that [the NZRL] can and does directly invest in amateur, grassroots Rugby League in conjunction with the Zones.*

16. In relation to this last point, the Zone submitted that generating revenue through elite and professional sports is "no different" from registered charities that operate as businesses and are charitable on the basis that their net business profits are dedicated for charitable purposes.
17. The Board has reviewed the Zone's submission and information provided, and referred to information about the Zone's activities in the public domain, including information published to the NZRL's website⁴ and the Zone's financial statement for the year to December 2011 (lodged with the Registrar of Incorporated Societies).

B. Legal framework for registration

18. 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.
19. Section 5(1) of the Act defines charitable purpose as including every charitable purpose "whether it relates to the relief of poverty, the

⁴ <http://www.nzrl.co.nz> [accessed 26 February 2013].

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.⁵

20. To be charitable at law a purpose must be for the public benefit.⁶ Public benefit must be expressly shown where the claimed purpose is benefit to the community.⁷ Further, in every case, the direct benefit of the entity's purposes must flow to the public or a sufficient sector of the public.⁸ 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.⁹
21. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not preclude registration if it is merely ancillary to a charitable purpose. Section 5(4) of the Act states that a non-charitable purpose is ancillary if the non-charitable purpose is:

(a) *ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and*

⁵ 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].

⁶ Authorities include: *Oppenheimer v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Verge v Somerville* [1924] AC 496; *Dingle v Turner* [1972] AC 601. See also: *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 ("*Accountants*") at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 ("*Latimer, CA*") at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) ("*Travis Trust*") at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 ("*Queenstown Lakes*") at [30]; *Education New Zealand Trust* at [23].

⁷ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 ("*CDC*") at [45].

⁸ 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 characterize the purpose of the entity: see *Accountants* at 153 (the "generalised concept of benefit" identified with the public satisfaction of knowing that the fund is there to safeguard and protect clients' interests is too "nebulous and remote" to characterise the purpose of the fund); *Travis Trust* at [30] - [35] (holding that where the express purpose was to "support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes", the purpose was to support that single group race and not to support the racing industry or racing public as a whole). See to the same effect *Queenstown Lakes* at [68] - [76] (held that the purpose of the Trust was to provide housing for individuals not to advance the overall welfare of the community by enabling workers to stay in the area); *CDC* at [67] (primary purpose is the assistance of individual businesses and the "hope and belief" that the success of those businesses would increase the economic wellbeing of the Canterbury region does not establish public benefit as a primary purpose).

⁹ 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.

(b) not an independent purpose of the trust, society or institution.

22. 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.¹⁰ It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity's overall endeavour.¹¹

Relevance of entity's activities in registration decision-making

23. Section 18(3)(a)(i) and (ii) of the Act provide that the activities of an applicant entity must be taken into consideration when determining whether that entity qualifies for registration under the Act.¹² The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.¹³ Section 13 of the Act focuses attention on the purposes for which an entity is *at present* established.¹⁴ This focus is justified in the broader scheme of the Act¹⁵ and the fiscal consequences of registration under the Act.¹⁶
24. Activities are not to be elevated to purposes,¹⁷ 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;¹⁸

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

¹¹ 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.

¹² See also section 50(2)(a) of the Act.

¹³ *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].

¹⁴ *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 (“*Word Investments*”) 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.

¹⁵ Including the statutory functions set out in section 10 of the Act, “promote public trust and confidence in the charitable sector” and “encourage and promote the effective use of charitable resources”.

¹⁶ 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.

¹⁷ *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*”).

¹⁸ See *Professional Engineers* at 575 (Tipping J).

- whether the entity is acting for an unstated non-charitable purpose;¹⁹
 - whether the entity's purposes are providing benefit to the public;²⁰
 - whether a non-charitable purpose is within the savings provision set out in section 5(3) of the Act.²¹
25. 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.²²
- Characterisation of an entity's purposes**
26. Once an entity's purposes are established as a matter of fact, the question whether they are charitable is a question of law.²³ The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.
27. 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.²⁴ Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.²⁵

¹⁹ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 ("*Glasgow Police Athletic Association*"); compare *Word Investments* at [25] (Gummow, Hayne, Heydon and Crennan JJ).

²⁰ 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].

²¹ 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.

²² Gino Dal Pont, *Law of Charity in Australia and New Zealand* (2nd ed., LexisNexis Butterworths, Australia, 2010) ("*Dal Pont*") at [13.17]. For example, in *Travis Trust* at [30] - [35], [58], Joseph Williams J determined that a purpose to "support the New Zealand racing industry by the anonymous sponsor of a group race known as the Travis Stakes" was not charitable. His Honour rejected a submission that the purpose was to benefit the racing industry. Despite the opening words of the purpose clause, his Honour held that the purpose was to support a single group race. See to same effect: *Glasgow Police Athletic Association* (where machinery provisions in the association's rules were taken into account to identify the purposes of the Association); *Professional Engineers* (where Tipping J looked to the rules as a whole to resolve the uncertainty in the way in which the primary object was stated).

²³ *Molloy* at 693.

²⁴ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

²⁵ *Dal Pont* at [13.18], and see also the discussion at [2.8] - [2.11]. See for example *Latimer, PC* at 168 (PC) ("whether the purposes of the trust are charitable does not depend on the subjective intentions or motives of the settlor, but on the legal effect of the language he has used. The question is not, what was the settlor's purpose in establishing the trust? But, what are the purposes for which trust money may be applied?"); *Molloy* at 693; *Keren Kayemeth Le Jisroel Ltd v Inland Revenue Commissioners* [1932] AC 650 at 657 (Lord Tomlin), 661 (Lord Macmillan); *Oldham* at 251 (Lightman J).

C. Law on promotion of sport and charity

28. In New Zealand law, a purpose to promote sport is not itself a valid charitable purpose, but the promotion of amateur sport as a means to advance a valid charitable purpose or purposes may be charitable. In determining whether an entity's purpose is to promote sports as a means to advance a charitable purpose, the Board considers the entity's stated purposes, and the entity's activities. The Board considers whether the activities are a means to advance charitable purpose or charitable purposes, having regard to their direct (rather than downstream) consequences.

C.1 Promotion of sport as an end in itself not charitable

29. The position that sporting purposes lie outside the scope of charity derives from English authorities,²⁶ approved and applied in New Zealand by the High Court.²⁷
30. In *Travis Trust*, the Court explained that a purpose to promote sport may be charitable if the sport is promoted as a means to advance a valid charitable purpose or purposes:²⁸

A trust to promote racing could only be charitable in nature if its deeper purpose was the pursuit of some other objective, either in principle or, in accordance with charities jurisprudence, a charitable purpose in its own right within the spirit and intendment of the Statute of Elizabeth. Thus, if it could have been established that the true intention of the support for this race was the promotion of health, education or perhaps even animal welfare, it might have satisfied the test.

31. The general law position is recognised in section 5(2A) of the Act:

The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.

32. The Board considers that section 5(2A) makes clear that promotion of sports is only charitable if it is a means to pursue a charitable purpose. This is contrasted with a purpose to promote sports as an end itself, or as a means to pursue a mix of purposes that are not exclusively charitable.
33. The Board notes that in relation to sports and charity, New Zealand law accords with the approach taken by courts in comparable jurisdictions including Canada and Australia.
34. In *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*²⁹ the Supreme Court of Canada rejected the idea that amateur

²⁶ *Re Nottage* [1895] 2 Ch 649 (CA); *Re Mariette* [1915] 2 Ch 284; *Inland Revenue Commissioners v McMullen* [1981] AC 884.

²⁷ *Travis Trust*.

²⁸ *Travis Trust* at [59].

sport that promotes physical health is prima facie charitable.³⁰ Instead, the Court noted that “the trend of the cases supports the proposition that sport, if ancillary to another recognised charitable purpose, such as education, can be charitable, but not sport in itself”.³¹ The Court held that the AYSA was set up to promote soccer, and any health benefits were simply consequences that did not establish the sports as a means to a charitable purpose.³²

35. The case law in Australia is to the same effect. In *Northern NSW Football Ltd*³³ the Court reviewed the authorities, and held that a purpose to promote and manage football in a region is not a charitable purpose. The Court rejected an “amalgam” of “the effects of playing football improving health and general wellbeing of the community” and “the improvement of health and general wellbeing of participants as a purpose”.³⁴ The Court held that the purpose of Northern NSW Football Limited was the promotion and management of football, and that this purpose was not charitable in law notwithstanding that benefit to communities may result.³⁵
36. The status of sports as charity has been modified by legislation in England and Wales, and Scotland. In England and Wales, legislation provides that “the advancement of amateur sport” is a charitable purpose.³⁶ In Scotland, legislation provides that “the advancement of public participation in sport”³⁷ is a charitable purpose.³⁸ The position in the United Kingdom therefore differs from the position in New Zealand, where the promotion of amateur sports is not charitable unless it is a means to advance charitable purposes.

C.2 Entities established to promote and manage a sport in a region

37. The Board considers that, as a general proposition, bodies established to administer and manage a sporting code or discipline in a region are likely to be established for the purpose of promoting sport as an ends in itself. As such, entities of this kind are likely to lie outside the scope of charity in New Zealand law, as reflected in section 5(2A) of the Act.

²⁹ 2007 SCC 42, [2007] 3 SCR 217.

³⁰ Contrast *Re Laidlaw Foundation* (1984) 13 DLR (4th) 491 (“*Re Laidlaw*”) at 505-506 (Dymond Surr Ct J).

³¹ *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)* 2007 SCC 42 (“AYSA”), at [22].

³² AYSA at [41].

³³ *Northern NSW Football Ltd v Chief Commissioner of State Revenue* [2011] NSWCA 51 (“*NSW Football*”).

³⁴ *NSW Football*, at [24].

³⁵ *NSW Football*, at [24].

³⁶ *Charities Act 2011* (UK), s 3(1)(g).

³⁷ *Charities and Trustee Investment (Scotland) Act 2005*, s 7(2)(h).

³⁸ In both jurisdictions, legislation preserves and applies the public benefit requirement for charitable status: *Charities Act 2011* (UK), s 4; *Charities and Trustee Investment (Scotland) Act 2005*, s 8.

38. The Board notes that this position accords with the judgment of Australian and Canadian courts applying the general law test in *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*³⁹ and *Northern NSW Football Ltd.*⁴⁰
39. Alternatively, entities acting as regional governing bodies for a sport may be seen to promote sport as a means to a number of ends, which are not exclusively charitable. Relevantly, a purpose to promote professional sports is not charitable as it is for private pecuniary benefit of professional players, and the promotion of sports events as a source of entertainment and recreation for spectators does not advance a charitable purpose.⁴¹ The promotion of sports for elite athletes does not provide sufficient public benefit to qualify as charitable in law,⁴² and the promotion of sporting success is not itself a charitable aim.⁴³ An entity which is established with independent purposes to promote sport as a means to these ends will not fall within the scope of charity recognised in section 5(2A) of the Act.
40. As noted above, the position on sports and charity in the United Kingdom differs from the position in New Zealand. In the United Kingdom, entities acting as district, regional, national or international governing or ruling bodies may have aims within the independent statutory charitable purpose (promotion of amateur sport).⁴⁴ However, even after the statutory recognition of the promotion of amateur sports as in itself a valid charitable purpose in England and Wales and Scotland, entities may encounter some difficulties establishing that they fall within the scope of the statutory charitable purpose. Governing bodies can fall outside the statutory purpose where they have an independent purpose to promote professional sports,⁴⁵ including by providing sports academies linked to

³⁹ 2007 SCC 42, [2007] 3 SCR 217.

⁴⁰ [2011] NSWCA 51.

⁴¹ *Travis Trust*, at [52]. Compare Charities Commission for England and Wales, *Consultation: The Advancement of Amateur Sport*, 28 February 2011, at [A8]. See also Her Majesty's Revenue and Customs "Community Amateur Sports Clubs: Detailed Guidance Notes" <http://www.hmrc.gov.uk/casc/casc_guidance.htm>, at [7.6].

⁴² See discussion in registration decisions declining applications for registration of entities that promote sport for high performance athletes: NZ Snowboardcross (NZA43490), Decision number 2012-2, 1 November 2012; Waikato Rowing Performance Centre Incorporated (THE41712), Decision number 2012-04, 5 April 2012.

⁴³ The Charities Commission for England and Wales emphasized this distinction in its publications prior to the introduction of the new statutory charitable purpose to advance amateur sport, see *Charitable Status and Sports* (2003), at [27] – [30]. Even after the introduction of the legislation, the regulator has advised that the promotion of sporting success as an independent aim does not lie within the scope of the statutory charitable purpose: *Consultation: The Advancement of Amateur Sport*, 28 February 2011, at [55] - [61].

⁴⁴ Charities Commission for England and Wales, *Consultation: The Advancement of Amateur Sport*, 28 February 2011, at [64].

⁴⁵ The statutory definition of charitable purpose is limited to the promotion of amateur sport. Charities Commission for England and Wales, *Consultation: The Advancement of Amateur Sport*, 28 February 2011, at [44] – [47] and [A26 –A28]; See also Her Majesty's Revenue and Customs "Community Amateur Sports Clubs: Detailed Guidance Notes" <http://www.hmrc.gov.uk/casc/casc_guidance.htm>, at [7.6]. The Office of the Scottish Charity Regulator notes that while provision for professional athletes may be allowed in some circumstances, it can raise issues of private benefit

professional clubs or concerned with the training of professional sportspeople.⁴⁶

41. Further, the Board notes that the Charities Commission for England and Wales maintains that the promotion of competitive success is not a valid charitable purpose under the statutory definition of charitable purpose that applies in England and Wales:

*Where an organisation has the promotion of international success in a particular sport as a separate, free-standing aim then its aims will not be exclusively charitable ...*⁴⁷

*The training of 'elite' sportspeople may be a legitimate means of advancing amateur sports or games for the public benefit ... [h]owever where an organisation is specifically directed towards the training of elite athletes for sporting success, the proof of that success or outcome is likely to be measured in terms of performance rankings, titles and medals...*⁴⁸

*We recognise that the competitive element in sports and games is an intrinsic and essential part of its appeal to players, whatever their level of skill. This is not an issue with regard to public benefit. It becomes an issue when an organisation's resources are geared towards the pursuit of excellence to the detriment of other either less skilled or less competitive members because in practice, benefits are being unreasonably restricted to a much narrower section of the public.*⁴⁹

42. The Charity Commission for England and Wales has also rejected the argument that the benefit to spectators of watching elite level sport is one that lies within the scope of charity.⁵⁰
43. Thus, the Board considers that even if the promotion of amateur sport were a charitable purpose in its own right, entities that were established with an independent purpose to promote professional sport, sporting success, and/or sport as entertainment for spectators would not be established for exclusively charitable purposes.
44. Having regard to the New Zealand law recognised in section 5(2A), and comparative guidance from other jurisdictions, the Board considers that the following considerations will be relevant in assessing the status of entities established to govern and promote a sport in a particular region:

and appropriate use of assets: Office of the Scottish Charity Regulator "Meeting the Charity Test: Guidance for Applicants and for Existing Charities" (2011), at 6-7.

⁴⁶ Charities Commission for England and Wales, *Consultation: The Advancement of Amateur Sport*, 28 February 2011, at [61], [62], [63].

⁴⁷ Charities Commission for England and Wales, *Consultation: The Advancement of Amateur Sport*, 28 February 2011, at [55].

⁴⁸ *Ibid.*, at [59].

⁴⁹ *Ibid.*, at [A21].

⁵⁰ Charities Commission for England and Wales, *Analysis of the law underpinning Advancement of Amateur Sport for the Public Benefit*, <http://www.charitycommission.gov.uk/Library/guidance/analysis_sport.pdf> [accessed 1 March 2013] at [3.9].

- a) The promotion of amateur sport as a means to advance charitable purposes, for the public benefit, is a charitable purpose in New Zealand law.
- b) The promotion of sport (including amateur sport conducted on a not-for-profit basis) as an end in itself is not a valid charitable purpose in New Zealand law.
- c) The promotion of sport (including amateur sport conducted on a not-for-profit basis) as a means to the following ends is not a charitable purpose:
 - providing private pecuniary interests to players and others involved in the sport;
 - promoting sporting success;
 - providing entertainment and recreation to spectators at sports events.
- d) The down-stream benefits of advancing professional sports and sporting success for elite athletes do not themselves establish a purpose of advancing professional sports and sporting success for elite athletes as a charitable purpose in law.

D. The Zone's purpose to promote sport as an ends in itself

- 45. The Board considers that the Zone has been established and is maintained for the purpose of promoting rugby league in New Zealand as an end in itself. The Board considers that this conclusion is justified by reference to the rules of the Zone, and the Zone's activities.

D.1 The Zone's rules document

- 46. The Board considers that the Zone's rules document establishes the Zone for the purpose of promoting rugby league in New Zealand as an end in itself.
- 47. First, the objects in clause 3.1 are entirely directed towards the promotion of rugby league throughout the Zone and New Zealand, without any reference to promotion of sport as a means to advance charitable purposes.
- 48. Secondly, clause 4.1 states a purpose to promote rugby league as a means to advance recreation or entertainment:

4.1 Amateur Rugby League: The Zone has been incorporated for the purpose of promoting amateur Rugby League conducted for the recreation or entertainment of the general public...

- 49. Clause 7 sets out the roles and responsibility of the Zone. Clause 7.1 "acknowledges that the Zone has been established to promote, foster and develop Rugby League within the Region in a manner that supports and is consistent with the initiatives of the NZRL for the promotion, fostering and development of Rugby League in New Zealand generally."
- 50. Clause 7.3 specifies:

Strategic Plan: The Zone will develop a strategic plan for the promotion, fostering and development of rugby league in the Region which will be consistent with, and complement, the strategic plan adopted by the NZRL for the promotion, fostering and development of Rugby League in New Zealand. The Zone will also develop annual budgets to support its strategic plan. It is acknowledged that the strategic plans of the NZRL and the Zone will be reviewed and updated periodically and that each strategic plan of the Zone, and its supporting budget will be subject to the approval of the NZRL.

51. The priority given to the NZRL and its development of rugby league in New Zealand is further evident in clause 3.2 which sets out the Zone's powers under the proviso that the powers are "subject to the rules, by-laws, regulations and resolutions of the NZRL and the strategic plan adopted by the NZRL from time to time, and subject to Rule 4 relating to the general purpose and capacity of the Zone".
52. Thirdly, the provisions governing membership of the Zone reflect and confirm the focus on development of the NZRL and advancing its interests and development of rugby league in New Zealand as a national game. Membership of the Zone comprises 5 District Leagues, Clubs, Life Members and the President (clause 5.1 of the Applicant's rules refer). Members are bound by the constitution of the NZRL and all regulations, by-laws, and resolutions of the NZRL, which have paramount force (clause 5.2, 5.3, 5.4 refer; see also clauses 8 and 9). Members are not permitted to disaffiliate or withdraw from the Zone without the prior written consent of the Board, and are not allowed to affiliate to any rugby league organisation outside of the NZRL (clause 6).
53. Finally, the primacy given to the NZRL and its governance is seen throughout clause 8 (governing District Leagues), clause 15 (governing changes to the rules of the Zone), clause 32 (regulation of rugby league).
54. The Board considers that the Zone's rules establish the Zone for the purpose of promoting the sport of rugby league in New Zealand as an end in itself.

D.2 The Zone's activities

55. The Board further considers that the Zone's activities advance rugby league as an ends in itself.
56. In accordance with its rules document, the Zone's activities are directed by the NZRL's rules, by-laws, regulations and Game Plan. For accounting purposes, the Zone is an in-substance subsidiary of the NZRL due to the deemed level of control and is therefore consolidated into the NZRL Group financial results.⁵¹ The Zone receives significant financial support from the NZRL.⁵²

⁵¹ Zone's financial statements for the year to December 2011.

⁵² Zone's financial statements for the year to December 2011.

57. The NZRL Game Plan to 2013 commits the NZRL to broad based programmes, a sustainable national competition, increasing participation at all levels, and implementing “League 4 Life” awareness and online community as a means to develop the game. The Board notes that the Game Plan to 2013 seeks to retain participants to the game and increase the consumer base; and to implement progression and development pathways for players, coaches, managers, trainers, referees, administrators. Viewed holistically, the Game Plan is to promote the game as an end in itself.
58. The Board notes that the zones were established in response to a recommendation, made in the Anderson Report, that zones be tasked with coordinating programmes, running competitions, sponsorship, trust fund applications and supporting grass roots activities and Districts and Clubs in their geographic area. The zones were established to meet the perceived need for “a number of strong well-resourced regional administration centres to work with the existing District structure, ensuring the Districts are appropriately supported via the regional centres (Zones) to support the game ‘on the ground’.” The Board considers that the rationale for the zones confirms that their focus is on administration of rugby league in New Zealand.
59. The Board notes the Zone’s submission that its principal focus is on delivery of the game at the grass-roots level (districts and clubs). The Board considers that the fact that the Zone focuses on administration of the game *at a regional level* does not in itself support an inference that the Zone promotes the game *as a means to advance charitable purposes*. It would seem clear that the NZRL zones are established to promote rugby league in New Zealand, focusing on their specific region.
60. The Board notes the Zone’s submission that the broader NZRL purpose is to promote rugby league as an amateur sport in New Zealand, and that the NZRL’s promotion of elite and professional sports is a means to promote amateur grassroots rugby league in New Zealand. The Board does not accept this submission for two reasons.
61. First, the Zone’s submission assumes that a purpose to promote sport at a ‘grass roots level’ will necessarily qualify as charitable. However, this is not the position in New Zealand law. A purpose to promote rugby league as an ends in itself is not a charitable purpose; and a purpose to promote rugby league as an ends to itself is not converted into a purpose to promote rugby league as a means to advance charitable purposes simply because it is focused on the game at a ‘grass roots’ level. In the Zone’s case, the purpose includes promotion of rugby league as entertainment and recreation, to promote sporting success, and to grow the consumer base for the game. Looking at the Zone’s stated purposes and activities as a whole the Board is not satisfied that the dominant purpose is to promote participation in rugby league as a means to advance a charitable purpose.
62. Moreover, the Zone’s submission assumes that the promotion of sport at an elite and professional level is necessarily a means to advance the

amateur game at the grass-roots level. The Board does not consider that this stands as a general proposition: Offering a high level sporting event does not in itself provide spectators with a benefit that lies within the scope of charity, and any effect of the games in inspiring participation at the grass-roots level is at best a 'down-stream' benefit that does not serve to bring promotion of professional or elite competitions within the scope of charity. Further, the Board considers that viewed holistically the Zone's operation involves a significant investment in elite players and events that constitutes an independent (free-standing) purpose to promote sporting success.

63. Finally, the Board rejects the Zone's submission that generating revenue through elite and professional sports is "no different" from registered charities that operate as businesses. The fundamental difficulty with this submission is that it assumes that the Zone's purpose to promote the amateur game at the grass-roots level is a charitable purpose. In addition, the analogy to businesses that are registered charities does not hold because the Zone's rules do not require it to apply net business profits to the advancement of charitable purposes.
64. The Board considers that the Zone's activities are consistent with a purpose to promote rugby league as an end in itself, and as such lies outside the scope of charity in New Zealand law.

E. Zone's purpose to promote sport as means to various ends

65. The Board has also considered what might follow if, contrary to the conclusion stated above, it had found that the Zone has a purpose to promote sport as a means to an ends.
66. The Zone's rules document contains scant reference to any ends for which rugby league may be a means. The document does contain a reference to the promotion of rugby league "conducted for the recreation or entertainment of the general public" (clause 4.2). It further stipulates that member *clubs* must promote and encourage "other activities to enhance the game of rugby league and encourage healthy lifestyles" (clause 9.2(d)). In addition, the rules stipulate that the Zone will operate in accordance with the NZRL game plan, which includes a goal to increase participation in rugby league at all levels including clubs and schools.
67. While recognising that the Zone promotes participation in rugby in schools and at the community level through clubs, the Board is not satisfied that the Zone's purpose is to promote the game as a means to advance charitable purposes. The Zone's promotion of the game is not expressly linked to the advancement of charitable purposes in the rules document, nor does the Zone focus on activities that are exclusively means to advance charitable purposes. To take one example, promoting participation in club rugby league is, in the context of the Zone's rules

and the NZRL Game Plan, a means to advance the health of players but also a means to increase the sustainability of the game, including by increasing the audience for the game and providing new talent for player development through to high performance levels, and growing the “consumer base”. Similarly, an initiative such as “League 4 Life” is identified in the Game Plan to 2013 as a means to increase the “consumer base” and increase “the audience”. Further, the focus of the Zone is on increasing participation in all roles (players, coaches, referees, administrators) and creating progression and development pathways for coaches, managers, trainers, referees and administrators, as well as players.

68. Further, even if the Zone’s purpose were to promote the game at the regional level as a means to other ends, those ends would not be exclusively charitable and the Board is not satisfied that the ends that are within the scope of charity are dominant in the Zone’s overall endeavour. The Zone’s purpose in promoting rugby league includes advancing rugby league as a means to provide private pecuniary benefit to players and others remunerated for their involvement in rugby league in New Zealand; advancing rugby league as entertainment; and promoting sporting success of elite players.

F. Zone’s non-charitable purposes are not ancillary

69. The Board has also considered whether the Zone’s (non-charitable) purposes fall within the savings provision set out in section 5(3) of the Act. We consider that the Zone’s purpose to promote sport *as an end in itself*, is pervasive and predominant and clearly outside of the savings provision set out in section 5(3) of the Act.
70. We are further satisfied that, on the alternative view that the Zone promotes sport for a variety of purposes, some of which are charitable and some of which are not, the non-charitable purposes do not come within the savings provision set out in section 5(3) of the Act. We consider that the Zone’s purposes to promote sport to promote sporting success; the professional and pecuniary interests of players, coaches, umpires and administrators; and sport as entertainment for audiences are neither qualitatively nor quantitatively ancillary to the Zone’s purpose to promote sport as a means to advance charitable purposes including promotion of health and advancement of education.

G. Determination

71. The Board's determination is that the Southern Zone of NZRL Incorporated does not qualify for registration under the Act and the application for registration should be declined. We consider that the Zone has a non-charitable purpose (or non-charitable purposes), and that this purpose (or these purposes) does not (or do not) fall within the savings provision set out in 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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Roger Holmes Miller

15th April 2013
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Date 

