

Registration decision: Eyre Community Environmental Safety Society Incorporated (EYR45058)

Executive Summary

1. The Charities Registration Board (the Board) has determined to decline the application for registration of the Eyre Community Environmental Safety Society Incorporated (the Applicant) under the Charities Act 2005 (the Act). The Applicant has been established and maintained for an independent (non-ancillary) purpose that is not charitable in law, and as such does not qualify for registration under section 13(1) of the Act.
2. The Applicant's purposes relate in part to the protection of the community, which is a charitable purpose in law. However, having considered the Applicant's rules document in light of its activities, the Board considers that the Applicant's main purpose is to procure specific governmental actions in relation to a resource consent application in Eyre. In New Zealand law, a purpose to procure governmental actions (including policies and tribunal or judicial decisions) is a "political" purpose which is not charitable.
3. An entity with a political purpose can qualify for registration under the Act if that purpose is ancillary to the entity's valid charitable purposes.¹ Here, however, the Applicant's political purpose constitutes almost all of its endeavour. As such, the Applicant's political purpose cannot be considered ancillary to any valid charitable purpose, and the Applicant cannot qualify for registration under the Act.
4. The Board's reasons for decision are set out below, under the following headings:
 - A. Background
 - B. Legal framework for registration decision
 - C. Law on political purposes and charity
 - D. Applicant's purposes
 - E. Section 5(3) of the Act
 - F. Determination

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

A. Background

5. The Applicant was incorporated under the *Incorporated Societies Act 1908* on 17 July 2012, and applied for registration as a charitable entity under the Act on 6 September 2012.

6. The Applicant's rules state its objectives at clause 2.1 and 2.2:

2.1 The primary objects of the Society are to:

(a) To combine our efforts, strengths, and brainpower to ultimately ensure the safety of our Community at large.

(b) Make regulations to advance the attainment of any of the above objects.

(c) Do any act or thing incidental or conducive to the attainment of any of the above objects.

(d) To be active in planning/resource management issues affecting the local community and its residents.

(e) To maintain the amenity of the area and to protect the community from any threats to residents lives, land and houses.

2.2 Without detracting from the primary objects, the secondary objects of the Society are to:

(a) To increase public recognition, understanding and appreciation of the consequences of any actions taken that could affect the greater community.

7. The Applicant is in its first financial year of operation and has not yet filed annual accounts with the Registrar of Incorporated Societies. However, the Applicant maintains a website² and has made media statements³ which provide evidence of its activities. It has also provided information about its current and proposed activities in correspondence with Charities Services in relation to its application for registration.

8. On 30 November 2012, Charities Services wrote to the Applicant to notify that its application may be declined on the ground that the Applicant was not established for exclusively charitable purposes as required by the Act. The letter explained that political purposes are outside the scope of charity in New Zealand law, and that the Applicant's activities showed that it has such a purpose which was not within the saving provision set out in section 5(3) of the Act.

9. On 17 December 2012, the Applicant submitted a two page written response to the notice sent on 3 December 2012. The Applicant stated that its purpose is to improve and monitor the safety of the community in the Eyre region, and that this

² <http://www.ecess.org> [accessed 30 November 2012]

³ <http://stuff.co.nz/the-press/news/northern-outlook/7165721/Make-sure-its-right> [accessed 30 November 2012]

purpose “includes, but is not limited to opposing the intended method of construction of a large 8.3Mm³ dam at Wrights road”. The letter stated:

The Society could be held to be advocating a particular point of view, in that we are advocating that the proposed dam design is scrutinised very carefully as part of the Consent process, but we submit that the public good is self-evident in this: - we are concerned that the surrounding community (which is large) will be subjected to a greatly increased risk of flooding, which may be avoided simply by an improved dam design.

10. In its response, the Applicant also stated:

The opposition to the intended method of construction of the Wrights Road dam is not political in any sense: - we are not seeking to change the law, or even to vary local regulations. The Society does not oppose irrigation for agricultural/horticultural purposes, but simply believes that the combination of the proposed site of the dam and its intended method of construction, make the dam unsafe for the large surrounding community; the society therefore seeks a review of the design principles for the dam, not with the objective of preventing water storage, but simply with the objective of making that storage safe.

We will review the contents of our website to ensure that all published content does not either directly or indirectly infer a political agenda. The website was intended to be an informative forum allowing all parties to voice their perspectives but we may need to review this open policy if it contravenes our trust charter.

B. Legal framework for registration

11. Under section 13(1)(b) of the Act, a society qualifies for registration if it is established and maintained for exclusively purposes and not for private pecuniary profit.
12. Section 5(1) of the Act defines charitable purpose as including every charitable purpose “whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community”. This statutory definition adopts the well-established fourfold classification of charitable purpose at general law.⁴

⁴ 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].

13. To be charitable at law a purpose must be for the public benefit.⁵ Public benefit must be expressly shown where the claimed purpose is benefit to the community.⁶ Further, in every case, the direct benefit of the entity's purposes must flow to the public or a sufficient sector of the public.⁷ 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.⁸
14. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not preclude registration if it is merely ancillary to a charitable purpose. Section 5(4) of the Act states that a non-charitable purpose is ancillary if the non-charitable purpose is:
- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and
- (b) not an independent purpose of the trust, society or institution.
15. 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.⁹ It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity's overall endeavour.¹⁰

⁵ 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].

⁶ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 ("*CDC*") at [45].

⁷ See discussion in *Latimer, CA* at [32] - [37]. The courts have held that the downstream benefits of an entity's activities do not serve to characterise the purpose of the entity: see *Accountants* at 153 (the "generalised concept of benefit" identified with the public satisfaction of knowing that the fund is there to safeguard and protect clients' interests is too "nebulous and remote" to characterise the purpose of the fund); *Travis Trust* at [30] - [35] (holding that where the express purpose was to "support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes", the purpose was to support that single group race and not to support the racing industry or racing public as a whole). See to the same effect *Queenstown Lakes* at [68] - [76] (held that the purpose of the Trust was to provide housing for individuals not to advance the overall welfare of the community by enabling workers to stay in the area); *CDC* at [67] (primary purpose is the assistance of individual businesses and the "hope and belief" that the success of those businesses would increase the economic wellbeing of the Canterbury region does not establish public benefit as a primary purpose).

⁸ 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.

⁹ For recent judicial comment on the qualitative test see *Greenpeace, CA* at [62], [83] - [91].

¹⁰ 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*

Relevance of entity's activities in registration decision-making

16. Section 18(3)(a)(i) and (ii) of the Act provides that the activities of an applicant entity must be taken into consideration when determining whether that entity qualifies for registration under the Act.¹¹ The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.¹² Section 13 of the Act focuses attention on the purposes for which an entity is *at present* established.¹³ This focus is justified in the broader scheme of the Act¹⁴ and the fiscal consequences of registration under the Act.¹⁵
17. Activities are not to be elevated to purposes,¹⁶ 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;¹⁷
 - whether the entity is acting for an unstated non-charitable purpose;¹⁸
 - whether the entity's purposes are providing benefit to the public;¹⁹

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.

¹¹ See also section 50(2)(a) of the Act.

¹² *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].

¹³ *Greenpeace, CA* at [40]. See to the 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.

¹⁴ 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".

¹⁵ 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.

¹⁶ *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*").

¹⁷ See *Professional Engineers* at 575 (Tipping J).

¹⁸ *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).

¹⁹ 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].

- whether a non-charitable purpose is within the savings provision set out in section 5(3) of the Act.²⁰
18. 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.²¹
- Characterisation of an entity's purposes**
19. Once an entity's purposes are established as a matter of fact, whether or not they are charitable is a question of law.²² The Board is bound to apply the law as declared by the courts and legislature, and set out in the Act.
20. 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.²³ Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.²⁴

C. Law on political purposes and charity

21. In New Zealand law, a political purpose is not charitable. An entity that has a political purpose will only qualify for registration if that purpose falls within the savings provision set out in section 5(3) of the Act, i.e. if that political purpose is ancillary to a valid charitable purpose of the entity. If the political purpose is independent (more than ancillary), the entity cannot qualify for registration under the Act.

²⁰ See for example *Greenpeace, CA* at [40], [48], and [87] – [92], [99] and [102], [103]. Earlier authorities to the same effect include *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA) ("*Molloy*") at 693 and the authorities cited there.

²¹ 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 the 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).

²² *Molloy* at 693.

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

²⁴ *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).

Political purposes not charitable in New Zealand law

22. The position that political purposes lie outside the scope of charity derives from English authorities,²⁵ and has been approved and applied in New Zealand by the Court of Appeal²⁶ and the High Court.²⁷
23. The general law position is recognised in section 5(3) of the Act, which specifically provides that advocacy is an example of a non-charitable purpose, which will disqualify an entity from registration under the Act unless it is ancillary to the valid charitable purposes of the entity.²⁸
24. 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 law²⁹ and English case law;³⁰ and dissimilar to the position in Australian law.³¹
25. New Zealand law's position on "political" purposes and charity is conceptually tied to the public benefit requirement for charity:³²

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

26. The public benefit requirement is a general requirement for charitable status, applicable to all heads of charity. Thus, even if a "political" purpose otherwise appears to fall within an established head of charity, it cannot qualify as a charitable purpose because it can never be regarded as being for the public benefit in a manner that the law regards as charitable.³³

²⁵ *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].

²⁶ *Molloy, Greenpeace, CA* esp at [63].

²⁷ *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].

²⁸ Compare *Greenpeace, CA* at [45].

²⁹ See Income Tax Act RSC 1985 c 1 (5th Supp) ss 149.1(6.1) and 149.1(6.2); *Vancouver Society* at [169], and see also *Human Life International in Canada Inc v Minister of National Revenue* [1998] 3 FC 202 ("*Human Life*").

³⁰ See note 12.

³¹ See *Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539.

³² *Greenpeace, CA* at [63].

³³ See *McGovern* at 333G-334B and 340B-E. See also *Southwood* at [5], [6].

Categories of political purposes

27. The courts have recognised three categories of political purposes excluded from the scope of charity:³⁴ First, purposes to further the interests of a particular political party or representative;³⁵ secondly, purposes to procure governmental actions, including through legislation,³⁶ and other regulatory, administrative and/or judicial actions;³⁷ and thirdly, purposes to promote a point of view, the public benefit of which is not self-evident as a matter of law.³⁸

A purpose to seek a political outcome that advances charitable purposes

28. The position in New Zealand law is that the second mentioned category of political purpose includes any purpose to procure governmental actions (central and local), 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.³⁹
29. The Board recognises that qualification for registration depends on the purposes of an entity and that purposes are not to be conflated with activities. Thus, an entity that is established for exclusively charitable purposes may engage in political activities provided that those activities are not elevated to an independent political purpose of the entity. Further, not all communication with political actors is “political” activity. For example, if a charity conducts genuinely educational research and publishes the results of its research without linking it to a call to political action, it may then send its research to all governmental decision-makers (without favouring one candidate or party over another); and may present its research findings to parliamentary committee hearings, government advisory panels and international policy development working groups.⁴⁰ However, the essential point remains that, if an entity has or adopts a

³⁴ The categorization follows *Collier* at 89-90. Slade J’s influential non-exhaustive categorization in *McGovern* at 340 is similar, but expands on the second category and omits the third category.

³⁵ *Collier* at 90, and see also *McGovern* at 337.

³⁶ 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.

³⁷ 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].

³⁸ *Collier* at 90. See also *Molloy* at 697 and *Greenpeace, CA* at [61], [72], [76]. Compare judicial recognition of this category of “political” purpose in Canada: *Positive Action Against Pornography* [1998] 2 FC 340 at 350; *Human Life* at 217.

³⁹ *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).

⁴⁰ See *Vancouver Society; Southwood*. The scope for communication with governmental actors would be limited to communications that are based on work by the charity that itself qualifies as advancing education, i.e. that is well reasoned and researched and not intended to persuade the

political purpose, then the entity can only qualify for registration if that purpose lies within the savings provision set out in section 5(3) of the Act, i.e. that the political purpose is merely ancillary to the charitable purposes of the entity.

30. Bearing the above observations in mind, the Board considers that a purpose to procure government actions (including legislation, policies and other governmental decisions) may be indicated by actions such as:⁴¹
- 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.
31. Further, the Board notes that the case law makes it clear that a purpose to secure governmental action by mobilising public support for that governmental action is a political purpose.⁴²

audience to a particular point of view. The Board considers that the administrative interpretation of the law provided by the Canada Revenue Agency is useful in this regard, see: *Policy Statement CPS-022, Political Activities*, published at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html> [accessed 14 February 2013].

⁴¹ 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].

⁴² See *McGovern* at 346; *Wilkinson* at 1076; *Draco* at [65]. Compare to the same effect *Action by Christians for the Abolition of Torture v Canada* (2003) 225 DLR (4th) 99 at [19], [52], [53], [67].

D. Applicant's purposes

32. The Applicant's purposes do not relate to the relief of poverty, the advancement of religion or the advancement of education. The Applicant's stated purposes (particularly clause 2.1(a) and (e)) relate to the protection of human life and property, which is a charitable purpose "beneficial to the community" in New Zealand law.⁴³ However, for the reasons that follow, the Board finds that the Applicant does not qualify for registration because it has an independent non-charitable purpose, being a political purpose to procure governmental actions.
33. The Board considers that it is a purpose of the Applicant to procure particular governmental actions, predominantly actions on the application for resource consent by Waimakariri Irrigation Limited to build an earth dam on Wrights Road (the "WIL Dam").
34. 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 2.1(c) refers to any action conducive to ensure the safety of the community; 2.1(d) refers to being active in planning/resource management issues affecting the local community and its residents.
35. In addition, the Board considers that the Applicant's activities indicate its purpose to procure governmental actions. In particular, the Board notes that the Applicant presents itself to the public as an organisation formed to oppose the WIL Dam.⁴⁴

We are currently reviewing several matters which impact on our community but the proposed dam at Wrights Rd is still the major concern for a large proportion of our community

Important: Only when the consent is publicly notified, can ECESS (and each of you in our community) submit formal submissions. At this time, ECESS will hold a public meeting at The West Eyreton Hall to offer guidance on how to structure and write your submission.

Finally, we continue to work hard on your behalf to facilitate a safe and lasting future for you and your family.

ECESS now has a group of nationally recognised experts (including a premier dam engineer) who have confirmed the earlier risk assertions publicised by this group during the year.

We at ECESS are not (and have never been) opposed to dairying, agricultural enterprise or irrigation in general. We are, however, opposed to unmitigated risks being thrust upon the wider community

⁴³ The case law is long standing *Attorney-General v Brown* (1818) 1 Swan 265 (assistance to coastal town against ravages of sea); *Wilson v Barnes* (1886) 38 Ch D 507 (CA) (repair of sea dykes); *Johnston v Swann* (1818) 3 Madd 457 (provision of lifeboats to coastal town); *Beaumont v Oliveira* (1869 4 Ch App 309 (lifesaving); *Re Wokingham Fire Brigade Trust* [1951] Ch 373 (voluntary fire brigade).

⁴⁴ <http://www.ecess.org/> [accessed 19 February 2013]

by the desire of a very small minority who will themselves receive limited benefit. The dam design is based upon a series of assumptions and assertions which have little substance in reality. The Engineering is quite simply flawed. This is where the risk to our community becomes intolerable.

36. The Applicant seeks donations from the public to fund its role in the resource consent application process: “the Society needs financial help. Expert consultants and legal fees are expensive and without these professionals we cannot protect this community”.⁴⁵
37. The activities of the Applicant would currently seem to be wholly focused on opposition to the Waimakariri Irrigation Limited’s application. The applicant’s webpage,⁴⁶ public meetings⁴⁷ and media release⁴⁸ have all been in relation to the WIL dam.
38. The Applicant has also published criticism of the safety features of the WIL dam in a media release.⁴⁹
39. Further the Applicant has also promoted a petition to Environment Canterbury and Waimakariri District Council to oppose the resource consent for the WIL dam.⁵⁰
40. The Board notes that once resource consent is publicly notified, the Applicant will be making formal submissions to the Waimakariri District Council and Environment Canterbury which will include expert evidence. As noted above, the Board considers that communicating the results of educational research conducted by an entity to relevant governmental actors may fall within the scope of charity and may not be a political activity indicative of a political purpose. However, the Board considers that viewed as a whole, the Applicant’s activities show that it has been formed for a political purpose, being the purpose of procuring government action to prevent resource consent for the WIL dam. The Board considers that the Applicant is not established for exclusively charitable purposes as required by Section 13(1) of the Act. Further the “political purpose” is of the kind that is not charitable in New Zealand law.

⁴⁵ <http://www.ecess.org/what.html> [accessed 19 February 2013].

⁴⁶ <http://www.ecess.org> [accessed 19 February 2013].

⁴⁷ <http://www.ecess.org/archive.html> [accessed 19 February 2013].

⁴⁸ <http://www.ecess.org/archive.html> [accessed 19 February 2013].

⁴⁹ <http://www.ecess.org/wil.html> “In a nutshell, the dam embankment design does not meet international standards and would not be admissible in California (or any other earthquake prone zone).” And “The instrumentation is inadequate and there is no hazard management plan or warning system in place. The seismic study, commissioned by WIL, is incomplete and, contains errors and omissions” [accessed 19 February 2013].

⁵⁰ <http://www.ecess.org/what.html> [accessed 19 February 2013].

E. Section 5(3) of the Act

41. The Board has considered whether the Applicant's political (non-charitable) purpose falls within the savings provision set out in section 5(3) of the Act. The promotion of community safety is a valid charitable purpose in law. The Board considers that there is a prima facie case that the Applicant's actions to oppose the resource consent for the WIL dam is qualitatively ancillary to its charitable purposes to promote community safety. However, the Board considers that the Applicant's political purpose is clearly more than ancillary in quantitative terms. The Applicant's purpose to oppose government actions to allow the building of an earth dam on Wrights Road (i.e. the WIL dam) is fairly described as the Applicant's primary and dominant purpose. Certainly, it would seem that the purpose to procure such government action has constituted close to 100% of the Applicant's overall endeavour since its establishment in 2012, and formerly as the "Dam Wrights Group".

F. Determination

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

For the above reasons, the Board declines the Applicant's application for registration as a charitable entity.

Signed for and on behalf of the Board


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Roger Holmes Miller

15/04/2013
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Date