

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV 2018-485-418
[2020] NZHC 1999**

UNDER the Charities Registration Act 2005

AND UNDER the Judicial Review Procedure Act 2016

IN THE MATTER OF an appeal and application for judicial review
of the Charities Registration Board’s
decision to refuse the appellant’s application
for registration as a charitable entity

BETWEEN GREENPEACE OF NEW ZEALAND INC
Applicant/Appellant

AND CHARITIES REGISTRATION BOARD
First Respondent

THE ATTORNEY-GENERAL
Second Respondent

Hearing: 2 and 3 December 2019

Counsel: D M Salmon and H A T Bush for Appellant/Applicant
P G Gunn and L Dittrich for First and Second Respondents

Judgment: 10 August 2020

JUDGMENT OF MALLON J

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Introduction

[1] Greenpeace of New Zealand Inc (Greenpeace NZ) is a New Zealand organisation which is part of the international Greenpeace movement that seeks a greener and more peaceful future. Historically its focus was on peace, nuclear disarmament and the elimination of weapons of mass destruction, the international movement having arisen out of a protest over nuclear testing near Alaska.¹ Greenpeace NZ's focus these days is advocacy for the protection of the environment, particularly protecting the environment and its population from climate change and protecting the ocean environment.

¹ "The History of Greenpeace" Greenpeace International <greenpeace.org>.

[2] Greenpeace NZ is funded by gifts from supporters. There are fiscal and other advantages if it has charitable status. Greenpeace has been seeking charitable status since 24 June 2008. At that time, its application to what was then the Charities Commission (now the Charities Board, referred to in this judgment as “the Board”) was declined and the subsequent appeals ultimately reached the Supreme Court.²

[3] The Charities Commission and the courts at this time were principally focussed on whether one of Greenpeace NZ’s stated objects, that of promoting “peace, disarmament and the elimination of all weapons of mass destruction”, disqualified it from charitable status. This issue arose because, under the prevailing authority in New Zealand at the time, an organisation with a political purpose was not regarded as having a charitable purpose so as to qualify for registration under the Charities Act 2005. Political purpose included seeking to persuade the public to adopt a particular attitude towards some broad social question.³

[4] The Supreme Court, in a majority decision, held that it was not correct that a political purpose necessarily disqualified an organisation from charitable status. It held that an entity could be charitable even if its principal purpose was to advocate or promote a cause. It held that the “end that is advocated, the means promoted to achieve that end and the manner in which the cause is promoted” are to be assessed to determine whether an entity’s purpose is of public benefit and charitable in the sense used by the common law.⁴

[5] The Supreme Court remitted Greenpeace NZ’s application back to the Board (as it had then become) for reconsideration in light of the Court’s decision on political purposes. If Greenpeace NZ had an illegal purpose, that would also disqualify it. The Court was uncertain if this was a live issue so far as the Board was concerned but, if it was, it was to be considered too.

² *Greenpeace of New Zealand Inc* Charities Commission Decision, 2010-7, 15 April 2010; *Re Greenpeace of New Zealand Inc* [2011] 2 NZLR 815 (HC); *Re Greenpeace of New Zealand Inc* [2012] NZCA 533, [2013] 1 NZLR 339; and *Re Greenpeace of New Zealand Inc* [2014] NZSC 105.

³ Michael Chesterman *Charities, Trusts, and Social Welfare* (Weidenfeld and Nicolson, 1979) at 181.

⁴ *Greenpeace* [Supreme Court], above n 2, at [76] and [113]. Also referred to as a public benefit “within the spirit and intendment” of the preamble to the Statute of Charitable Uses 1601.

[6] Following the Supreme Court's decision, the Board reconsidered Greenpeace NZ's application but again declined it.⁵ The Board determined that Greenpeace NZ's purposes included advocating its own views on environmental issues and on peace, nuclear disarmament and the elimination of weapons of mass destruction and it could not be established that these purposes were of public benefit and charitable. It also considered that Greenpeace NZ had an illegal purpose that disqualified it from charitable status.

[7] Before me for determination is Greenpeace NZ's appeal from that decision. The Attorney-General submits the Board was correct in finding that:

- (a) Greenpeace NZ's advocacy for causes, which is its main focus, did not meet the Supreme Court's test for registration;
- (b) Greenpeace NZ's activities do not have an educational purpose because they are intended to persuade recipients to a particular point of view rather than to educate;
- (c) for the reasons given by the Supreme Court, its purpose of promoting peace, nuclear disarmament and eliminating weapons of mass destruction is not charitable; and
- (d) Greenpeace undertakes and endorses illegal activities to support its purposes to such an extent that an illegal purpose can be inferred.

[8] Greenpeace NZ submits the Board erred by:

- (a) taking an approach that was too narrow and fine-grained to whether the views Greenpeace NZ advocated for the protection of the environment were of public benefit, including by focussing too heavily on whether there were different views to those that Greenpeace NZ advocated for as to how the end goals could be achieved;

⁵ *Greenpeace of New Zealand Inc* Charities Board Decision, 2018-1, 21 March 2018.

- (b) failing to apply the proper test to whether Greenpeace NZ's activities were for the advancement of education;
- (c) finding that any non-charitable component of Greenpeace NZ's purposes relating to peace, disarmament and elimination of weapons of mass destruction were not ancillary to Greenpeace NZ's main purposes; and
- (d) wrongly concluding that Greenpeace NZ had an illegal purpose when its objects do not include breaking the law and the instances of personnel or volunteers doing so were isolated and of a minor nature.

[9] In addition to the appeal, Greenpeace NZ applies for judicial review on the ground of apparent bias. The apparent bias concerns the connections of Simon Karipa, one of the members of the Board. At the relevant time he was General Counsel of Te Ohu Kaimoana (TOK) and TOK and Greenpeace NZ had opposing views on the proposal for the Kermadec Ocean Sanctuary. He had also carried out commercial work for Trans-Tasman Resources Ltd (TTR) which was engaged in an application for oil drilling in Taranaki that Greenpeace NZ opposed.

[10] Greenpeace NZ submits these connections were such that a fair-minded lay observer would reasonably apprehend that Mr Karipa might not bring an impartial mind to the decision on Greenpeace NZ's application for charitable status. It submits that the appeal cannot cure this breach of natural justice because Mr Karipa was involved in the investigation of the evidence of Greenpeace NZ's activities and it is not now possible to know what has or has not been considered in that investigation.

[11] The Attorney-General submits the circumstances alleged to give rise to a conflict or the appearance of bias are too remote to meet the fair-minded lay observer test for apparent bias in the context of the Charities Act 2005. In any event, the Attorney submits the outcome of the appeal will render the judicial review moot.

[12] For the reasons that follow, I have determined that Greenpeace NZ was entitled to be registered as a charity and should now be so registered. I have also determined that this cures the apparent bias issue.

The Charities Act

[13] The Charities Act 2005 provides for the registration of entities as charitable entities. A society qualifies for registration if it “is established and maintained exclusively for charitable purposes” and “is not carried on for the private pecuniary gain of any individual”.⁶

[14] Section 5 defines “charitable purpose” as follows:

5 Meaning of charitable purpose and effect of ancillary non-charitable purpose

(1) In this Act, unless the context otherwise requires, **charitable purpose** includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.

...

(3) To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.

(4) For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution 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] As confirmed by the case law, this means that any purpose of the entity, that is not ancillary to its main purpose(s), must fit within one of the four heads of charity

⁶ Charities Act 2005, s 13(1)(b). There are also requirements concerning the entity’s name and its officers.

(relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community) and be of public benefit.⁷

[16] The Act establishes the Charities Board.⁸ It is comprised of three members appointed by the Minister. The Board has functions, duties and powers relating to registration and deregistration of charitable entities conferred or imposed on it by the Act. In performing or exercising those functions, powers or duties, each member of the Board “must act independently in exercising his or her professional judgment”.⁹

[17] An application for registration is first considered by the chief executive.¹⁰ In considering the application, the chief executive must have regard to the activities of the entity at the time the application is made as well as its proposed activities.¹¹ The chief executive must also observe the principles of natural justice.¹² The chief executive recommends to the Board that it either grant or decline the application.¹³

[18] The Board must grant the application if it considers the entity qualifies for registration and the chief executive is then directed to register the entity as a charitable entity.¹⁴ The Board is not required to follow a formal process in making this decision.¹⁵ It must give reasons for its decision if it refuses the application.¹⁶

[19] The Act establishes a register of charitable entities.¹⁷ Its purposes include enabling a member of the public to determine whether an entity is registered as a charitable entity and to “obtain information concerning the nature, activities, and purposes of charitable entities”.¹⁸ Amongst other things, the register must contain a

⁷ *Greenpeace* [Supreme Court], above n 2, at [22]-[23].

⁸ Charities Act 2005, s 8.

⁹ Section 8(4). Schedule 2 to the Act sets out further provisions relating to the Board and its members.

¹⁰ Section 18(1).

¹¹ Section 18(3)(a).

¹² Section 18(3)(b).

¹³ Section 19(1).

¹⁴ Section 19(2).

¹⁵ Section 19(3).

¹⁶ Section 19(4).

¹⁷ Section 21(1).

¹⁸ Section 22(a).

copy of the rules of the entity, its application for registration and each of its annual returns.¹⁹

[20] An entity may be removed from the register by direction of the Board.²⁰ The grounds for removal include where “the entity is not, or is no longer, qualified for registration as a charitable entity” or where “the entity has engaged in serious wrongdoing or any person has engaged in serious wrongdoing in connection with the entity”.²¹ Before an entity can be removed, it has a reasonable opportunity to make submissions to the Board and the Board must observe the rules of natural justice.²²

[21] A person aggrieved by a decision of the Board has a right of appeal to the High Court.²³ A decision of the Board may also be subject to an application for judicial review.²⁴

Background to the Board’s decision

Introduction

[22] An entity qualifies as charitable because of its purpose. However, in considering an application for registration, regard must be had to the entity’s current and proposed activities. The entity’s current and proposed activities may be relevant for a number of reasons. The purpose of an entity may be inferred from the activities it undertakes.²⁵ It may assist with whether the entity’s stated purpose is a sham for a non-charitable purpose. It may also assist with determining the relative weight of an entity’s stated objects. And it may assist in determining the consequences of pursuing a purpose that has not been adjudged as charitable and therefore whether that purpose is charitable.²⁶ The practical effect is that to determine if an entity is established and maintained for charitable purposes, the entity’s stated objects as well as current and proposed activities will be considered.

¹⁹ Section 24(e)-(f).

²⁰ Section 32(1).

²¹ Section 32(1)(a) and (e).

²² Section 36.

²³ Section 59(1).

²⁴ Section 61(6).

²⁵ *Greenpeace* [Supreme Court], above n 2, at [14].

²⁶ See the discussion in *Re The Foundation for Anti-Aging Research* [2016] NZHC 2328 at [82]-[87]; see also Juliet Chevalier-Watts *Law of Charity* (2nd ed, Thomson Reuters) at 78-86.

[23] For Greenpeace NZ’s application, the potentially relevant charitable purposes are the “advancement of education” or “any other matter beneficial to the community”. If the charitable purpose is “advancement of education” (as is also the case with the relief of poverty or the advancement of religion), public benefit may be presumed unless the contrary is shown.²⁷ Where the charitable purpose is “any other matter beneficial to the community” it is necessary to establish both that there is a public benefit and that the purpose is charitable by analogy with objects already held to be charitable.²⁸

[24] For Greenpeace NZ’s application, there are also potentially disqualifying activities of relevance. They are non-ancillary “advocacy” that is not charitable by analogy and are not shown to be of public benefit, and illegal activities. Prior to the Supreme Court’s decision, the prevailing view was that advocacy for “political purposes” (which included seeking to persuade the public to adopt a particular attitude toward some broad social question) was disqualifying, at least partly because the benefit to the public could not be shown.²⁹ Illegal activities were disqualifying because they could not be said to be of benefit to the public.

Greenpeace NZ’s objects

[25] The starting point for determining whether Greenpeace NZ has a charitable purpose is what it states its purpose to be. Greenpeace NZ is an incorporated society governed by its rules.³⁰ Those rules set out Greenpeace NZ’s objects and it is required to act within those objects. At the time of the Supreme Court’s decision, Greenpeace NZ’s objects were as follows:

²⁷ *Greenpeace* [Supreme Court], above n 2, at [25].

²⁸ At [30] and [120].

²⁹ *Greenpeace* [Court of Appeal], above n 2, at [63]-[64], discussing *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA), which concerned a tax donation to the Society for the Protection of the Unborn Child. The abortion debate was regarded by the Court of Appeal as a good example of competing views of a contentious or controversial nature which meant that they were “political”. See William Henderson and Jonathan Forbes *Tudor on Charities* (10th ed, Sweet & Maxwell, 2018) at 1-101 discussing four justifications for the political purposes exclusion, one of which is that the Court does not have the means to judge whether a change in the law will or will not be for the public benefit. See also Susan Glazebrook “A charity in all but law: the political purpose exception and the charitable sector” (2019) 42 *MelbULRev* 632 at 642.

³⁰ It was incorporated in New Zealand on 5 July 1976.

- 2.1 Promote the philosophy that humanity is part of the planet and its interconnected web of life and whatever we do to the planet we do to ourselves.
- 2.2 Promote the protection and preservation of nature and the environment, including the oceans, lakes, rivers and other waters, the land and the air and flora and fauna everywhere and including but not limited to the promotion of conservation, peace, *nuclear disarmament and the elimination of all weapons of mass destruction*.
- 2.3 Identify, research and monitor issues affecting these objects, and develop and implement programmes to increase public awareness and understanding of these and related issues.
- 2.4 Undertake, promote, organise and participate in seminars, research projects, conferences and other educational activities which deal with issues relating to the objects of the Society.
- 2.5 Promote education on environmental issues by giving financial and other support to the Greenpeace New Zealand Charitable Trust.
- 2.6 Cooperate with other organisations having similar or compatible objects and in particular to cooperate with Stichting Greenpeace Council by abiding by its determination in so far as it is lawful to do so.
- 2.7 Promote the adoption of legislation, policies, rules, regulations and plans which further the objects of the Society *listed in clauses 2.1–2.6* and support *their* enforcement or implementation through political or judicial processes as necessary, *where such promotion or support is ancillary to those objects*.

[26] The italicised words reflect changes made by Greenpeace NZ following the Court of Appeal hearing. They were changes the Court of Appeal discussed with Greenpeace NZ at that hearing.³¹

Greenpeace NZ's activities as at 2008

[27] The information about Greenpeace NZ's activities in the earlier proceedings was primarily sourced by the Commission from Greenpeace's websites.³² This included statements that Greenpeace is fundamentally opposed to war, is actively campaigning for international disarmament, is working with citizens and political leaders around the world to make this happen, and champions non-violence as a force for positive change in the world. It also included statements that it uses "high-profile,

³¹ See [31]-[32] below.

³² I refer here to "Greenpeace" because it is not clear to me that the Commission distinguished between Greenpeace NZ and Greenpeace International.

non-violent, direct action, research, lobbying, and quiet diplomacy” to pursue its goals. Non-violent direct action (NVDA) was described as action intended to physically to stop environmental destruction at its source.

[28] The Commission had also sourced examples of Greenpeace’s advocacy from its websites. On peace and disarmament, examples included various protests such as nuclear testing in Alaska and at Mururoa Atoll, flying a “No War, Peace Now” flag at the America’s Cup and protesting against specific defence initiatives in specific countries, such as the US Strategic Defense Initiative.³³ Other examples related to:

- (a) advocacy against chemicals and pollutions;
- (b) advocacy and marches against the introduction and testing of genetic engineering crops in New Zealand;
- (c) advocacy concerning the oceans and fisheries (for example, advocacy in favour of an overall 50 per cent reduction in fishing and criticising New Zealand’s quota management system);
- (d) advocacy for the phasing out of fossil fuels, for farming to be brought more fully or more rapidly under the Emissions Trading Scheme and for dairy farm expansion to be halted, for the enactment of a Climate Protection Bill and for the government to forsake economic growth and to close certain energy plants;
- (e) advocacy for enforcement action to prevent illegal logging in East Asian countries; and
- (f) encouraging the public to email messages to the government and opposition urging them to act on climate change.

³³ It is apparent that at least some of these activities relate to entities in the Greenpeace movement other than Greenpeace NZ. For example, the protest against nuclear testing in Alaska was made by a crew that founded the movement in a boat that sailed from Canada and occurred before Greenpeace NZ was established.

[29] The Commission had also sourced from Greenpeace’s websites examples of its direct action. These included activities such as boarding coal ships, occupying power stations and mines, boarding fishing vessels, boarding ships carrying genetically engineered food, boarding ships carrying palm kernel and planting trees on land thought to have been cleared for dairy farming, amongst other things.³⁴

[30] Greenpeace NZ disputed that the information the Commission had obtained was representative of its activities. It described its primary activity as educating the public on environmental issues. It said its political activities as described in cl 2.7 were a very small part of its operations. It said that it promoted peace through educational means. This involved producing technical reports and documentaries, doing public presentations, sending boats “to bear witness”, writing letters, and protesting, amongst other things.

The earlier proceedings

[31] In 2010 the Commission declined Greenpeace NZ’s application for registration for two reasons:

- (a) The Commission considered two of its objects were not charitable. One of those was its then object in cl 2.2 of its rules of promoting peace and disarmament.³⁵ The other was its then object in cl 2.7 of its rules of promoting the adoption of legislation, policies, rules, regulations and plans which further Greenpeace’s other objects and support their enforcement or implementation through political or judicial processes as necessary.³⁶ The Commission considered these objects were political purposes that were not merely ancillary to its charitable purposes. Following the prevailing authority at that time, this meant Greenpeace was not established and maintained exclusively for charitable purposes.³⁷

³⁴ Again, some of those activities may have been those of other organisations in the Greenpeace movement. This is not made clear.

³⁵ As this object was stated before the amendments discussed with the Court of Appeal.

³⁶ As this object was stated before the amendments discussed with the Court of Appeal.

³⁷ Following *Molloy*, above n 29.

- (b) The Commission considered that Greenpeace’s NVDA activities were central to it and could entail illegal activities. These activities could not be said to be in the public interest and charitable.

[32] The High Court dismissed the appeal from the Commission’s decision. The Judge agreed with the Commission that the two purposes it identified were not charitable purposes on the basis of the prevailing view in the case law by which he was bound.³⁸ The Judge considered it was clear from Greenpeace’s websites that it promotes itself as campaigning for the cause of international disarmament and relied on its political activities to advance its causes. The Judge also considered Greenpeace’s non-violent but potentially illegal activities, designed to put activities of concern to Greenpeace in the spotlight, were political activities. The Judge had reservations about, and did not form a concluded view on, whether the Commission had sufficient evidence to conclude that Greenpeace NZ was deliberately involved in taking illegal action.

[33] The Court of Appeal considered the Commission and the High Court had been correct to conclude Greenpeace NZ’s objects of promoting peace and disarmament in cl 2.2 were not exclusively charitable.³⁹ This was because the question of whether peace could be achieved through disarmament or through maintaining military strength was “undoubtedly contentious and controversial with strong, genuinely held views on both sides of the debate”.⁴⁰ However, with the amendment to cl 2.2, the Court considered the element of political contention and controversy was removed.⁴¹ It considered that pursuit of this object was a charitable purpose under the fourth head of the s 5(1) definition.⁴²

[34] With the amendment to cl 2.7, the Court considered the political advocacy object would be ancillary. It would then be up to Greenpeace NZ not to elevate this

³⁸ *Molloy*, above n 29.

³⁹ *Greenpeace* [Court of Appeal], above n 2, at [75].

⁴⁰ At [74].

⁴¹ The Court of Appeal, at [76]-[79], referred to New Zealand’s international obligations as a signatory to the Nuclear Non-Proliferation Treaty and New Zealand’s domestic legislation, supported by successive New Zealand governments, reflecting overwhelming public opinion on these matters.

⁴² The Supreme Court, at [85]-[88], discussed an issue with this analysis, namely that it also needed to be established whether the object was a charitable purpose (as well as being of public benefit).

ancillary purpose to an independent purpose and to thereby put its charitable status at risk.⁴³ The Court of Appeal considered it was necessary for the Board to focus on Greenpeace NZ's new objects and its proposed activities in light of those objects.⁴⁴

[35] The Court of Appeal did not determine whether Greenpeace NZ was pursuing illegal activities disentitling it to registration. Whether it was involved in illegal or unlawful activity sufficiently material or significant to preclude registration was a matter of fact and degree. A range of factors were likely to be influential, namely:⁴⁵

- (a) the nature and seriousness of the illegal activity;
- (b) whether the activity is attributable to Greenpeace NZ because it was expressly or impliedly authorised, subsequently ratified or condoned, or impliedly endorsed by a failure to discourage members from continuing with it;
- (c) whether Greenpeace NZ had processes in place to prevent the illegal activity or has since put processes in place to prevent the activity occurring again;
- (d) whether the activity was inadvertent or intentional; and
- (e) whether the activity was a single occurrence or part of a pattern of behaviour.

[36] The Court of Appeal further commented that the Board would need to be careful to avoid declaring activity to be illegal or unlawful when that had not been judicially determined.⁴⁶ The Board was directed to reconsider this issue.

⁴³ *Greenpeace* [Court of Appeal], above n 2, at [87] and [89].

⁴⁴ At [90].

⁴⁵ At [97].

⁴⁶ At [98].

The Supreme Court

[37] The Supreme Court held, in a majority decision, that s 5(3) did not enact a general prohibition on advocacy unless it was ancillary to a charitable purpose.⁴⁷ It held that a charitable purpose and a political purpose were not mutually exclusive. It said:⁴⁸

[69] A conclusion that a purpose is “political” or “advocacy” obscures proper focus on whether a purpose is charitable within the sense used by law. It is difficult to construct any adequate or principled theory to support blanket exclusion. A political purpose or advocacy exclusion would be an impediment to charitable status for organisations which, although campaigning for charitable ends, do not themselves directly undertake tangible good works of the type recognised as charitable.

[70] As well, a strict exclusion risks rigidity in an area of law which should be responsive to the way society works. It is likely to hinder the responsiveness of this area of law to the changing circumstances of society. Just as the law of charities recognised the public benefit of philanthropy in easing the burden on parishes of alleviating poverty, keeping utilities in repair, and educating the poor in post-Reformation Elizabethan England, the circumstances of the modern outsourced and perhaps contracting state may throw up new need for philanthropy which is properly to be treated as charitable. So, for example, charity has been found in purposes which support the machinery or harmony of civil society, such as is illustrated by the decisions in England and Australia holding law reporting to be a charitable purpose and in New Zealand by the decision of the Court of Appeal in *Latimer v Commissioner of Inland Revenue* holding the assistance of Maori in the preparation, presentation and negotiating of claims before the Waitangi Tribunal to be a charitable purpose.

[71] Just as promotion of the abolition of slavery has been regarded as charitable, today advocacy for such ends as human rights or protection of the environment and promotion of amenities that make communities pleasant may have come to be regarded as charitable purposes in themselves, depending on the nature of the advocacy, even if not ancillary to more tangible charity. That result was looked to as one that might well come about in relation to protection of the environment by Somers J in *Molloy*. In the present case the Board has accepted that Greenpeace’s object to “promote the protection and preservation of nature and the environment” is charitable. Protection of the environment may require broad-based support and effort, including through the participatory processes set up by legislation, to enable the public interest to be [assessed]^[49]. In the same way, the promotion of human rights (a purpose of the New Zealand Bill of Rights Act 1990, as its long title indicates) may

⁴⁷ *Greenpeace* [Supreme Court], above n 2, at [58].

⁴⁸ These and the following extracts are quoted because this appeal turns on how this guidance is to be applied to Greenpeace NZ. The footnotes are omitted. The emphases in the quotations are mine.

⁴⁹ The word “assessed” appears to be an error. As counsel for Greenpeace NZ submits, it appears the intended word was “advanced”.

depend on similar broad-based support so that advocacy, including through participation in political and legal processes, may well be charitable.

[38] The majority further said:

[73] Advancement of causes will often, perhaps most often, be non-charitable. That is for the reasons given in the authorities – it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable. Matters of opinion may be impossible to characterise as of public benefit either in achievement or in the promotion itself. Thus in *Aid/Watch*, Kiefel J held that “reaching a conclusion of public benefit may be difficult where the activities of an organisation largely involve the assertion of its views”. She concluded that *Aid/Watch* had failed to establish that the views it asserted were correct and would in fact promote the delivery of aid.⁵⁰ Furthermore, the ends promoted may be outside the scope of the cases which have built on the spirit of the preamble, so that there is no sound analogy on which the law might be developed within the sense of what has been recognised to be charitable. ...

[39] Having set out those views, the majority discussed whether the promotion of peace, nuclear disarmament and the elimination of weapons of mass destruction was a charitable purpose. It considered that the promotion of peace was too general an end to be charitable without a closer enquiry into the method of promotion. It considered that the Court of Appeal may have treated the promotion of nuclear disarmament and the elimination of weapons of mass destruction as the means by which peace would be promoted. However, this too was an “abstract end” that did not provide a sufficient answer.⁵¹ That end was not self-evidently a public benefit and nor was it likely to be capable of demonstration by evidence.

[40] The majority explained why in its view promoting nuclear disarmament and the elimination of weapons of mass destruction was not self-evidently a public benefit. Public benefit does not depend on whether the end is non-controversial in New Zealand. There were policy choices to be made and it was further complicated by the fact that the actors critical in obtaining that end were states. The court has no adequate means of judging the public benefit of promoting this end “taking into account all the consequences, local and international”.⁵²

⁵⁰ *Greenpeace* [Supreme Court], above n 2, at [82].

⁵¹ At [100].

⁵² At [101].

[41] The majority considered that when a charity promotes “an abstraction, such as ‘peace’ and ‘nuclear disarmament’, the focus in assessing charitable purpose must be on *how* such abstraction is to be furthered”.⁵³ The majority said that education could be a manner of promoting that object that qualified as a charitable purpose, but this did not appear to be central to Greenpeace NZ’s activities. Rather, its website indicated that direct action and advocacy were its principal means of promoting the ends of nuclear disarmament and the elimination of weapons of mass destruction.

[42] The majority explained:⁵⁴

... when considering charitable purpose, we consider that the promotion itself, if a standalone object not merely ancillary, must itself be an object of public benefit or utility within the sense used in the authorities to qualify as a charitable purpose. As indicated above ..., such public benefit or utility may sometimes be found in advocacy or other expressive conduct. But such finding depends on the wider context (including the context of public participation and processes and human rights values), which requires a closer consideration than has been brought to bear in the present case.

[43] The majority concluded that Greenpeace NZ’s application needed to be reconsidered by the Board. It said:

[104] The matter of the charitable status of the purposes of Greenpeace has not been considered on the correct basis. Although it may be doubtful on the material before the Court that charitable purpose can be established, it is inappropriate for such assessment to be undertaken as a matter of first and last impression in this Court. ... The assessment of charitable purpose is [the Board’s] in the first instance. If it is concluded that the object of promoting nuclear disarmament and the elimination of weapons of mass destruction is not shown to be charitable, then the question whether the activities undertaken by Greenpeace are no more than ancillary to its charitable purposes will require further assessment by the chief executive and Board, as the Court of Appeal required. ...

[44] As to illegal activities, the Court said:⁵⁵

[111] It may be accepted that an illegal purpose is disqualifying. It does not constitute a charitable purpose and would mean that the entity is not “established and maintained exclusively for charitable purposes”. While illegal activities may indicate an illegal purpose, breaches of the law not deliberately undertaken or coordinated by the entity are unlikely to amount to a purpose. Isolated breaches of the law, even if apparently sanctioned by the

⁵³ At [102].

⁵⁴ *Greenpeace* [Supreme Court], above n 2, at [103]. The emphasis is mine.

⁵⁵ The Supreme Court was unanimous on this topic. See the minority judgment given by William Young J at [119].

organisation, may well not amount to a disqualifying purpose. Assessment of illegal purpose is, as the Court of Appeal recognised, a matter of fact and degree. Patterns of behaviour, the nature and seriousness of illegal activity, any express or implied ratification or authorisation, steps taken to prevent recurrence, intention or inadvertence in the illegality, may all be relevant. On the other hand, we are unable to accept the submission by Greenpeace that only serious offending, such as would permit sanction under the legislation on a one-off basis even if not indicative of any system or purpose, is required before illegal conduct amounts to a purpose of the entity.

[112] It is not clear that the question of illegal purpose is a live one so far as the chief executive and the Board are concerned. The remarks about possible illegal purpose in the Commission's decision may not arise on reconsideration. If so, however, the comments of the Court of Appeal, which are acknowledged by counsel for the Board to have been unnecessary for the Court's decision, are for the most part a sensible list of the factors that may be relevant in a particular case. Whether illegal activity cannot be taken into account unless it has been the subject of criminal prosecution may be more doubtful and is a point which should wait for an actual controversy.

[45] The Supreme Court determined that the matter was to be remitted back to the Board for consideration in light of the Court's decision.

The law as it now stands on advocacy for causes

[46] Points of principle I take from the Supreme Court's decision are as follows:

- (a) To qualify for charitable status, the entity's purpose must be a "charitable purpose" as determined by analogy with objects already held to be charitable as well as being of public benefit.
- (b) This area of the law should be responsive to the way society works and be responsive to changing circumstances. A modern, outsourced and contracting state may throw up new need for philanthropy.
- (c) A charitable purpose does not need to involve directly undertaking tangible good works. It can involve campaigning for charitable ends.
- (d) Advocacy for such ends as human rights or protection of the environment can be charitable depending on the nature of the advocacy. These ends require broad-based support and effort, including through political and legal processes.

- (e) Advocacy for causes will often not be charitable because it is not possible to say that the views being promoted are a public benefit recognised as charitable, either in their achievement or in the promotion itself. They may also have no sound analogy in the common law to be recognised as a charitable purpose.
- (f) It is not the case that advocacy on views that are generally accepted are charitable, and those that are highly controversial were not. Advocacy may be required to effect change that is to the public benefit.
- (g) Assessment of whether advocacy or promotion of a cause is a charitable purpose depends on the end that is advocated, the means promoted to achieve that end and the manner in which the cause is promoted.
- (h) Where the entity promotes an abstraction, such as peace or nuclear disarmament, the focus must be on how the abstraction is furthered. Advocacy promoting nuclear disarmament and the elimination of weapons of mass destruction was not a charitable purpose per se. It depended on the means and manner of this promotion.
- (i) If an entity has an illegal purpose, it is not established and maintained exclusively for charitable purposes. Illegal activities may indicate an illegal purpose, but this was a matter of fact and degree.

[47] The difficulty with the decision lies in its application. As one commentator discusses, the decision means that activities such as the promotion of specific causes or viewpoints and law reform advocacy, which had previously prevented controversial organisations from obtaining charitable status, could now be charitable.⁵⁶ She comments that the decision maker has to determine whether the purpose or activity of the organisation is for the public benefit and this can be particularly difficult where the cause is controversial or the particular viewpoint is contested.⁵⁷ She further comments that the Supreme Court has made it even more difficult by requiring an

⁵⁶ Jane Norton “Controversial charities and public benefit” (2018) NZLJ 64 at 65.

⁵⁷ At 65.

assessment of the benefit of achieving the stated purpose rather than just the benefit of pursuing it.⁵⁸

[48] As to this last point, the Supreme Court had taken a different approach to that of the majority of the High Court of Australia in *Aid/Watch Inc v Commissioner of Taxation*.⁵⁹ That case concerned an organisation which sought to promote the more efficient use of Australian and multinational foreign aid directed to the relief of poverty. Its activities included research and public campaigns intended to generate public debate and to bring about changes in government policy and activity relating to the provision of foreign aid.

[49] The majority held that generation by lawful means of public debate concerning the efficiency of foreign aid directed to the relief of poverty was a purpose beneficial to the community. Kiefel J delivered a dissenting judgment. She considered the motives of the organisation were not sufficient to establish a public benefit.⁶⁰ If the organisation's main purpose was a political one, that is to say the assertion of its views, it was necessary for the organisation to show that the views it asserted were of public benefit.⁶¹ The Supreme Court majority in *Greenpeace* agreed with Kiefel J in making the point that advancement of causes will often not be charitable because it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.⁶²

[50] In this case, establishing whether Greenpeace NZ's objects are of public benefit in a charitable sense is less difficult because they have been discussed by the Supreme Court. The Court considered advocacy for the protection of the environment is a charitable purpose depending on the nature of the advocacy. As I will shortly turn to, the difficulty is as to what is meant by the Court's qualification that it would depend on "the nature of the advocacy". This was not discussed in the context of Greenpeace NZ's activities in advocating for the protection of the environment because that purpose had not been an issue for the Charities Commission.

⁵⁸ At 66.

⁵⁹ *Aid/Watch Inc v Commissioner of Taxation* [2010] HCA 42, (2010) 214 CLR 539.

⁶⁰ At [82].

⁶¹ At [85].

⁶² *Greenpeace* [Supreme Court], above n 2, at [73].

[51] Conceptually, there may be difficulty in distinguishing between “end”, “means” and “manner”. As Cull J put it in *Better Public Media Trust v Attorney-General*, the end is the ultimate goal for which the organisation is advocating, the means is the way the organisation advocates achieving the end, and the manner is the way the organisation conducts its advocacy.⁶³ Another way of putting it, as it applies to Greenpeace NZ, is that advocacy for the protection of the environment (the end) is capable of being a charitable purpose and whether it does advance the public benefit (so as to be charitable) will depend on what is advocated (the means) and how that advocacy is carried out (the method).

[52] As to Greenpeace NZ’s direct action and advocacy aimed at promoting peace, nuclear disarmament and elimination of weapons of mass destruction, the Court considered it was unlikely that it could be demonstrated to be a charitable purpose of public benefit. The issue that has arisen following the Board’s reconsideration is whether Greenpeace NZ has a non-ancillary purpose to advocate for peace, nuclear disarmament and elimination of weapons of mass destruction.

The decision appealed from

Process

[53] As noted earlier, the Board is provided with the recommendation of the chief executive on an application for registration. The process leading to the recommendation and the recommendation itself is carried out by personnel in the Charities Services team on behalf of the chief executive. In this case, Charities Services personnel communicated with Greenpeace NZ about its application, prepared an analysis on the application for the Board, attended Board meetings when the application was discussed, and prepared the Board’s draft decision.

[54] The process from the time Greenpeace NZ confirmed it wished to pursue its application until Greenpeace NZ was notified of the Board’s decision took nearly three years. It involved the following:

⁶³ *Better Public Media Trust v Attorney-General* [2020] NZHC 350 at [53].

- (a) July 2015: Following contact from Charities Services, Greenpeace NZ confirmed that it wished to pursue its application for registration and provided a detailed letter and a supporting affidavit setting out its activities and advancing arguments as to why it qualified for registration.
- (b) 31 August 2015: Board meeting – the Board directed Charities Services to keep it apprised of progress with and issues concerning Greenpeace NZ’s application.
- (c) 29 October 2015: Board meeting – Charities Services advised the Board it expected to have a discussion paper for the Board’s November meeting.
- (d) 18 November 2015: Charities Services memorandum to the Board – Charities Services’ preliminary view was that Greenpeace NZ did not qualify for registration. Charities Services recommended that Greenpeace be provided with its preliminary conclusions and given an opportunity to comment and provide further information.
- (e) 25 November 2015: Board meeting – the Board discussed the memorandum and considered that further information was necessary before it could make a decision on the application.
- (f) 30 November 2015: Charities Services provided the Board with the supporting documents and background material on which its recommendation had been made.⁶⁴

⁶⁴ This material was substantial. It comprised 760 pages and included a detailed assessment by Charities Services about the views advocated by Greenpeace with extensive footnotes to material on Greenpeace websites; a 13-page summary of examples of Greenpeace’s “activists” activities under the heading “illegal purpose”, with photographs and website references; other internal work carried out by Charities Services; US judgments involving cases against Greenpeace entities; privileged material; Greenpeace NZ’s letter and affidavit discussed above and other correspondence with Greenpeace NZ; and Greenpeace publications.

- (g) 15 December 2015: Board meeting – the Board discussed Greenpeace NZ’s application and what further information from Greenpeace NZ it should seek.
- (h) 18 December 2015: Charities Services wrote to Greenpeace, in accordance with the Board’s direction, seeking further information and suggesting a meeting.
- (i) 3 February 2016: Greenpeace NZ responded seeking clarification on the approach Charities Services was taking and advancing its position on why it qualified for registration.
- (j) 18 February 2016: Board meeting – the Board considered Greenpeace NZ’s response and approved Charities Services’ proposed response. Charities Services sent the approved letter to Greenpeace NZ the same day.
- (k) 2 May 2016: Greenpeace NZ provided a detailed response setting out why it disagreed with how Charities Services was applying the Supreme Court’s decision and provided further information about its activities. It confirmed it was happy to meet with Charities Services if that would advance matters.
- (l) 25 August 2016: Charities Services provided the Board with its updated assessment and supporting documentation. It remained of the view that Greenpeace NZ did not qualify for registration. It provided a draft notice to Greenpeace NZ for the Board’s approval.
- (m) 25 August 2016: Board meeting – the Board considered the material and assessment provided by Charities Services and approved the draft notice.
- (n) 28 September 2016: Charities Services notified Greenpeace NZ of its view that Greenpeace NZ did not meet the requirements for

registration. Greenpeace NZ was given the opportunity to make further submissions and for a meeting before a final decision was made by the Board.

- (o) July 2017: after several follow up communications from Charities Services, Greenpeace NZ advised that it would not be making further submissions.⁶⁵
- (p) 9 August 2017: Charities Services emailed Greenpeace NZ about three direct protest actions in April, June and July 2017. It advised that they contributed to Charities Services' view that Greenpeace NZ had an illegal purpose and that Greenpeace NZ had the opportunity to make submissions but that otherwise it would be recommending to the Board that it decline Greenpeace NZ's application.
- (q) 14 September 2017: Charities Services provided a memorandum to the Board with its recommendation that the Board decline Greenpeace NZ's application, a draft decision and supporting material.⁶⁶
- (r) 18 and 19 September 2017: Mr Karipa emailed the other Board members and Charities Services personnel about activities of Greenpeace NZ in the media that appeared to be illegal. Charities Services responded that these activities had been included in the 28 September 2016 notice sent to Greenpeace NZ.
- (s) 27 September 2017: the Board considered Charities Services' recommendation and proposed some changes to the draft determination.

⁶⁵ It was evidently apparent to Greenpeace NZ that Charities Services was taking a different view on how the Supreme Court's decision was to be applied and there was no utility in further submissions at that stage.

⁶⁶ The material relied on was substantial. It included the correspondence with Greenpeace relating to the Board's reassessment of Greenpeace's application following the Supreme Court decision, analysis conducted by Charities Services on the application and documentation referred to in that analysis, as well as the Charities Commission's 2010 decision and material relating to that decision.

- (t) 23 November 2017: Mr Karipa provided further comments on the draft determination, including on how Greenpeace NZ's "Red Fish Guide" publication was described.
- (u) 9 February 2018: Charities Services provided a further paper to the Board. Charities Services' recommendation remained the same. It provided an updated draft determination. Charities Services also emailed Greenpeace NZ, advising that the Board was considering Greenpeace NZ's application at its meeting on 22 February 2018 and providing a further opportunity for Greenpeace NZ to forward any further information or submissions for the Board's consideration.
- (v) 22 February 2018: Board meeting – the Board considered the amended draft determination and, subject to being satisfied that natural justice requirements had been met, it agreed with the draft determination declining the application.
- (w) 15 and 19 March 2018: Charities Services provided amended draft determinations to the Board for its approval.
- (x) 21 March 2018: the Board gave its decision declining the application and notifying Greenpeace NZ of that decision.

Updated information about Greenpeace NZ's activities

[55] The information about Greenpeace NZ's current activities provided in July 2015 came from Bunny McDiarmid, Greenpeace NZ's executive director. In her letter to Charities Services, she confirmed Greenpeace NZ's objects were as set out above.⁶⁷ She advised that all of its advocacy is directed to its objects (2.2 to 2.5) and most of its activities were directed to environmental education and conservation ends. She advised that Greenpeace NZ no longer campaigned on promoting peace and nuclear disarmament.

⁶⁷ Refer above at [25].

[56] By way of further explanation she advised:

In fact, Greenpeace currently only advocates for environmental ends. This is clear from my 2015 affidavit. While the Greenpeace website provides information on a range of issues, all of Greenpeace's current and planned campaigns and activities are focused in two areas: climate change and oceans. This position is ongoing and is expected to remain ongoing for the foreseeable future. ...

More specifically, Greenpeace's climate change team has worked for the last 5 years, and continues to work, to educate the public about the environmental risks of deep sea oil drilling, including the likelihood and consequences of a spill and the impact of oil exploration and drilling processes on marine life. It also works on informing the public on the benefits of clean energy and promotes investment in a clean and sustainable future. Greenpeace's oceans team focusses on promoting sustainable tuna fisheries, given the Pacific has the 'healthiest' tuna stocks globally and already 3 out of 4 Pacific tuna species are listed as endangered or vulnerable.

[57] Ms McDiarmid said that Greenpeace NZ currently seeks to protect the environment by:

Educating the population on the merits of alternative clean energy, and our ability to adopt it (refer the *Future is Here* report);

Conducting research and educating the population on the environmental risks to New Zealand's coastal and marine environment of deep sea oil exploration and drilling processes (refer *Trajectory Analysis of Deep Sea Oil Spill Scenarios in New Zealand Waters* report prepared by data scientists at Dumpark Ltd, *Out of Depth* report; and joint research with Otago University on whales and seismic activity);

Conducting research and educating the population on action we could be taking to avoid climate change, and developing a comprehensive climate action plan for New Zealand (refer *Energy [r]evolution* report);

Educating the population on sustainable and ethical fishing practices, particularly in the Pacific tuna industry (refer *While Stocks Last; Rescuing the Pacific and its Tuna* and *Transforming Tuna Fisheries in Pacific Island Countries* reports);

Promoting the establishment of protected marine areas in the Pacific Ocean to encourage regeneration of healthy fish stocks (refer reports above);

Promoting the protection of endangered Maui dolphin and their sanctuaries.

[58] Ms McDiarmid advised that the kind of advocacy described in object 2.7 is a "very small part of what Greenpeace does". Of its 50 full time staff, one staff member is engaged in this role. That staff member:

- (a) has face to face meetings with politicians and makes submissions on environmental issues;
- (b) engages with parliamentary committee and public consultation processes on environmental issues (often at the Government's request);
- (c) attends meetings, workshops and conferences relating to environmental policies;
- (d) creates "a climate of observation on environmental issues at a government level";
- (e) monitors environmental issues before parliament, "reporting to the population on them" and encourages debate;
- (f) distributes or shares Greenpeace research and expertise with politicians and local businesses; and
- (g) makes sure the Greenpeace team is informed of developments on issues it works on.

[59] As to Greenpeace NZ's object of promoting peace, nuclear disarmament or the elimination of weapons of mass destruction, Ms McDiarmid advised:

... Greenpeace has no activities or campaign focus whatsoever on peace, nuclear disarmament or the elimination of weapons of mass destruction. The extent of Greenpeace's activity on these issues is a handful of pages on its website, which outline New Zealand's historical nuclear campaigns, our aspiration for a peaceful world free of nuclear weapons, some data indicating where public opinion lies on the matter, and some information about actions being taken by other Greenpeace offices around the world. ... In this country there is no budget allocation; no budget spend; no employee time; and no disqualifying manner of promotion.

... Greenpeace has had no activities relating to peace and nuclear disarmament since around 2004, when Greenpeace shifted its priority away from nuclear disarmament to climate change, which we see as being the biggest security to threat to our environment. Further, Greenpeace does not expect to have activities or campaigns on peace and nuclear disarmament issues at any time in the foreseeable future. To a large extent, Greenpeace considers it 'won' on these issues when New Zealand instigated its nuclear free legislation. ...

These words in Greenpeace's Rules date back to a time where Greenpeace actively campaigned on nuclear issues. They may now be seen more of a recognition of our history as a key player in the anti-nuclear movement ... They are an important part of our legacy and our values, but have ceased to be an actively campaigned on issue in this country. In that context, they must be viewed as ancillary purposes.

[60] On the topic of illegal activities, Ms McDiarmid said Greenpeace NZ "does not have, and has never had, any object or purpose aimed at breaking the law". She elaborated:

NVDA means taking peaceful action that confronts problems and the problem-makers...

... NVDA forms a small part of Greenpeace's activity structure and focus in terms of time, personnel and resources. NVDA that actually carries a risk of Greenpeace personnel/volunteers breaking the law is an even smaller subset of that.

... it would seem that the Greenpeace website misrepresents Greenpeace's actual focus on NVDA in terms of its overall operation. That is perhaps unsurprising, given that these actions are the events that create photo opportunities and receive media coverage. ... NVDA support makes up only 9% of the campaign budget and an even smaller percentage of the budget overall.

NVDA as conducted by Greenpeace means taking non-violent actions that achieve one of the following objectives:

1. The action creates a photo opportunity which will resonate with the public or a particular audience;
2. The action directly communicates something to a specific person or company (for example, through words on a banner);
3. The action mobilises people (for example a peaceful protest or march); or
4. The action is a direct action at the scene of an environmentally harmful activity.

The first three types of NVDA do not even create opportunity for breaking the law, e.g. they simply involve peaceful mobilisation of people (for example a public march), or "bearing witness" (deploying an eye in the sky) to environmentally harmful activities, in a non-violent manner (for example participating in a flotilla of boats to document, observe or protest a risky oil or illegal fishing operation).

Only the last (and only in some cases) carries some risk of law infringement by Greenpeace personnel or volunteers. It is a personal decision and risk taken by the activist, and Greenpeace's objective is never to break the law. As a general statement, direct actions are not designed to break laws, but to create events that will educate and cast light on environmental issues and to create a

platform for discussion. Any occasional breach of laws is incidental to that goal.

[61] Ms McDiarmid supported this information with an affidavit. Her affidavit advised that:⁶⁸

- (a) Greenpeace NZ's activities are campaign activities, fundraising and operational/governance activities. Campaign activities are the means by which it promotes its objects.
- (b) Greenpeace NZ's campaign focus in 2014 was made up of its oceans campaign (34 per cent), climate campaign (66 per cent) and peace and nuclear disarmament campaigns (zero per cent). This focus was broadly the same for the last five years. In 2015 the ocean campaign would be an increasing focus. Since around 2004 there had been no budget spend on peace, nuclear disarmament and the elimination of weapons of mass destruction.
- (c) By far the largest part of Greenpeace NZ's campaign activities relate to "educating New Zealanders on environmental issues, using facts obtained from scientific research". This involves employing and commissioning scientists and researchers to prepare scientific, economic and environmental impact reports, speaking to around 250,000 New Zealanders each year and working towards changing perceptions and expectations based on scientific research, through Greenpeace's face to face team and its outreach team, and communicating on environmental issues through other educative mechanisms.

[62] In May 2016 Ms McDiarmid provided the following further information (all in response to specific questions asked by Charities Services):

⁶⁸ In support of this information, the affidavit annexed Greenpeace NZ's 2014 financial report, a spreadsheet of Greenpeace NZ's expenditure for the years 2011-2014, as well as Greenpeace NZ's most recent financial forecast and its 2015 budgeted expenditure (set out under 29 headings). Further detail of the amount it spent on various campaigns was provided in the 2 May 2016 letter.

- (a) The sole goal of Greenpeace NZ's climate change campaign was to prevent catastrophic climate change. Greenpeace's "stop deep sea oil" message is used by it as a catalyst for generating debate on climate change. In 2015, a significant part of Greenpeace NZ's climate change activity involved working with other groups to organise the People's Climate March around the time of the Paris conference.
- (b) While Greenpeace NZ supports more marine protected areas, it has no active campaigns for this. From time to time, Greenpeace NZ is involved in oceans related work that do not fit within its tuna campaign. This could include taking a position or making a statement on marine reserves or working to protect Maui dolphins.
- (c) Greenpeace NZ's tuna campaign is focused on sustainable fishing. This has the end goal of protecting the environment, specifically protecting tuna. The biggest species of tuna are near-threatened, vulnerable, endangered or critically endangered. Fishing at unsustainable levels is occurring due to destructive fishing methods and overcapacity, affecting Pacific Island nations that depend on tuna.
- (d) Greenpeace NZ had recently launched a freshwater campaign intended to enhance the health of New Zealand's rivers. This would be run in 2016 in addition to Greenpeace NZ's climate and tuna campaign.
- (e) Almost all of Greenpeace NZ's resources and time go towards furthering the end goals of preventing climate change (the climate campaign) and protecting global tuna fisheries (the tuna campaign). In 2015 the allocation of its costs on its campaigns was: oceans campaign (31.8 per cent); climate campaign (21.4 per cent); campaign coordination (10.8 per cent); media and communication (14.4 per cent); public information and outreach (33 per cent); actions support (10.2 per cent) and political (two per cent).⁶⁹

⁶⁹ Greenpeace NZ's letter also set out the funds and time spent on each cause identified by Charities Services (preventing further deep sea oil, supporting developed countries reduce their emissions, general oceans conservation work, switching to more sustainable fishing, and other campaigning activities) and the proportion of Greenpeace NZ's funds and time they represented.

- (f) Greenpeace NZ contributed approximately 20 per cent of its fundraising income to Greenpeace International. These funds went into a general pool. Greenpeace International's expenditure went to global campaigns,⁷⁰ campaign support (including costs associated with Greenpeace International's four ships), organisational costs and support for other Greenpeace organisations that do not have the funds to support themselves but where there are important, usually environmental, issues (for example, deforestation in India and Indonesia).

- (g) Greenpeace NZ had one person, an external IT consultant, working on its SafeSource project, which facilitates anonymous whistle-blowing to Greenpeace. He had worked 26.5 hours and was paid \$2,390. Greenpeace NZ had also spent \$6,273 on web hosting. Greenpeace NZ was not aware of any laws that would be breached, nor of anyone facing legal consequences, from sharing information on this site. It did not encourage anyone to put themselves at risk and advised people to get advice if they were in doubt.

- (h) Greenpeace Educational Trust is a separate and independent trust. It produces Greenpeace NZ's supporter magazine, which raises awareness on the environmental problems Greenpeace NZ is working on. It has also provided funding for a shelter at the Longbush Ecosanctuary, as well as funding associated with remembering the sinking of the Rainbow Warrior and maintaining the monument and track at its resting place.

[63] Ms McDiarmid also advised Charities Services that contributions to Greenpeace International by approximately nine of the 21 Greenpeace organisations around the world are restricted to specific uses. This is because they have charitable status and must account for their use of funds. Ms McDiarmid said Greenpeace NZ

⁷⁰ In order of budget, these are Save the Arctic, Climate and Energy, Oceans, Forest, Food for Life, and Detox (toxics).

would be prepared to consider restricting its contributions to certain uses if that were a condition of being granted charitable status.

Greenpeace NZ's submissions

[64] In its July 2015 letter Greenpeace NZ submitted that:

- (a) All Greenpeace NZ's advocacy is directed to environmental education and conservation ends and is charitable and for the public benefit. This is because its advocacy was directed to approved charitable ends and in the participatory and constructive manner the Supreme Court had seen benefit in.
- (b) Its object to promote peace and nuclear disarmament was ancillary because Greenpeace NZ no longer campaigned on this topic.
- (c) Greenpeace NZ does not have an illegal purpose. Media articles give a misleading impression. Unsurprisingly, they report on the cases where Greenpeace NZ personnel or volunteers have been arrested, but these activities are not an important part of Greenpeace NZ life. If the Board had any residual concerns about this, it could monitor Greenpeace NZ's conduct and consider it under s 32 of the Act.
- (d) The Board should now register Greenpeace NZ, back-dated to 30 June 2008.

[65] Greenpeace NZ's letter of 3 February 2016 said:

... We understand it to be common ground that the protection of the environment is an acceptable charitable purpose.

More specifically, (iii) [supporting the establishment of marine reserves] and (iv) [switching to more sustainable (selective-fishing) methods] of your list are aimed at protecting the ocean environment. Causes (i) [removing barriers (such as subsidies) to the mass production of clean energy], (ii) [supporting global emissions peaking in 2015, and developed countries making cuts of

40 percent on their 1990 levels by 2020] and (v) [preventing further deep sea oil drilling] of your list are aimed at avoiding catastrophic climate change.^[71]

We believe protecting the environment and its population from climate change is not only self-evidently in the public benefit, it is the most important public issue we face. We had apprehended that this too would be common ground. We understand that the Crown has accepted the science on climate change from (i) its position at the recent COP conference in Paris; and (ii) the documents filed in the case of *Thomson v Minister of Climate Change Issues*.

Given the protection of the environment and the avoidance of climate change are recognised as charitable, and benefit the planet and its people as a whole, the advancement of those causes must by definition be in the public benefit. Any advocacy by Greenpeace goes solely towards advancing those causes. By that logic, it must also be for the public benefit.

[66] Greenpeace NZ provided further submissions in support of its application in its May 2016 letter. By this stage, Greenpeace NZ was concerned about the way Charities Services was approaching its application. Greenpeace NZ submitted that the Supreme Court approach did not involve separating the ends, mode and means such that they all must advance a public benefit in their own right. Rather, these were interconnected and were to be considered as a whole when assessing whether goals advance a public benefit.

[67] On its climate campaign it said:

Our primary submission is that this work is self-evidently in the public benefit. It benefits the community as a whole, rather than any individual or group thereof, and it is common ground that the goal of preventing catastrophic climate change is an acceptable charitable end within the spirit of the preamble. This is a non-abstract end, which we submit Charities Services is capable of judging in the public benefit.

Numbers (i)[removing barriers to the mass production of clean energy] (ii) [supporting global emissions peaking in 2015, and developed countries making cuts of 40 per cent on their 1990 levels by 2020] and (v) [preventing further deep sea drilling] are not separate causes, but integral parts of preventing catastrophic climate change. In order to achieve this charitable end, the world *must* (a) reduce global emissions (b) through ending dependence on fossil fuels (like oil) that create the vast bulk of emissions, and (c) transitioning to a renewable energy future. Unlike peace (which courts have found could be achieved through a race to arms or laying down arms) these ‘causes’ are essential components of preventing catastrophic climate change.

⁷¹ These are matters Charities Services advised it viewed as “causes” on which Greenpeace NZ was advocating towards the end goal of protecting the environment.

The science on this is unequivocal, and has been accepted at every credible level of domestic international politics. Scientists universally agree that global emissions need to peak urgently, and that if we are to avoid catastrophic climate change, we must dramatically reduce global emissions including by stopping burning fossil fuels, within the next two decades. In fact, scientists have now found that 80% of known fossil fuels cannot be burnt if we are to achieve this. ...

...

We submit that if you accept that preventing catastrophic climate change is in the public benefit, then you must also accept that supporting emissions reductions, stopping burning fossil fuels, leaving unburnable carbon in the ground and transitioning to renewable energy are by extension, in the public benefit. ...

[68] Greenpeace NZ submitted its work is identical to a number of other Greenpeace organisations that have charitable status, including Greenpeace Australia. It also noted that other New Zealand environmental and development organisations that had climate campaigns involving advocacy on the same matters as Greenpeace NZ have charitable status. Greenpeace NZ discussed some examples, including:

- (a) The Royal Forest and Bird Protection Society of New Zealand: Greenpeace NZ said this society takes a proactive approach on opposing mining (including at sea), encourages the Government to put more resources and effort into renewable resources and promotes a reduction in emissions by 40 per cent below 1990 levels by 2030.
- (b) The Environmental Defence Society Incorporated: Greenpeace NZ said this society regularly advocates on the climate change effects of (proposed) mining operations in New Zealand through the courts and opposes deep sea mining.

[69] Greenpeace NZ submitted that controversy is not determinative of charitable status, as recognised by the Board in the *Restore Christchurch Cathedral Group* decision. The Board was able to judge the public benefit in Greenpeace NZ's "causes" (the word used by Charities Services) even though there may be differing views about them. Greenpeace NZ submitted that its goal to prevent catastrophic climate change, through its deep sea oil, renewable energy and emissions reduction work, advances a charitable public benefit because it: benefits the public rather than an individual;

advances a non-abstract charitable end (the avoidance of catastrophic climate change); does not advance any separate purpose that is not in the public benefit; and is within the spirit of what is charitable by analogy.

[70] Greenpeace NZ submitted that its tuna campaign was work for the public benefit. The one and only goal of the campaign was to preserve oceans and animals so as to have a diverse ocean ecosystem with tuna to feed people around the world well into the future. Greenpeace Australia and other organisations in New Zealand with charitable status have identical or similar campaigns. Saving an endangered species is charitable. Greenpeace NZ's tuna campaign advances a charitable public benefit because it: benefits the public rather than an individual; advances an accepted charitable end (the protection of the environment); does not advance any separate purpose that is not in the public benefit; and is within the spirit of what is charitable by analogy.

Charities Services' advice to the Board

[71] Charities Services' preliminary views, as set out in its 18 November 2015 memorandum to the Board, were that:

- (a) Greenpeace NZ's primary purpose was not educative. Rather it was advocacy for the environment, and in particular the protection of the marine environment and the prevention of climate change.
- (b) Advocacy for the protection of the environment could be charitable, but it still depended on the nature of the advocacy. This meant it was necessary to consider the means and method by which Greenpeace NZ advocated for the protection of the environment.
- (c) As to the means, many publications found on Greenpeace websites did not advance a charitable public benefit. This was because, while the views Greenpeace NZ advocated may protect the environment, their implementation would also have economic and social consequences. The public benefit from these wider consequences was unlikely to be capable of demonstration by evidence.

- (d) The method of the majority of Greenpeace's advocacy was charitable because its focus was on engaging in the democratic process. However, its "method of supporting deliberate breaches of the law" was not charitable. Further, Greenpeace NZ promoted whistleblowing. This was not charitable because its SafeSource website would not be a protected disclosure under the Protected Disclosure Act 2000.
- (e) Greenpeace NZ's objects of promoting peace, nuclear disarmament and the elimination of weapons of mass destruction were "capable of standing on their own" and it was "doubtful they [could] be viewed as ancillary in the qualitative sense". Greenpeace had submitted it had no current or planned activities relating to these objects so it could not be determined that its activities were charitable. Further, Greenpeace NZ provided significant funds to Greenpeace International. It was unclear if any of these funds were used for the purposes of peace, nuclear disarmament and the elimination of weapons of mass destruction. Further information was required about this.
- (f) Greenpeace NZ has an illegal purpose disqualifying it from registration. This was because:
 - (i) Activities carried out in New Zealand were clear breaches of the law and of minor seriousness. They were not a regular occurrence but showed a pattern of behaviour. Greenpeace NZ's publications indicated that it expressly ratifies these activities and may have directly coordinated them. It did not appear that Greenpeace NZ had processes to prevent illegal activities.
 - (ii) Greenpeace NZ members were part of international campaigns that were clear breaches of the law. They were of minor to moderate seriousness. Three of these led to arrests. The activities were ratified or condoned if not expressly authorised by Greenpeace NZ. Greenpeace NZ paid the legal costs of its

members involved in the Arctic 30. Greenpeace NZ did not appear to have processes to prevent illegal activity by its members as part of international campaigns. The information appeared to demonstrate that Greenpeace NZ supported this behaviour. Further information was needed to determine if funds from Greenpeace NZ to international campaigns were for illegal actions and whether there was any ringfencing of the funds provided.

[72] Charities Services recommendation to the Board to decline registration, in its memorandum dated on 14 September 2017, was for the following reasons:⁷²

- (a) Greenpeace NZ's stated purposes are abstract end goals to advance education protect the environment and promote peace and disarmament. These end goals are capable of being charitable.
- (b) Greenpeace NZ's main activity is advocacy on causes that it considers will protect the environment. The manner in which it advanced this end goal was largely within the spirit of public participation in decision making. However, the means promoted by Greenpeace NZ largely involved promoting its own view on climate change, fresh water and sustainable fishing issues. Some of this advocacy was capable of advancing a charitable public benefit, for example where it provided objective expert evidence to decision makers. However, its focus was on promoting its point of view on environmental issues. It could not be determined that this was in the public benefit.
- (c) Most of Greenpeace NZ's activities do not advance education in a charitable sense as they are directed to persuading the reader to Greenpeace's own particular views on the environment.

⁷² From this point, Charities Services' recommendation and advice did not change. It was involved in assisting the Board with ensuring natural justice had been met and in finalising the draft determination for the Board.

- (d) Greenpeace NZ's purpose to promote its own views on peace, nuclear disarmament and weapons was not a charitable purpose. Although its advocacy for these end goals "is a small part of Greenpeace NZ's overall activities", they are "separate end goals that cannot be read as ancillary to Greenpeace's other stated purposes".
- (e) Greenpeace's recent illegal activities carried out by "Greenpeace and its members" demonstrated an illegal purpose that disqualified it from registration.
- (f) The majority decision in *Aid/Watch* and the ACNC's approach to Greenpeace Australia was not relevant. This was because the Supreme Court in New Zealand had preferred Kiefel J's minority opinion. Also, legislation had since been passed in Australia to explicitly permit charities to advocate for charitable purposes.

The Board's decision

[73] The Board determined that:

- (a) Greenpeace NZ's advocacy for the protection of the environment was not charitable because it largely involved promoting its views and it could not be said that these views are of public benefit in the way the law recognises as charitable.
- (b) Greenpeace NZ did not have a charitable purpose to advance education because most of its activities promoted its view and did not advance genuine, objective education.
- (c) Greenpeace NZ had a non-ancillary purpose to promote peace, nuclear disarmament and the elimination of weapons of mass destruction. The promotion of its views on this topic were not a benefit in the way the law recognises as charitable.

- (d) Greenpeace NZ and its members are involved in illegal activities from which an illegal purpose could be inferred.

Protecting the environment

The Board's reasons

[74] The Board first considered whether Greenpeace NZ has a charitable purpose to protect the environment. It said:⁷³

The Board accepts that Greenpeace's advocacy is for the charitable end goal of protecting the environment. The Board also acknowledges that the manner in which Greenpeace uses to carry out its advocacy is largely within the spirit of public participation in decision making. The Board considers, however, that the means promoted by Greenpeace largely involve promoting its own views on environmental issues.

[75] The Board went on to explain this view. It considered that Greenpeace NZ's main activity was advocacy on causes that it considers will protect the environment. It discussed that Greenpeace NZ's main campaigns currently were:

- a) Climate – supporting reducing global emissions, ending dependence on fossil fuels like oil, and transitioning to a renewable energy future, for the end goal of preventing catastrophic climate change. This campaign has included opposing further deep-sea oil drilling, opposing government subsidies for fossil fuel exploration, advocating for a removal of barriers to clean energy, and advocating for all energy in New Zealand to come from renewable sources by 2050.
- b) Oceans – promoting sustainable fishing methods, towards the end goal of a diverse and sustainable ocean ecosystem. This has included advocating to ban destructive fishing techniques, opposing industrial-scale fishing in the Pacific, opposing single-use plastic bags, addressing labour abuses and illegal fishing, calling for retailers to sell sustainably sourced fisheries products, encouraging consumers to make sustainable decisions, and supporting the concept of more marine protected areas.
- c) Fresh water – opposing the expansion of New Zealand's industry dairy model, and advocating for a transition to ecological farming to enhance the quality of New Zealand's rivers.

[76] As to climate, the Board said:

39. The Board accepts that advocating in general for sustainable means of achieving economic growth and the prudent use of natural resources may be consistent or supportive of a charitable

⁷³ *Greenpeace Charities Board Decision*, above n 5, at 35.

purpose where it is balanced against competing needs and awareness of social and economic limitations.

40. The Board considers that determining the specific policies the government should take to address climate change (for example: the role of fossil fuels) is a complex issue that requires in-depth consideration of the potential consequences of New Zealand's international obligations and interests, environmental risks, the importance of fossil fuels in New Zealand's economy, the competing interests of industries, economic costs, and New Zealand's dealings with other nations.

...

42. The Board considers that where Greenpeace seeks to protect the environment by providing expert and objective evidence to assist resource management decisions, this advances a public benefit similar to what has been accepted by the courts as charitable.
43. The material before the Board indicates, however, that most of Greenpeace's activities involve advocating its points of view on climate change and promoting those views to the public. The Board considers it is not possible to say whether the views promoted by Greenpeace on climate change are of a benefit in the way that the law recognises as charitable.

[77] As to oceans, the Board said:

44. The Board considers that some aspects of Greenpeace's oceans campaign advance a charitable public benefit similar to previous cases (for example, helping consumers to make sustainable decisions and opposing illegal fishing practices in the Pacific).
45. Greenpeace's ocean campaign also involves advocating for Pacific Island countries to completely transform Pacific tuna fisheries. For example, Greenpeace is opposed to foreign-owned, large-scale industrial vessels in the Pacific, because of environmental impacts such as overfishing and destructive fishing practices. Greenpeace advocates for artisanal-based fisheries, using low-impact fishing techniques.
46. The Board considers that Greenpeace's advocacy on this topic raises broader considerations, including New Zealand's dealings with other states, the competing interests of the fishing industry, environmental impacts, and economic considerations. On balance, the Board does not consider public benefit in the sense treated as charitable has been demonstrated in these areas.

[78] As to freshwater, the Board said:

47. Greenpeace's fresh water campaign promotes the view that to improve freshwater quality in New Zealand, intensive dairy expansion must be stopped.

48. The Board considers that addressing fresh water quality in New Zealand is a complex policy issue that raises broader considerations such as the competing interests of the dairy industry and other water users, mitigation costs, the impacts on local communities and the wider economy, and environmental impacts. The Board notes that reports from the Parliamentary Commissioner for the Environment and the Ministry for the Environment both highlight the complexity of decision making in this area.
49. The Board considers it is not possible to say whether the views promoted by Greenpeace on fresh water issues are of a benefit in the way that the law recognises as charitable, taking into account the wider consequences of implementing those views.

[79] The Board concluded that most of Greenpeace NZ's advocacy was advancement of causes which the Supreme Court had indicated would not be charitable, on the basis that it was not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.⁷⁴ The Board was also of the view that this advocacy was not ancillary to a charitable purpose given Greenpeace NZ's focus on this.⁷⁵ This meant Greenpeace NZ was not established and maintained for exclusively charitable purposes and it therefore did not qualify for registration.⁷⁶

Submissions

[80] The Attorney-General submits the Board was correct to find that Greenpeace NZ does not qualify for charitable status because Greenpeace NZ's main focus is advocacy for causes it considers will protect the environment. He submits that, while the end goal of protecting the environment is charitable, it is not possible to say whether many of the climate, oceans and fresh water policies Greenpeace advocates for (the means) are of benefit in the way the law recognises as charitable.

[81] This is because Greenpeace NZ's views are not universally accepted and there are competing interests at stake. For example, while it is accepted that addressing climate change is a public benefit, and advocacy aimed at that goal may be a public benefit, it is necessary to consider what is being advocated. If the advocacy was simply that there is an urgent need to reduce our reliance on fossil fuels, that might be

⁷⁴ At [50].

⁷⁵ At [54].

⁷⁶ At [55].

of public benefit. If, however, the advocacy is that we must stop all deep-sea oil drilling now, then that is not a public benefit because there are complex choices to be made about what range of measures should be taken and when and how they should be undertaken. The Attorney-General submits that this means it is not possible to say that advocating those views is of public benefit. He accepts that Greenpeace NZ's advocacy on environmental issues before the Select Committee or in the courts is a public benefit in that it advances the democratic process or the process of the courts on important issues but Greenpeace NZ's evidence is that this is a small part of what it does. He accepts that where Greenpeace NZ commissions independent scientific research, that too is a public benefit. However, the majority of Greenpeace NZ's activities are to advance its views on environmental issues.

Assessment

[82] This approach treats advocacy for the protection of the environment in the same way as advocacy for peace and nuclear disarmament. I consider that to be an incorrect application of the Supreme Court's decision. The Supreme Court saw advocacy for the protection of the environment as different from advocacy for peace and nuclear disarmament.

[83] An end goal of peace and nuclear disarmament is not a charitable purpose of public benefit in itself because there are complex policy decisions involved for states about whether disarmament or bargaining by strength will better achieve peace.⁷⁷ To advocate for this general and abstract end is therefore not necessarily a charitable purpose of public benefit and it is necessary to assess what is done (the means and the method/manner) to determine this. If what is done is simply advocating for peace and nuclear disarmament generally, the public benefit in this would be difficult to establish.

[84] In contrast, advocacy for the protection of the environment may be charitable in itself. This is because protecting the environment often requires broad-based support and effort.⁷⁸ As Simon France J put it in *Re Family First*, the Supreme Court

⁷⁷ *Southwood v Attorney-General* [2000] WTLR 1199 (CA) at [29]; and *Greenpeace* [Supreme Court], above n 2, at [97]-[98].

⁷⁸ *Greenpeace* [Supreme Court], above n 2, at [71].

provided examples of “purposes, the very advocacy for which will be regarded as charitable”.⁷⁹ The protection of the environment was one such example.

[85] The Supreme Court qualified this by saying that it would depend on the nature of the advocacy. The Board took this as meaning that if the advocacy involved advancing particular views, on which there were competing views and interests, then Greenpeace NZ needed to demonstrate that its views were of public benefit and it could not do so. I agree with Greenpeace NZ that this approach is incorrect. Protecting the environment will often come at the cost of competing interests, but advocating for its protection, in opposition to competing interests, is no less in the public benefit because of that. The Supreme Court cannot have meant that the nature of the advocacy will be disqualifying if an organisation advocates for environmental protection of a kind for which there will be opposition.

[86] By way of illustration, an application for a permit to extract coal from an open-cast mine may be opposed by an environmental group because there are protected species in the area of the proposed operation. If the environmental group submits on a proper basis that the Minister decline the permit in order to protect the species or that it grant the permit only on conditions that protect the species, the group is advocating for the protection of the environment. Advancing the interests of protecting the species is a charitable purpose. Although there are competing commercial and economic interests at stake, the public benefit comes from raising awareness of the environmental issues at stake and thereby assisting to ensure that the public’s interest in protecting the environment is part of the decision-making process. Without that advocacy, the environmental impacts may be unknown or given insufficient attention as against the private interests of the applicant for the permit. The advocacy in this example is not undertaken to confer a private advantage and something of value to the public is achieved.⁸⁰

⁷⁹ *Re Family First New Zealand* [2018] NZHC 2273 at [16].

⁸⁰ As Hammond J put it in *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342 at 347, “[t]here is no intrinsic legal definition of a charity. As a matter of technique, Courts can only describe the attributes of charities. And the essential attribute required is that a charitable activity must seek the public weal: or, to put it another way, a charity is not concerned with the conferment of private advantage”.

[87] The Attorney-General accepts this kind of advocacy is a public benefit. He distinguishes it from Greenpeace NZ's public advocacy – in which it disseminates its views to the public – because they are “views” that are not balanced with other available ways of protecting the environment. He submits it is not enough to simply generate public debate. He submits that the Supreme Court rejected this approach when it referred with approval to Kiefel J in *Aid/Watch* that reaching a conclusion of public benefit may be difficult where the activities of an organisation largely involve the assertion of views.

[88] However, Kiefel J was referring to views that could not be assumed to promote the delivery of foreign aid to those in need. In contrast, the advocacy for the protection of the environment is a charitable purpose of public benefit, depending on its nature. That is because protecting the environment requires broad-based support and effort. And almost every action to protect the environment will clash in some way with commercial or other vested interests.

[89] In Greenpeace NZ's case, one of its primary areas of advocacy is about measures to address avoiding catastrophic climate change. This is a classic example of an environmental end that requires broad-based support and effort. The ongoing international efforts to build consensus towards achieving this aim are discussed in *Thomson v Minister for Climate Change Issues*.⁸¹ New Zealand intends to play its part in achieving this aim.⁸² Domestic courts have accepted they have a proper role to play in government decision-making on this issue.⁸³ Grassroots advocacy also has a role. Recent examples of that advocacy in action have been the marches by schools sparked by the teen activist Greta Thunberg, and the call for a levy on single use plastic bags (from, amongst others, mayors and in a petition launched by Wellington school

⁸¹ *Thomson v Minister for Climate Change Issues* [2017] NZHC 733, [2018] 2 NZLR 160 at [19]-[40].

⁸² For example, it has ratified the 2015 Paris Agreement entered into in pursuit of the objectives of the United Nations Framework Convention on Climate Change. It has also enacted the Climate Change Response (Zero Carbon) Amendment Act 2019.

⁸³ *Thomson*, above n 81, at [133].

girls) to which the nation's supermarkets responded.⁸⁴ As it is put by the authors of one study:⁸⁵

Climate change is a global problem requiring a collective response. Grassroots advocacy has been an important element in propelling this collective response, often through the mechanism of campaigns....Findings demonstrate that climate change advocacy is diverse and achieving substantial successes such as the development of climate change-related legislation and divestment commitments from a range of organizations....

[90] I agree with counsel that, if protecting the environment is a charitable purpose, it must follow that avoiding catastrophic climate change is also of benefit to the public. Advocacy to this end is a charitable purpose of public benefit depending on its nature. Greenpeace NZ's advocacy promotes reducing global emissions by limiting fossil fuel use and switching to clean energy. It is uncontroversial on the science that this is an available mitigation measure.⁸⁶ To the extent there is debate about this measure, it is about to what extent this should be pursued in combination with other measures and in what time frame. Greenpeace NZ's advocacy is part of that important debate.

[91] The Board accepted that there was a charitable public benefit in some aspects of Greenpeace NZ's oceans campaign (for example, helping consumers to make sustainable decisions and opposing illegal fishing practices in the Pacific). It

⁸⁴ See, for example, Jason Walls "Climate change march: Thousands of schoolkids' action inspired by Greta Thunberg" *New Zealand Herald* (online ed, 27 September 2019); Ged Cann "Nearly half the country's mayors join call for compulsory change on plastic bags" *Stuff* (25 June 2017).

⁸⁵ Robyn Gulliver, Kelly Fielding and Winnifred Louis "Understanding the Outcomes of Climate Change Campaigns in the Australian Environmental Movement" (2019) 3(1) *Case Studies in the Environment*. See also Robert Brulle, Jason Carmichael and J. Craig Jenkins "Shifting public opinion on climate change: an empirical assessment of factors influencing concern over climate change in the U.S., 2002-2010" (2012) 114 *Climate Change* 169, which conducted an empirical analysis of the factors affecting United States public concern about the threat of climate change over an eight year period. The abstract for this article includes the following: "Promulgation of scientific information to the public on climate change has a minimal effect. The implication would seem to be that information-based science advocacy has had only a minor effect on public concern, while political mobilization by elites and advocacy groups is critical in influencing climate change concern".

⁸⁶ See the AR5 Synthesis Report (2014) of the Intergovernmental Panel on Climate Change (IPCC). Its conclusions include the following: human influence on the climate system is clear; anthropogenic greenhouse gas emissions have increased since the pre-industrial era and are now higher than ever and their effects are extremely likely to have been the dominant cause of the observed warming since the mid-20th century; emissions of CO₂ from fossil fuel combustion and industrial processes contributed about 78 per cent of the total emissions increase from 1970-2010; limiting climate change requires substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change risks; and key measures to achieve mitigation goals include decarbonising electricity generation as well as efficiency enhancements and behavioural changes to reduce energy demand.

considered other aspects were not a charitable public benefit because they advocated for measures to protect the ocean environment when there were competing considerations at stake. I consider that, as with the Board's approach to Greenpeace NZ's climate change campaign, this was an incorrect approach.

[92] The Board referred to Greenpeace NZ's advocacy against foreign-owned, large-scale industrial vessels in the Pacific because of environmental impacts such as overfishing and destructive fishing practices, and advocating for artisanal-based fisheries using low-impact fishing techniques. As Greenpeace NZ submits, this advocacy is about sustainable fishing. Sustainable fishing is a measure towards protecting the ocean environment.

[93] The public interest in sustainable fishing is recognised in the Fisheries Act 1996 which has the purpose of providing for "the utilisation of fisheries resources while ensuring sustainability".⁸⁷ Ensuring sustainability means "maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations" and "avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment".⁸⁸ Greenpeace NZ's tuna campaign is aimed at these purposes for the future needs of Pacific Island nations that depend on tuna.

[94] Advocacy aimed at engendering broad-based support and effort against overfishing and destructive fishing practices is advocacy for the protection of the environment, which is a charitable purpose of public benefit. It is of public benefit because it helps to ensure that environmental impacts are taken into account amongst the state interests that may be at play and the competing interests of the fishing industry and other economic considerations, just as it does if the advocacy is in a courtroom or before a select committee.

[95] I take the same view of Greenpeace NZ's freshwater campaign. As Greenpeace NZ submits, the public benefit of preserving waterways has long been recognised.⁸⁹ It submits it is not in doubt that Greenpeace's promoted means of

⁸⁷ Fisheries Act 1996, s 8.

⁸⁸ Section 8.

⁸⁹ *Kaikoura v Boyd* [1949] NZLR 233 at 268.

stopping intensive dairy expansion would improve water quality. It refers to commentary from the Parliamentary Commissioner for the Environment, which stated:⁹⁰

Rivers that are pristine inland become increasingly degraded as they flow down developed catchments. The conversion of both sheep and country forests to dairy land has greatly increased the amount of nitrogen in freshwater, whether together with phosphorus, it fertilises unwanted plant growth. ...

[96] And earlier commentary from the Commissioner that stated:⁹¹

Dairy farming is not the only land use responsible for declining water quality ... But dairy farming is the land use that has continued to expand rapidly, and so is largely the cause of increased nutrient stress on waterways.

[97] It is a charitable purpose of public benefit to advocate for the enhancement of the quality of our rivers by advocating against intensive dairy expansion even though there are competing interests at stake. It helps to ensure that the environmental impacts are taken into account when decisions about land utilisation are made, whether that be by farmers making their decisions about what to farm and what farming practices to employ, or public decision makers involved in land utilisation and water quality decisions. That assists to protect the environment. Without advocacy from environment groups the environmental impacts may not be appreciated or understood, or they may be overlooked and underweighted.

[98] As Greenpeace NZ has pointed out, a number of environment groups with similar purposes have charitable status. At my request, counsel provided the objects of some of those groups and a summary of why they were granted charitable status. The closest example is probably the Royal Forest and Bird Protection Society of New Zealand Inc, which campaigns on similar environmental issues.⁹² Its objects at the time it applied for registration were as follows:

2 (a) The main objects of the Society shall be:

⁹⁰ *The State of New Zealand's Environment: Commentary by the Parliamentary Commissioner for the Environment on Environment Aotearoa 2015* (Parliamentary Commissioner for the Environment, June 2016) at 38.

⁹¹ *Update Report: Water quality in New Zealand: Land use and nutrient pollution* (Parliamentary Commissioner for the Environment, June 2015) at 13.

⁹² See the Royal Forest and Bird website <www.forestandbird.org.nz>.

To take all reasonable steps within the power the Society for the preservation and protection of the indigenous flora and fauna and natural features of New Zealand, for the benefit of the public including future generations.

- (b) Without affecting the generality of the main objects, the Society shall have the following ancillary objects:
 - (i) To spread knowledge and encourage appreciation of our native flora and fauna, their aesthetic, scientific, cultural and recreational values.
 - (ii) To educate the public of all age groups regarding the importance and urgent need for protection of these natural resources.
 - (iii) To meet the vital need to conserve the environment free from pollution.
 - (iv) To advocate the protection of indigenous species, their habitats and ecosystems.
 - (v) To advocate the creation and the preservation of protected natural areas, reserves and National Parks in public ownership and/or control.
 - (vi) To establish and administer reserves and sanctuaries for the preservation of New Zealand's indigenous ecosystems.
 - (vii) To advocate the destruction of introduced species harmful to New Zealand's flora and fauna.

[99] There is no published decision but counsel for the Attorney-General has helpfully provided the following summary of the Charities Commission's reasons:

The Commission considered the Society had charitable purposes to advance education and protect the environment. The Commission noted the Society had some stated purposes mentioning advocacy, but considered these were not political advocacy purposes; rather, a means to achieve its other charitable purposes.

[100] Not too much can be taken from this because I do not have details about the manner of Royal Forest and Bird's advocacy. At best, there is an impression that prior to the Supreme Court's *Greenpeace* decision the Charities Commission accepted (correctly) that advocacy for the protection of the environment can advance the public benefit in a manner that is charitable.

[101] I conclude that the Board erred in finding that campaigning for the protection of the environment was not a charitable purpose of public benefit. Greenpeace NZ was not ineligible for charitable status on this basis.

Advancing education

[102] Greenpeace NZ's objects include undertaking research and other educational activities (rr 2.3 and 2.4). This purpose falls under the charitable purpose in the Charities Act of advancing education. It is assumed to be of public benefit unless the contrary is shown. The question considered by the Board is whether Greenpeace NZ has activities that fall under this purpose as it has been interpreted by the courts.

The Board's reasons

[103] To answer this question, the Board referred to the High Court's view in *Re Collier* that for research to qualify as education:⁹³

... it must first confer a public benefit, in that it somehow assists the training of mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimum standard.

[104] The Board also considered it was necessary that education be "sufficiently structured to assist the training of the mind, or the advancement of research" and the "publishing of facts already in the public domain" did not amount to research.⁹⁴ It considered that purposes to promote a point of view or a cause were not educational. It was the Board's view that, if an entity promotes a cause or a view through the dissemination of research or information, the entity must demonstrate how the cause or view itself is consistent with or supportive of a charitable purpose.⁹⁵ Publication to persuade was not the same as to educate.⁹⁶

[105] The Board summarised its view of the law as follows:

⁹³ *Re Collier* [1998] 1 NZLR 81 at 91-92, cited at [59] of the Board's decision.

⁹⁴ At [61], referring to *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10, (1999) 169 DLR (4th) 34 at [171] and *Re Draco Foundation (NZ) Charitable Trust* (2011) 25 NZTC 20-023 (HC) at [75].

⁹⁵ At [62].

⁹⁶ *Aid/Watch*, above n 59, at [63], referring to Kiefel J.

64. The Board considers that in order for a purpose to advance education, the information must be presented in a balanced, objective and neutral manner so that the reader can form a view themselves, rather than expressing a one-sided perspective intended to persuade the public to a particular point of view. To summarise the relevant case law, to determine whether Greenpeace's reports and websites seek to promote Greenpeace's point of view, or advance genuine, objective education, the appropriate areas of analysis are:
- a. the nature of the information, to determine whether it is objective, neutral and balanced;
 - b. whether it has been reviewed by objective third parties; and
 - c. how Greenpeace disseminates its views to the public, to determine whether it seeks to educate or persuade to a point of view.

[106] Applying this approach to Greenpeace NZ's activities:

66. ... the Board considers that the reports seek to promote Greenpeace's point of view on environmental issues rather than to educate.
67. The Board considers that most of Greenpeace's reports can be characterised as "propaganda or cause under the guise of research" as described in *Re Collier*. Most of the reports do not have an independent and objective starting point. ... The reports do not provide balanced, objective discussion of these topics. In almost all reports, research is presented in a way designed to support Greenpeace's point of view. Greenpeace has not provided evidence that the reports have been peer-reviewed by an appropriately qualified, independent person.
- ...
69. The Board acknowledges that the *Trajectory Analysis of Deep Oil Spills Scenarios in New Zealand Waters* ("Trajectory Analysis report") is capable of advancing education. ... The Trajectory Analysis report was prepared by data scientists from an independent body with expertise in oceanographic modelling and particle dispersal simulation. The information in the report is objective, neutral and balanced. ... The analysis is based on industry-standard modelling techniques ... The report acknowledges gaps in the research and has been peer-reviewed by an appropriately qualified, independent person.
70. Although the Board accepts that the Trajectory Analysis report is capable of advancing education, ... Greenpeace's websites do not present the results objectively, and instead uses them in a manner that advances Greenpeace's views on deep-sea oil drilling.
71. The Board also accepts that the research in Greenpeace's other reports may meet the "minimum standard" criteria ...

72. Although Greenpeace's other reports are structured as research, the Board does not consider Greenpeace advances education through the reports. Greenpeace's reports promote Greenpeace's point of view, and do not advance genuine, objective education.

...

74. ... Most of the information on the websites is a combination of opinion pieces expressing Greenpeace's point of view and republishing information from other sources that is not sufficiently structured to ensure learning is advanced.

[107] The Board considered some of Greenpeace NZ's activities were consistent with or supportive of advancing education (for example, information provided to the public on what to do if they see a stranded whale), but these activities were a small part of Greenpeace NZ's activities. It concluded that Greenpeace NZ did not have a charitable purpose to advance education.

Submissions

[108] Greenpeace NZ submits the Board adopted too prescriptive a test for what is required to advance education and that this was inconsistent with New Zealand authority. It submits education is interpreted widely. It must be of educational value to the researcher, or lead to something that will be part of the store of educational material, or improve knowledge in an area that education may cover.⁹⁷ It accepts this is to be distinguished from propaganda which advocates one side of a political debate.⁹⁸

[109] It submits that placing commissioned research on its website is a manner of providing education and an increasingly effective one in this day and age. Greenpeace NZ submits that its advocacy is science and fact-driven and that it walks in step with New Zealand's public policy. Everything Greenpeace NZ does is to seek to tell people about this and what needs to be done and this aligns with a charitable advancement of education purpose.

⁹⁷ *Re Hopkins' Will Trusts* [1964] 3 All ER 46 (Ch) at [680].

⁹⁸ *Re Bushnell (Deceased); Lloyds Bank Ltd v Murray* [1975] 1 WLR 1596, [1075] 1 All ER 721 at 1603-1604; *Re Draco*, above n 94, at [53]; and *Southwood*, above n 77, at [17].

[110] The Attorney-General submits that it will often not be possible to find educational public benefit in the promotion of particular views, even when those views are accompanied by research. He submits it will be a case-by-case consideration for the Court as to whether commentary or recommendations, commissioned research, or other material aimed at promoting certain viewpoints are of sufficient educative value to establish public benefit in a charitable sense.

[111] The Attorney-General submits that Greenpeace NZ's work does not advance learning through teaching or education.⁹⁹ Its commissions reports in accordance with pre-determined perspectives and the public benefit in those perspectives is not established. As discussed by the Supreme Court, Greenpeace NZ's educational objects are conducted through Greenpeace New Zealand Educational Trust and any educational element in promoting its stated ends are unlikely to be central to its promotional efforts.¹⁰⁰

Assessment

[112] Greenpeace New Zealand Educational Trust is not the only entity through which Greenpeace NZ seeks to advance education. The information Greenpeace NZ provided to the Board about the Trust indicates a limited sphere of activities carried out independently by the Trust.

[113] In one sense, all of Greenpeace NZ's advocacy about protecting the environment advances education because it educates the public on important environmental concerns. That was partly Greenpeace NZ's position in support of its application. However advocacy aimed at persuading the public to adopt a particular attitude on some broad social question and "advancing education" (as referred to in s 5(1) of the Charities Act) are not the same.¹⁰¹ Greenpeace NZ's advocacy falls under the "any other matter beneficial to the community" limb of s 5(1). To the extent that it educates the public that (for example) there is an urgent need to address climate change and that our reliance on fossil fuel needs to change, it has some analogy with

⁹⁹ *In Re Shaw (deceased)* [1957] 1 WLR 729 at 738.

¹⁰⁰ *Greenpeace* [Supreme Court], above n 2, at [103] in relation to its objective of nuclear disarmament and the elimination of weapons of mass destruction.

¹⁰¹ Glazebrook, above n 29, at 642, referring to the "obvious tension" between a political purpose of this kind and the education limb of the definition of charity.

the “advancing education” charitable purpose for the purposes of the “any other matter beneficial to the community” limb.

[114] The information before the Board was that part of Greenpeace NZ’s activities involve commissioning independent research. This is capable of being with the advancing education limb of s 5(1), depending on the circumstances. Such reports are capable of advancing education even though they are on issues of concern to Greenpeace NZ.

[115] The Board accepted that the *Trajectory Analysis of Deep Sea Oil Spill Scenarios in New Zealand Waters* report was capable of advancing education. It decided that Greenpeace NZ did not advance education by commissioning this report because it presented the findings of the report in an unbalanced way. The Board also accepted that other research commissioned by Greenpeace NZ was capable of advancing education but did not do so for the same reason.

[116] In my view, the Board’s approach conflated two activities – on the one hand the commissioning of research and making that research publicly available, and on the other hand the use Greenpeace NZ made of the findings from that research:

- (a) The Board’s view of the *Trajectory Analysis of Deep Oil Spill Scenarios in New Zealand* report was that it was independent scientific research, objective, neutral and balanced, based on industry-standard modelling techniques, and had been peer-reviewed by an appropriately qualified, independent person. Research of that kind is advancing education by contributing to the store of human knowledge.¹⁰² Greenpeace NZ makes the report available free of charge on its publicly accessible website. I accept Greenpeace NZ’s submission that the internet can be a forum through which members of the public are educated, depending on the content of the information provided. I consider that in commissioning research of this kind and making it available,

¹⁰² *Re The Foundation for Anti-Aging Research*, above n 26, at [55]-[61] provides a recent discussion of advancing education through research.

Greenpeace NZ is advancing education. This is assumed to be of public benefit unless shown otherwise.

- (b) The use Greenpeace NZ makes of the findings from the research is part of its advocacy activities. Whether its advocacy is a charitable purpose of public benefit is a separate question. For the reasons already discussed I consider that it is.

[117] I therefore consider that Greenpeace NZ does undertake activities to advance education in pursuit of its object to do so. These activities are used to support its advocacy activities to promote the environment. As discussed, those activities are also a charitable purpose of public benefit.

Promotion of peace, nuclear disarmament and the elimination of weapons of mass-destruction

The Board's reasons

[118] The Board considered Greenpeace NZ's purpose to promote peace, nuclear disarmament and the elimination of weapons of mass destruction was an abstract end goal. This meant it was necessary to focus on how this goal would be achieved. It considered it was not possible to say that Greenpeace NZ's promotion of its views on this topic was a benefit in the way the law recognised as charitable. Its reasoning for why its activities were not ancillary was as follows:

84. Greenpeace's activities in this area are a small part of Greenpeace's overall activities. Greenpeace's stated purpose to promote peace, nuclear disarmament and elimination of weapons of mass destruction, however, is expressed as a primary purpose that can be carried out independently from Greenpeace's other purposes. For this reason, the Board considers that Greenpeace's peace, nuclear disarmament and elimination of weapons of mass destruction purpose is not merely ancillary to an identified charitable purpose.

Submissions

[119] Greenpeace NZ submits the Board was wrong to rely solely on its stated purposes and failed to consider the relevant evidence in deciding its purpose to promote peace, nuclear disarmament and the elimination of weapons of mass destruction

was not ancillary. The evidence before the Board was that nuclear disarmament occupies no employee time, involves no expenditure, and Greenpeace has no campaigns on this subject. The evidence was that it has had no activities relating to this purpose since 2004, when it switched its focus to climate change.

[120] The Attorney-General submits that the Charities Act places central importance on an entity's purposes and rules. An obvious reason for this is that the public register enables the public to find out what the stated purposes of a charitable entity are. The Attorney refers to s 5(4) of the Charities Act which provides that an ancillary purpose is one that is "not an independent purpose" of the entity. He submits that Greenpeace NZ's purpose at 2.2 to promote peace and nuclear disarmament is stated as an independent purpose and is not expressed to be ancillary, in contrast with the purpose at 2.7. The Attorney submits that Greenpeace NZ's submission that this purpose is ancillary flies in the face of the discussion before the Court of Appeal which led to the amendment to its rules in 2015. If in fact there is little activity directed to this purpose, then it should be removed or further amended.

Assessment

[121] I consider Greenpeace NZ is correct that the Board erred by not taking into account the evidence about what Greenpeace NZ actually does. An organisation's stated purposes are not the sole determinant of whether it advances a charitable purpose. An organisation's purpose may be inferred from its activities.¹⁰³ This does not cause difficulty for members of the public wanting to know what a charity actually does. The public register includes a number of details including the entity's name, rules, application for registration and its annual returns. There are also other sources of information, such as the organisation's website and the activities it is seen to be doing in the community.

[122] If an organisation's purpose can be inferred from its activities, its activities must also be relevant to whether a stated purpose is a dominant or an ancillary one. Greenpeace NZ points out that the Charities Commission has taken this view in the

¹⁰³ Charities Act, s 18(3); *Greenpeace* [Supreme Court], above n 2, at [14]; and *Re Foundation for Anti-Aging Research*, above n 26, at [82]-[87].

past.¹⁰⁴ That activities may show a stated purpose is ancillary was effectively confirmed by the Supreme Court. It referred Greenpeace NZ's application back to the Board to consider two things: (1) whether Greenpeace NZ's object of promoting nuclear disarmament and the elimination of weapons of mass destruction was shown to be charitable; and (2) if not, whether the activities undertaken by Greenpeace NZ are no more than ancillary to its charitable purposes.¹⁰⁵ In other words, it was possible that a reassessment of Greenpeace NZ's activities in pursuit of its stated object of promoting nuclear disarmament and the elimination of weapons of mass destruction might show that this object was ancillary to its main purpose of protecting the environment.

[123] The Supreme Court apparently did not regard the amendment to cl 2.7 that followed the discussion in the Court of Appeal as somehow controlling on this point. That is not surprising as the amendment was made in a different context – the Court of Appeal considered that promoting peace and nuclear disarmament was a charitable purpose but carrying out non-ancillary political activities in support of that purpose was not.

[124] The evidence before the Board was that Greenpeace NZ has had no activities relating to peace and nuclear disarmament since around 2004 and it did not intend to have any activities relating to this purpose for the foreseeable future. It considers that this argument has been “won” and it has moved its focus to the environment. It has not amended its objects because its former activities in pursuit of peace and nuclear disarmament are historically important to it and founded the Greenpeace movement. Its website refers to this for the same reason.

[125] In my view, to be “not an independent purpose” in s 5(4) does not mean that a purpose stated in the society's objects must be expressly stated to be ancillary in order that it be ancillary. It is the combination of what is expressed and what is done that will determine whether a purpose is ancillary. In Greenpeace NZ's case, this

¹⁰⁴ It refers to the Commission's decision on Oxfam which had political purposes amongst its objects. Oxfam proposed to delete those objects but the Commission said this was unnecessary, primarily because the information about Oxfam's activities showed that these purposes were ancillary.

¹⁰⁵ *Greenpeace* [Supreme Court], above n 2, at [104], quoted at [42] above.

combination shows that its purpose of promoting peace, nuclear disarmament and the elimination of weapons of mass destruction is ancillary.

[126] Greenpeace NZ's overall aspirational object is to protect the planet of which humanity is part (cl 2.1). It does this through its more specific purpose of promoting the protection and preservation of nature and the environment (cl 2.2) through advocacy (in a variety of forms) which may be on the various topics that are included in cl 2.2. The purpose of promoting peace and nuclear disarmament is one of those various topics.

[127] In practice, Greenpeace NZ focuses on the pressing issues of the planet at any particular time in pursuit of this objective. Whereas once Greenpeace NZ saw the consequences of the proliferation of nuclear weaponry as a pressing issue for the planet (the pursuit of which may not have been able to be established to as charitable purpose), it is now focussed on new challenges for our planet – addressing climate change, protecting the ocean and enhancing the quality of our rivers. Those environmental purposes are charitable purposes of public benefit.

[128] I therefore consider Greenpeace NZ was not disentitled to charitable status because its cl 2.2 object retained its historic (but now subsidiary) purpose of promoting peace and nuclear disarmament and the elimination of weapons of mass destruction. This conclusion means it is unnecessary to consider Greenpeace NZ's alternative argument that, even if this purpose is not ancillary, it is charitable. This argument was made because the UN Treaty on the Prohibition of Nuclear Weapons has been passed since the Supreme Court's decision.¹⁰⁶ This will comprehensively prohibit nuclear weapons if it comes into force.¹⁰⁷ The argument is better considered if the Treaty comes into force and in the circumstances as they have arisen that make it necessary to determine the issue.

¹⁰⁶ Treaty on the Prohibition of Nuclear Weapons 729 UNTS 161 (signed 7 July 2017).

¹⁰⁷ It was passed on 7 July 2017 and will come into force when it is ratified by 50 countries. Currently it has been ratified by 40 countries.

Illegal purpose

The Board's reasons

[129] The Board considered whether Greenpeace NZ and its members are involved in illegal activities from which an illegal purpose could be inferred under two headings: New Zealand-based activities and overseas activities. As to the first it said:

92. At the time of the Board's consideration, activities carried out by Greenpeace's members in New Zealand included:
- In July 2017, four Greenpeace members hung a banner on a crane next to the Beehive. The members were arrested but it appeared that charges were not laid.
 - In April 2017, three Greenpeace members, including Greenpeace's Executive Director, put themselves in the path of an offshore oil exploration ship. Greenpeace and the three Greenpeace members entered a plea of not guilty after being charged with interfering with the vessel under section 101B(1)(c) of the Crown Minerals Act 1993. As these charges were before the courts at the time of the Board's consideration, the Board has not reached a conclusion on whether this activity is illegal.
 - In May 2016, six Greenpeace members chained themselves to a truck and blockaded the entrance of a pet factory. It appears that charges were not laid.
 - In November 2015, five Greenpeace members boarded and locked themselves to a government boat. The members were convicted of being unlawfully on a vessel and discharged.
 - In June 2015, four Greenpeace members staged a day-long protest after climbing the roof of Parliament House. The members were convicted of trespass and ordered to pay \$750 reparation.
 - In November 2013 and December 2013, Greenpeace's former Executive Director crewed a Greenpeace-sponsored ship that stayed within the exclusion zone of a drilling ship for seven days. It appears that charges were not laid.
 - In February 2012, seven Greenpeace members occupied a drilling ship for 77 hours. The members were convicted of unlawfully boarding and occupying a vessel (after earlier charges of burglary were dropped), and sentenced to 12 hours of community service each and ordered to pay a total of \$5210 in reparation.
 - In February 2011, five Greenpeace members occupied an oil-drilling ship. One member was charged with committing a

dangerous activity involving a ship, and the other four members were charged with unlawfully being on a ship. It is unclear from Greenpeace's website whether the members were convicted of these charges.

93. The Board considers that most of the above activities carried out by Greenpeace's members in New Zealand are illegal activities, albeit of a relatively minor nature. Greenpeace's activities have involved trespass, unlawfully being on property, resisting police, obstructing a public way, bill sticking, and disturbing meetings. Five of the protest activities led to arrest and charges being laid, and convictions followed for three activities. One protest activity was before the courts at the time of the Board's consideration.
94. Greenpeace's website indicates that it has authorised or directly coordinated all activities. There is no evidence that Greenpeace has any processes in place to discourage illegal activities. For example, Greenpeace's core values include the statement: "We are accountable for our actions, and everyone on a Greenpeace action is trained in nonviolent direct action." The Board notes the April 2017 press statement of Greenpeace's Executive Director that "three of us who got in the water yesterday in front of a climate-destroying ship have been charged ... we had no choice but to take action yesterday to secure our common future. We will continue to resist the oil industry by every peaceful means available." In a November 2015 press statement regarding the occupation of a government boat, Greenpeace's Executive Director stated that all activists were briefed and knew that arrests were likely, saying "Obviously we'll support them." The Board also notes that Greenpeace organises an annual three-day, non-violent direct action training for new members. This includes training for Greenpeace's specialist climb and boat teams to continue to develop their skills. The Board considers this training is an indication that Greenpeace authorises and directly coordinates illegal activities such as trespass on ships and buildings. The Board considers that Greenpeace's illegal activities form part of a pattern of behaviour and are not isolated breaches of the law.

[130] As to overseas activities, the Board noted that Greenpeace NZ makes a significant annual contribution to Greenpeace International (the body that coordinates global policy and strategy and which operates its ships). Greenpeace NZ's members had also occasionally taken part in illegal activity outside of New Zealand. It concluded:

97. The Board considers that recent activities carried out by Greenpeace (New Zealand)'s members overseas are illegal activities but of a minor to moderate nature. Examples have included boarding and occupying an oil-drilling rig and ship, swimming in front of an oil-drilling ship and attempting to climb an oil rig. Two of the protest activities led to arrest and charges being laid. Greenpeace (New Zealand's) reporting on its website

indicates that the activities were subsequently ratified or condoned, if not impliedly or expressly authorised. There is no evidence that Greenpeace has any processes in place to discourage Greenpeace members taking part in illegal activities overseas.

[131] It concluded:

98. Taking into account the factors discussed in the Supreme Court, the Board considers that activities carried out by Greenpeace members are not isolated breaches of the law, but demonstrate a pattern of deliberate minor to moderate actual or potential illegal activity that is condoned or endorsed by Greenpeace. The Board considers that having regard to the scale and deliberate nature of this activity, it amounts to an illegal non-charitable purpose that disqualifies it from registration.

Submissions

[132] Greenpeace NZ submits the Board erred in finding that it had an illegal purpose. It submits that any activities which have involved its personnel or volunteers breaking the law are extremely isolated breaches of a minor nature and it is not part of its purposes to break the law. It submits that Greenpeace NZ's NVDA activities involve peaceful action that confronts problems. It refers to the evidence before the Board from Ms McDiarmid that in the previous 12 months its NVDA involved a number of peaceful actions that took place without any suggestion of illegality. These included a public march and a number of activities relating to shark finning. Further, counsel submits that Greenpeace NZ respects and complies with court orders and works with the Police when planning much of its NVDA activities.

[133] Greenpeace NZ makes the point that, of the seven examples discussed by the Board, three of them did not result in charges. It submits that it cannot be assumed that these examples involved illegal activities. It submits that activities by individual members of Greenpeace NZ on Greenpeace International's ships are not activities by the New Zealand organisation and are irrelevant. It submits the remainder of the examples are of a minor nature, as evidenced by the fact that they resulted in discharges without conviction, reparation and community service. It submits these activities are isolated and they cannot be elevated to infer a disqualifying illegal purpose.

[134] The Attorney-General submits the Board was correct to find that an illegal purpose can be inferred from illegal activities. Referring to the list of factors set out by the Court of Appeal, the Attorney submits:

- (a) Some of the examples discussed by the Board were potentially very serious, including placing personnel in the paths of vessels, which could have led to serious injury or even death of Greenpeace NZ personnel or others;
- (b) On the evidence, Greenpeace NZ authorises, endorses and even trains for these sorts of activities;
- (c) Greenpeace NZ has no processes in place to prevent this activity because it endorses or supports such activity;
- (d) The activity is intentional; and
- (e) The activity is part of pattern of behaviour.

[135] The Attorney submits the activity is sustained, could lead to serious consequences, is often illegal and it has led to court action and penalties. It is disruptive to people going about their lawful business and intended to be so. It is condoned by Greenpeace, it provides training and is supported by Greenpeace officers who sometimes take part in such activities. An illegal purpose can be inferred from this evidence.

Assessment

[136] I consider the fact that no charge is brought is relevant because it may indicate one of two things – the matter was not regarded as sufficiently serious to warrant a charge, taking into account all the circumstances of the offending and the alleged offender; or no offence was actually committed. The former is relevant to the “fact and degree” assessment the Court is to make in deciding whether the charity has an illegal purpose. The latter would at the least suggest caution before taking it into account.

[137] The Supreme Court did not form a view on whether activities that have not resulted in a conviction could be taken into account. It seems to me that they could be taken into account, provided the Board (and the Court on any appeal) has all the relevant circumstances to form a view as to their illegality or otherwise and their degree of seriousness. But there is the difficulty. The Court may not have the necessary information to assess this and therefore caution is necessary.

[138] For example, is it clear that hanging a banner on a crane next to the Beehive was an offence? Wilful damage, for example, requires there to have been damage and it is not clear from the Board's summary whether the banner rendered the crane inoperative or unsafe.¹⁰⁸ It also requires proof that the act was committed "without claim of right".¹⁰⁹ The offence of trespass requires a person to have been first warned to leave the place or to stay off the place.¹¹⁰ If it was an offence, on its face it appears to be at the lowest end of seriousness. The incident in 2017, involving a charge under s 101B(1)(c) of the Crown Minerals Act 1991, was being defended.¹¹¹ This suggests there was at least some basis for an acquittal.

[139] In any event, all seven examples are similar in kind. They involve non-violent actions intended to draw attention to activities that are harmful to the environment. They are a form of non-violent protest and are one of the ways that Greenpeace NZ advocates for the environment. Protesting is an exercise of the right to freedom of expression and the right to freedom of thought, conscience and belief. Sometimes breaches of the law of the land ultimately advance a public benefit.¹¹² Rightly or wrongly, that is presumably how individual Greenpeace activists see their actions when they carry out NVDA activities that involve the risk of transgressing the law. That context is relevant in the assessment of its seriousness.

¹⁰⁸ Summary Offences Act 1981, s 11 (wilful damage).

¹⁰⁹ See *R v Murnane* DC Wellington CRI-2008-006-932, 16 March 2010, where three defendants were acquitted of charges following their actions in breaking into a Government Communications Security Bureau (GSCB) facility and deflating a satellite dome where they contended they had a claim of right.

¹¹⁰ Trespass Act 1980, ss 3 and 4.

¹¹¹ The Board decision incorrectly refers to the charge as one under the Crown Minerals Act 1993. The amendment was made in 1993 but it was made to the 1991 Act.

¹¹² It is not necessary to delve into the interesting topic of civil disobedience and the notable examples in history where the public good has been advanced when a choice has been made to put conscience or causes of significant public importance above the law of the land (a topic mentioned only in passing at the hearing).

[140] For present purposes, I am satisfied that the seven incidents discussed by the Board are isolated (occurring at most twice a year), of short duration, involved just a few individuals, were of a minor nature (as indicated by the fact that no charge was laid or by the low level penalty imposed) and appear to have been motivated by deeply held concerns.

[141] I consider the Greenpeace International examples are relevant because Greenpeace NZ provides funding to Greenpeace International and some of the individuals involved may have been involved in those activities as members of Greenpeace NZ. I consider it is also relevant that Greenpeace NZ supports individuals who are involved in these activities, including by providing training for climbing of ships. However, as the Supreme Court said, “isolated breaches of the law, even if apparently sanctioned by the organisation, may well not amount to a disqualifying purpose”.¹¹³

[142] Importantly, the evidence before the Board was that NVDA activities form a small part of Greenpeace NZ’s activities, accounting for just nine per cent of its campaign budget and a smaller percentage of its overall budget. Further, NVDA activities that may risk breaching of the law are a small subset of its NVDA activities, which means they must account for something less than nine per cent of the campaign budget. A quantitative and qualitative assessment indicates that the breaches of the law are in reality a very small part of Greenpeace’s main activities, which advocate for the protection of the environment in lawful ways. As a matter of fact and degree, I consider it cannot be inferred that Greenpeace NZ has an illegal purpose from the sporadic breaches of the law that are at the low end of seriousness (particularly those that are carried out in New Zealand), that are intended to draw attention to environmental issues, are an exercise of the right to freedom of expression and the right to freedom of thought, conscience and belief, and when they make up a very small subset of Greenpeace NZ’s otherwise lawful activities.

[143] One of the Board’s roles is to monitor the organisations that have charitable status. This can lead to deregistration. If Greenpeace NZ personnel or volunteers

¹¹³ *Greenpeace* [Supreme Court], above n 2, at [111], quoted above at [44].

engage in NVDA activities of an unlawful kind in a more sustained or serious way, they risk jeopardising Greenpeace NZ's charitable status.

[144] I have considered whether Greenpeace NZ should be required to provide its funding to Greenpeace International for specific charitable and lawful uses only. Greenpeace NZ made that offer to the Board. I think the better approach is to leave that with Greenpeace NZ to consider and, if Charities Services has any concerns about Greenpeace International activities, it can liaise with Greenpeace NZ about those concerns if and when they arise, as part of its monitoring function.

Judicial review

Submissions

[145] Greenpeace NZ submits that the Board's decision should be set aside for apparent bias. It submits Mr Karipa had conflicting interests arising out of his employment as in-house counsel for TOK and his previous employment for Trans-Tasman Resources Ltd (TTR) such that a fair-minded lay observer would reasonably apprehend he might not bring an impartial mind to the decision.

Evidence relied on

[146] TOK is a non-governmental organisation that advances the interests of iwi through the development of fisheries, fishing and fisheries-related activities.¹¹⁴ Mr Karipa has had legal roles with TOK between 2005 and 2008, initially as a senior solicitor in the Legal Services Division and then as Manager of the Aquaculture Development team in a law and policy role. Between 2008 and 2012 he was employed elsewhere, including for McDouall Stuart Securities Ltd (discussed below). From 2012 until 2018, he was General Counsel of TOK. In that role he advised the Chief Executive and the TOK Board on legal matters, represented the organisation in court, briefed external lawyers and assisted with dispute resolution. On occasion, both before and after the Board's decision on Greenpeace NZ's application, he also served as acting Chief Executive of TOK for short periods of no more than two weeks.

¹¹⁴ Maori Fisheries Act 2004, s 32.

[147] In the time leading up to the Board's decision on Greenpeace NZ's application, TOK strongly opposed the Government's proposal for a 620,000 km² marine reserve known as the Kermadec Ocean Sanctuary (this proposal was later put on hold). On 20 March 2016 TOK filed legal proceedings against the Crown, contending it had ignored the impact the sanctuary would have on Māori fishing rights. In August 2016 TOK took out advertisements in two major newspapers as part of a public campaign against the sanctuary.

[148] Greenpeace NZ strongly supported the proposal for the sanctuary. Its view was that it would have an important role in protecting the ocean against exploitation, allowing it to recover and ensuring sustainable management of the ocean. Greenpeace NZ criticised TOK's stance on the proposed sanctuary.

[149] On 19 September 2016 Russel Norman, Executive Director of Greenpeace NZ, published an article highlighting issues on which Greenpeace disagreed with TOK. Specifically: TOK opposed measures to protect Māui dolphins whereas Greenpeace supported them; TOK opposed proposals to phase out "slavery in foreign vessels operating in New Zealand waters" whereas Greenpeace supported them; and TOK opposed the Kermadec Ocean Sanctuary whereas Greenpeace supported it. Mr Norman described TOK's position on these matters as being consistent with most of the New Zealand fishing industry.

[150] On 20 September 2016, Mike Smith, an indigenous rights activist and campaigner involved in Greenpeace NZ, published a blog post on Greenpeace NZ's website entitled "Te Ohu Kaimoana crying crocodile tears over Kermadec Ocean Sanctuary". Mr Smith's views in this article described TOK's stance as "a joke" from an organisation born of a modernisation process that "destroyed actual Māori and Treaty rights to fisheries". He said TOK's opposition was "a case of commercial self-interest by an irresponsible industry whose days are numbered."

[151] In February 2017 TOK produced a Draft Māori Fisheries Strategy. Mr Karipa was aware of this document and provided legal comments on it. This document discusses the influence of environmental non-governmental organisations and their activities, including Greenpeace NZ and Greenpeace International.

[152] It states:

Public surveys reveal that ENGOs often enjoy a high degree of public trust which gives them a high degree of political influence towards their specific causes. Advocacy groups have become adept at using information to advance their positions aggressively and openly use such information to influence political and bureaucratic processes. ...

We need only consider the process surrounding the proposed enactment of the Kermadec Ocean Sanctuary to understand how philanthropic funding and ENGO advocacy has been used to gain high level political influence and outcome.

[153] The paper goes on to conclude:

The recent Kermadec Ocean Sanctuary proposal to extinguish commercial rights ... was actively supported by domestic and international ENGOs including ... Greenpeace. ...

... if left unchecked, ENGO activities can negatively impact on iwi and New Zealand citizen's environmental concerns.

... Their future influence on Government and iwi fisheries decision-makers should not be under-estimated.

[154] In between his employment with TOK, while working for McDouall Stuart Securities Ltd, Mr Karipa was engaged by Trans-Tasman Resources Ltd (TTR) to raise capital and develop an investment strategy. One of TTR's key projects was an application to extract and process iron sand off the Taranaki Bight. Public hearings on this application took place before the Environmental Protection Authority between February and March 2017. Greenpeace was represented at the hearings, sharing legal counsel with Kiwis Against Seabed Mining Incorporated (KASM), and made submissions against the application.

[155] KASM applied for charitable status on 25 September 2014. The application was considered by the Board at meetings on 24 March, 27 October 2016 and 23 November 2016. Mr Karipa declared a professional conflict of interest and left the meetings. He said he did so because he was aware that KASM's main purpose was to oppose TTR's application in Taranaki. He considered it was inappropriate for him to consider the application when his earlier role for TTR went beyond legal advice and extended to assisting with raising capital.

[156] Mr Karipa gave affidavit evidence of other instances of when he has declared a conflict of interest and why he did not do so on Greenpeace NZ's application. He discussed the issue with the Board's chair and came to the view that he did not have a conflict of interest or the appearance of one because:

- (a) His role with TOK was as a practising barrister and solicitor. This meant he acted on the instructions of TOK, represented its interests in a professional capacity, and was subject to the obligations applicable to members of the profession.
- (b) He had not acquired any information that would give rise to a conflict about Greenpeace NZ as a result of litigation in which both TOK and Greenpeace NZ were involved.
- (c) While Greenpeace NZ and TOK held different views on ocean and marine sanctuaries, they agreed on others such as sustainability issues, acidification, climate change, and the extraction of minerals and petroleum.
- (d) Greenpeace NZ and TOK were both appellants to the Environmental Protection Authority decision to grant TTR a permit to mine off the Taranaki Blight.

[157] Mr Karipa also noted that he was on the Board when Sea Shepherd New Zealand Trust and Sea Shepherd New Zealand Limited were registered as charities. His affidavit says Sea Shepherd opposed the Kermadec Ocean Sanctuary proposal but I assume this is an error and he meant that it was in favour of the proposal.

[158] Mr Karipa's experience is that Greenpeace NZ is a strong and successful advocate for the environment without having had charitable status. He considered that denying it charitable status would not diminish its advocacy for activities that might be detrimental to the fishing industry. Mr Karipa noted that the Board's decision was unanimous.

The law

[159] There is no dispute between the parties about the relevant law. The principles are now well established and are helpfully summarised in *Constitutional and Administrative Law in New Zealand*.¹¹⁵

[160] A decision maker who is biased is disqualified from hearing a case unless he or she discloses the disqualifying interest and the parties waive their rights of objection. The rule against bias is at its most demanding when applied to the judiciary. It is at its least demanding when applied to low-level administrative bodies. The statutory scheme, the consequences of the decision-making, the degree of formality of the decision-making and the distinctions between judicial and administrative functions are relevant.

[161] Bias includes “apparent bias”. This applies when a fair-minded observer might reasonably apprehend that the decision maker might not bring an impartial mind to the resolution of the matter to be decided. The possibility of bias must be real and not remote. The fair-minded observer is presumed to be intelligent and to view matters objectively, to have some (but not a detailed) understanding of the law, to be apprised of the circumstances and context, and to take a balanced approach to the information.¹¹⁶

[162] An appeal can cure a decision made with apparent bias. It will not do so where the prejudicial effects of the impugned decision permeate the appeal.

Assessment

[163] In my view, the decision of the Board is somewhere between a low-level administrative decision and a judicial one.¹¹⁷ It requires Board members to have relevant experience, which suggests that some understanding of how environmental

¹¹⁵ Philip Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Thomson Reuters, 2014). See especially at 25.5.1, 25.5.4 and 25.6.

¹¹⁶ The leading case is *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, 1 NZLR 76.

¹¹⁷ In my view, the nature of the decisions in *Lab Tests Auckland Ltd v Auckland District Health Board* [2008] NZCA 385, [2009] 1 NZLR 776 and *Attorney-General v Problem Gambling* [2016] NZCA 609, [2017] 2 NZLR 470, relied on by the Attorney-General, are more akin to commercial decisions and are not analogous.

non-governmental organisations operate is not disqualifying. Schedule 2 to the Charities Act provides that a member of the Board who is interested in a matter relating to the Board must disclose details of the nature and extent of that interest to the chairperson and in an interests register. Matters that qualify as having an interest are focussed on financial interests. However they also include being “otherwise directly or indirectly interested in that matter”. This suggests that the primary conflict is financial but other interests may also give rise to conflicts.

[164] A fair-minded observer would take into account that Mr Karipa regarded it appropriate not to be part of the decision on KASM’s application. He or she would also take into account that Greenpeace NZ and KASM had the same interest and were represented by the same lawyer in the litigation that caused Mr Karipa to step aside from KASM’s application for charitable status. However, a fair-minded observer would understand that Mr Karipa’s actions in relation to KASM are not determinative. What matters is the reasons why he did so and whether they would give rise to the possibility that he could not bring an impartial mind to KASM’s application and, in turn, Greenpeace NZ’s application because of his former role for McDouall Stuart Securities Ltd in assisting TTR.

[165] A fair-minded observer would take into account that the issue that caused him to step aside from KASM’s application related to his previous employment. At the time KASM’s application was being discussed by the Board, Mr Karipa was General Counsel at TOK. TOK, KASM and Greenpeace NZ were on the same side in their opposition to TTR’s application for a permit. I consider that a fair-minded observer would not have regarded Mr Karipa’s earlier involvement in TTR’s application as raising the possibility that he could not bring an impartial mind to either KASM or Greenpeace NZ’s application for charitable status. In other words, Mr Karipa need not have stood aside from the KASM application and the fact that he did does not mean that he was required to do so on Greenpeace NZ’s application.

[166] Mr Karipa’s role with TOK is potentially more problematic. TOK and Greenpeace NZ did agree on some issues (as the TTR litigation illustrates) but at the time Greenpeace NZ’s application was under consideration, they were squarely on opposing sides on an issue of significance for both of them. As Greenpeace NZ’s

counsel put it, Mr Smith's post was a "very direct attack on the mana and credibility of those involved in [TOK]". Greenpeace NZ was regarded by TOK as one of the increasingly powerful ENGOs whose activities could negatively impact on iwi commercial rights to fisheries and the Kermadec Ocean Sanctuary was cited as an example of their ability to influence the Government.

[167] Greenpeace NZ was seeking charitable status because of the fiscal and other advantages it would give them. Fiscal advantages would free up more of Greenpeace NZ's funds to be applied in pursuit of its campaigns. Charitable status might also increase donations to the organisation, whether because there will be more certainty for the donor that the donation will qualify for a tax rebate or because it would be seen as increasing the legitimacy and good work of the charity.

[168] In this sense, Greenpeace NZ was seeking from the Board a status that would give it a pecuniary advantage from that of its current status, which in turn might increase its effectiveness in advancing environmental concerns, including overfishing and marine sanctuaries. The fact that it was already regarded by TOK as an effective advocate does not mean it might become more effective with charitable status.

[169] It is an insufficient answer that Mr Karipa was acting as a lawyer subject to professional obligations. He was employed by TOK to provide legal advice to it. He owed duties to TOK as an employee and as a legal adviser. He held a senior position as confirmed by the fact that he was occasionally acting Chief Executive. In that senior role he would be identified with TOK in a way that a barrister representing a client in a dispute would not be. A fair-minded observer would consider there was a possibility that Mr Karipa would, like TOK, consider that Greenpeace NZ was an effective organisation that, if left unchecked, could negatively impact iwi commercial fishing rights.

[170] The nature of Greenpeace NZ's advocacy was very much the issue before the Board. The Board's view was that this advocacy was one-sided and unbalanced. It did not take into account the competing commercial fishing interests for example. In other words, its advocacy was not balanced with the interests of TOK amongst others. On the other hand, that point was perhaps obvious. The Board understood that to be

a charitable purpose the advocacy could not be for a “cause” or to advance a point of view. That was a misreading of the Supreme Court decision but, on that misreading, the conclusion that Greenpeace NZ’s advocacy was not a charitable purpose followed, irrespective of TOK’s views on that advocacy.

[171] In my view, the fact that the investigation is carried out by Charities Services, which makes a recommendation to the Board, does not hold much weight in countering the risk of apparent bias. This is because it is apparent that the Board was involved in the process throughout. This included approving communications to Greenpeace NZ during the process, confirming that Charities Services was not to focus only on whether Greenpeace NZ had an illegal purpose and in discussing Charities Services’ preliminary views. Having said that, I consider there was nothing improper in the contributions Mr Karipa made during that process which Greenpeace NZ relied on its submissions.

[172] I do not regard this as a clear example of apparent bias. The position is more finely balanced. Greenpeace NZ and TOK did have some interests that were aligned and the causal connection between charitable status for Greenpeace NZ and its effectiveness vis-à-vis TOK’s interests is somewhat remote. On the other hand, there was a particular area of controversy between Greenpeace NZ and TOK at the relevant time. If there is doubt about whether there was grounds giving rise to apparent bias, that doubt should be resolved in favour of recusal.¹¹⁸ On balance I consider the competing interests of Greenpeace NZ and TOK on the Kermadec Sanctuary Ocean proposal gave rise to the possibility that Mr Karipa would not have an open mind on Greenpeace NZ’s application for charitable status.

[173] That is, of course, not to say that he failed to act impartially. That is not the test. The instances in which he has declared a conflict of interest (all detailed in his affidavit), including on the KASM application, show his efforts to be scrupulous as does his discussion with the chairperson on whether he had a conflict of interest on Greenpeace NZ’s application. However, apparent bias is about justice being seen to be done and in this instance I consider Greenpeace NZ has legitimate concerns that it

¹¹⁸ *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] 1 All ER 65 at [26], cited in *Zaoui v Grieg* CIV-2004-404-317, HC Auckland, 31 March 2004 at [48].

was not seen to be done on its application because of Mr Karipa's role with TOK at the relevant time.

[174] If I found for Greenpeace NZ on this issue, it sought an order that I refer the application back to the Board for reconsideration. The Attorney-General strongly urged that I not do so, given the already lengthy history to this matter. Greenpeace NZ considered that Mr Karipa's involvement in the decision had potentially affected the material on which the Board decision rested. It was concerned that there had been selective material obtained from Greenpeace websites and from other publicly available sources that misrepresented Greenpeace NZ's activities.

[175] I consider there is no need to send the matter back for reconsideration. The reason Greenpeace NZ failed was because of the view the Board took on the legal test. On my view of that test, Greenpeace NZ qualifies for registration on the information considered by the Board. It may be that the material on which the Board's decision rested is now out of date. But if there has been some material change that suggests an issue with its status, there is a removal process under the Charities Act that may be employed.

Conclusion and result

[176] I consider the Board was in error in declining Greenpeace NZ's application for charitable status. Greenpeace NZ's main activity is to advocate for the protection of the environment. It does that mainly by advocating for measures to mitigate climate change, for sustainable fishing for the protection of the ocean environment and for improving the quality of New Zealand's freshwater. There is a charitable public benefit in that advocacy, as it contributes to the broad-based support and effort necessary for the end goal of protecting the environment. The advocacy takes a variety of forms. Where it involves commissioning independent scientific research that it makes available on its website, it also advances education. Greenpeace NZ's purpose to promote peace, nuclear disarmament and the elimination of weapons of mass destruction is ancillary and therefore not disqualifying. It does not have an illegal purpose.

[177] The appeal is allowed. Greenpeace NZ is entitled to be registered. Greenpeace NZ had applied for registration back-dated to June 2008. I do not know if there is any issue about this but the parties have leave to file submissions if there is. Any such submissions are to be filed within one month of the date of this judgment with leave to seek an extension of this time period if necessary. I have set a timeframe for this in the interests of having this long process for Greenpeace NZ resolved sooner rather than later.

[178] I make no formal order on the judicial review given the outcome on the appeal. The ground on which the application was brought was made out. However the substantive appeal has cured the issue.

[179] If there is any issue as to costs, the parties are to file brief submissions within one month of the date of this judgment.

[180] Lastly, I thank Mr Salmon and Mr Gunn for the thoughtful and helpful submissions they each provided, no doubt assisted by their respective junior counsel.

Mallon J