

Registration Decision: Greenpeace of New Zealand Incorporated (GRE25219)

Board Decision

1. The role of the independent Charities Registration Board (“the Board”) is to maintain the integrity of the Charities Register through ensuring that entities on the Charities Register qualify for registration. The Board makes its decisions based on the facts before it and applies the law including relevant case law. The Board must decline to register an organisation when it does not advance a charitable purpose for the public benefit.¹ A purpose is charitable if it advances a public benefit in a way that is analogous to cases that have previously been held to be charitable.²
2. The Board’s decision is to decline to register Greenpeace of New Zealand Incorporated (“Greenpeace”) because it does not advance exclusively charitable purposes. The Board considers that:
 - a) Greenpeace has an independent purpose to advocate its own particular views on environmental issues that cannot be determined to be for the public benefit in a way previously accepted as charitable by the courts.
 - b) Greenpeace also has an independent purpose to promote its own particular views on peace, nuclear disarmament and weapons of mass destruction that cannot be determined to be for the public benefit in a way previously accepted as charitable by the courts.
 - c) Greenpeace has an illegal purpose that disqualifies it from being a registered charity.
3. Greenpeace has the freedom to continue to communicate its views and influence policy and legislation but the Board has found that Greenpeace’s pursuit of those activities does not qualify as being for the public benefit in a charitable sense.
4. In making its decision, the Board has sought to apply relevant case law including the guidance of the Supreme Court in *Re Greenpeace of New Zealand Incorporated* (“*Re Greenpeace*”)³ and the High Court in *Re Family First New Zealand* (“*Re Family First*”) and *Re the Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia* (“*FAAR and FRSSH*”).⁴

¹ Section 19(4) of the Charities Act (“the Act”).

² *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“*Re Greenpeace*”) at [17], [30], and [31].

³ *Re Greenpeace*.

⁴ *Re Family First New Zealand* [2015] NZHC 1493 (“*Re Family First*”); *Re the Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia* [2016] NZHC 2328 (“*FAAR and FRSSH*”).

5. The Board has carried out a full reconsideration of Greenpeace's application in light of the changes Greenpeace has made to its stated purposes and the reasons of the Supreme Court. The Board has based its conclusions on the facts before it and the application of the law.
6. The Board has considered in detail all of the submissions and information provided by Greenpeace in support of its application, and the information on its activities considered by Charities Services⁵ from Greenpeace's websites and other public sources. The Board has considered information about Greenpeace's activities up to and including 9 August 2017. Greenpeace has been advised of all information and sources that have been considered by the Board and has been provided with the opportunity to respond to that information.
7. As part of the reconsideration of Greenpeace's application, Greenpeace was given notice of Charities Services' position that it did not advance charitable purposes. On 28 September 2016, 9 August 2017, 9 February 2018 and 22 February 2018, Greenpeace was given the opportunity to make submissions in response to Charities Services' notices and to explain its involvement in activities, and it declined to do so.⁶
8. Greenpeace was also given the opportunity to meet with Charities Services' officials before providing its response, which it also declined. Greenpeace has relied on the submissions and information provided in support of its application on 9 July 2015, 17 July 2015, 3 February 2016 and 2 May 2016.
9. The Board is satisfied that Charities Services' reconsideration of Greenpeace's application complies with the principles of natural justice and that Greenpeace has been given the opportunity to be heard.⁷
10. Following the three-step process of Ellis J in *FAAR* and *FRSSH* the Board has considered:
 - a) whether Greenpeace's stated purposes are capable of being charitable;
 - b) whether Greenpeace's activities are consistent with or supportive of a charitable purpose; and
 - c) whether, if Greenpeace's activities are found not to be charitable, they can be said to be merely ancillary to an identified charitable purpose.⁸

⁵ Charities Services, Ngā Rātonga Kaupapa Atawhai, is part of the Department of Internal Affairs ("DIA"), and administers the Act.

⁶ Charities Services letters to Greenpeace dated 28 September 2016, 9 August 2017, 9 February 2018 and 22 February 2018 and emails from Greenpeace on 31 July 2017 and 27 September 2017.

⁷ Section 19(5) of the Act.

⁸ *FAAR* and *FRSSH* at [88].

11. Although the Supreme Court has made clear that an organisation that advocates for the advancement of a charitable purpose is capable of being registered,⁹ the Court also cautioned that “[a]dvancement of causes will often, perhaps most often, be non-charitable”,¹⁰ because it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.¹¹ The Supreme Court approved the reasoning of Keifel J in *Aid/Watch Incorporated v Commissioner of Taxation* (“*Aid/Watch*”)¹² that “reaching a conclusion of public benefit may be difficult where activities of an organisation largely involve the assertion of its views”.¹³
12. The Supreme Court directed the chief executive¹⁴ and the Board to reconsider Greenpeace’s application in the light of changes Greenpeace had made to its stated purposes, and the reasons of the Supreme Court.¹⁵
13. The Supreme Court in *Re Greenpeace* confirmed that an illegal purpose will disqualify an organisation from being registered as a charity. The Supreme Court observed that while illegal activities may indicate an illegal purpose, the assessment of illegal purpose is a matter of fact and degree.¹⁶
14. In making its decision the Board has also referred to cases decided before *Re Greenpeace*.¹⁷ In considering these cases the Board has taken into account the finding in the Supreme Court that the political purpose exclusion that had been applied in some of those cases no longer applies.¹⁸ The Supreme Court has indicated that the reasoning in these cases is still relevant to the determination of public benefit.¹⁹
15. In the light of Collins J’s direction in *Re Family First*, the Board has been conscious that it should not “carefully match” Greenpeace’s activities with organisations that have previously achieved recognition as registered charities.²⁰
16. This decision is separated into the following sections:
 - a) Background.
 - b) What are the purposes of Greenpeace?

⁹ *Re Greenpeace* at [72].

¹⁰ *Re Greenpeace* at [73].

¹¹ *Re Greenpeace* at [73].

¹² *Aid/Watch Incorporated v Commissioner of Taxation* [2010] 241 CLR 539 at [68]–[69] (“*Aid/Watch*”).

¹³ *Re Greenpeace* at [73].

¹⁴ The chief executive of DIA delegates most of their decision making to Charities Services.

¹⁵ *Re Greenpeace* at [104].

¹⁶ *Re Greenpeace* at [106], [111] and [112].

¹⁷ For example: *Re Collier* 1 NZLR 81 (HC) (“*Re Collier*”); *Re Draco Foundation (NZ) Charitable Trust* (2011) 25 NZTC 20-023 (HC) (“*Re Draco*”); *Aid/Watch v Commissioner of Taxation* [2010] HCA 42, (2010) 241 CLR 539 (“*Aid/Watch*”).

¹⁸ *Re Family First* at [86].

¹⁹ See for example: *Re Greenpeace* at [73] and [101], referring to the reasoning of the court in *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA) and *McGovern v Attorney General* [1982] Ch 321 respectively; *Aid/Watch*.

²⁰ *Re Family First* at [86].

- c) Does Greenpeace have a charitable purpose to protect the environment?
- d) Does Greenpeace have a charitable purpose to advance education?
- e) Does Greenpeace have a charitable purpose to promote peace, nuclear disarmament and the elimination of weapons of mass destruction?
- f) Does Greenpeace have an illegal purpose?

Background

17. Greenpeace applied to be registered as a charity on 25 June 2008. On 15 April 2010 the then Charities Commission made the decision to decline to register Greenpeace because it did not advance charitable purposes for the public benefit.²¹ Greenpeace was unsuccessful on appeal to the High Court.²²
18. Greenpeace appealed to the Court of Appeal. The Court of Appeal set aside the Commission's decision. It affirmed that political purposes cannot be charitable, but limited this prohibition to controversial political purposes.²³ The Court of Appeal directed Charities Services and the Board to reconsider Greenpeace's application in the light of the proposed amendment to its stated purposes and updated activities information. The reconsideration was also to cover whether Greenpeace was involved in illegal activities that meant it was not entitled to be a charity.²⁴
19. Greenpeace amended its stated purposes at its annual general meeting in June 2012.²⁵ The amendments to Greenpeace's rules were registered with the Registrar of Incorporated Societies on 19 May 2014.
20. Greenpeace appealed to the Supreme Court, which released its decision on 6 August 2014.²⁶ The Supreme Court directed the chief executive and the Board to reconsider Greenpeace's charitable status in the light of Greenpeace's amended stated purposes and the reasons in the Supreme Court's judgment.²⁷
21. On 17 April 2015, Greenpeace advised Charities Services that it wished to continue with its application for registration. On 21 April 2015 and 8 May 2015, Charities Services requested Greenpeace to provide updated activities information and submissions explaining how Greenpeace met registration requirements in light of the Supreme Court decision. Greenpeace provided this information on 9 July 2015 and 17 July 2015.

²¹ The Board and Charities Services took over the functions of the Act in 2012.

²² *Re Greenpeace of New Zealand Inc* [2011] 2 NZLR 815 (HC).

²³ *Re Greenpeace of New Zealand Inc* [2012] NZCA 533, [2013] 1 NZLR 339 ("*Greenpeace CA*") at [60] and [82].

²⁴ *Greenpeace CA* at [101] and [103].

²⁵ See Greenpeace's letter to Charities Services dated 11 September 2015.

²⁶ *Re Greenpeace*.

²⁷ *Re Greenpeace* at [104].

22. Charities Services wrote to Greenpeace on 18 December 2015 to ask for more information about Greenpeace's activities. Following the exchange of several letters clarifying Charities Services' request for information,²⁸ Greenpeace provided the requested information and further submissions on 2 May 2016.
23. Following its consideration of the requested information, on 28 September 2016, Charities Services sent a notice to Greenpeace that outlined in detail the reasons Charities Services considered that Greenpeace did not qualify for registration. The notice canvassed the submissions of Greenpeace and information on its activities considered by Charities Services. After initially indicating it might respond with further submissions,²⁹ Greenpeace advised Charities Services on 31 July 2017 that it would not take up the opportunity to make submissions or explain its involvement in the activities outlined in the notice.
24. On 9 August 2017 Charities Services sent a follow-up notice referring to several alleged illegal activities reported in the public domain. On 27 September 2017, Greenpeace declined to take up the opportunity to make submissions or explain its involvement in the alleged illegal activities. On 9 February 2018 and 22 February 2018 Greenpeace was given further opportunity to make submission in response to Charities Services' notices and to explain its involvement in activities, and it did decline to do so.³⁰ Greenpeace has relied on its earlier submissions and information it provided in support of its application on 9 July 2015, 17 July 2015, 3 February 2016 and 2 May 2016.

What are the purposes of Greenpeace?

25. The stated purposes of Greenpeace are to:³¹
 - 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 to these and related issues.

²⁸ Greenpeace's letter to Charities Services dated 3 February 2016 and Charities Services' response to Greenpeace dated 18 February 2016.

²⁹ Greenpeace's email to Charities Services dated 28 February 2017.

³⁰ Charities Services letters to Greenpeace dated 28 September 2016, 9 August 2017, 9 February 2018 and 22 February 2018 and emails from Greenpeace on 31 July 2017 and 27 September 2017.

³¹ Greenpeace's current rules, registered with the Registrar of Incorporated Societies on 11 September 2015. Greenpeace amended its rules in 2015 to limit the distribution of surplus funds on winding up to charitable purposes.

- 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 Co-operate with other organisations having similar or compatible objects and in particular to co-operate 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. Greenpeace has submitted that:³²

- a) Greenpeace's main purpose is to protect the environment by educating the public on environmental issues.
- b) To the extent that Greenpeace engages in political advocacy, this is ancillary to its main purpose.
- c) Even if Greenpeace's political advocacy is not ancillary, Greenpeace's advocacy advances a charitable public benefit.
- d) Greenpeace's peace and nuclear disarmament purpose is ancillary, as Greenpeace has no current or planned activities in this area.
- e) Greenpeace does not have, and has never had a purpose to deliberately break the law.

27. Applying the first step of Ellis J's three-step process,³³ the Board considers that Greenpeace's stated purposes to protect the environment, advance education and promote peace, nuclear disarmament and the elimination of weapons of mass destruction are abstract end goals that may be capable of being charitable.

28. To assess whether Greenpeace's stated purposes are charitable the focus must be on *how* these end goals are furthered.³⁴

³² Greenpeace's submissions dated 9 July 2015, 3 February 2016 and 2 May 2016.

³³ *FAAR* and *FRSSH* at [88].

³⁴ *Re Greenpeace* at [99]–[103], [116] and [117].

29. The Board acknowledges that Greenpeace has amended its stated advocacy purpose to make it clear that it is ancillary to Greenpeace's other stated purposes. Whether Greenpeace's advocacy is consistent with or supportive of a charitable purpose, or is truly ancillary, depends on consideration of Greenpeace's current and proposed activities in light of the reasons of the Supreme Court.

Does Greenpeace have a charitable purpose to protect the environment?

30. The protection of the environment has been accepted as a charitable purpose. The case law has acknowledged protecting the environment includes purposes that tangibly protect the environment, such as protecting the quality of rivers and protecting marine animals and the ocean environment.³⁵ Promoting a sustainable standard of living can also come within protection of the environment, where an organisation's activities balance competing needs against awareness of the environment, social and economic limitations.³⁶
31. The Supreme Court also made clear that advocacy for the end of protecting the environment is capable of being charitable, depending on the nature of the advocacy.³⁷ The Supreme Court recognised that protection of the environment may require broad-based support and efforts, including through participatory processes set up by legislation, to enable the public benefit to be assessed.³⁸ Not all purposes directed at the protection of the environment will necessarily benefit the public in a charitable sense, however. Where an organisation advocates for the environment by asserting its particular points of view, the courts may not be able to find public benefit.
32. Acknowledging that advocacy for points of view can advance a charitable purpose, the Supreme Court in *Re Greenpeace* held that to assess whether the purpose can be said to be of public benefit within the previous cases depends on a wider consideration of whether the purpose advances a benefit to the public. Although advocacy for the end of protecting the environment is charitable, the *means* to promote that *end*, and the *manner* in which the cause is promoted must also be considered in relation to the previous cases.³⁹
33. The Supreme Court in *Re Greenpeace* approved the reasoning of Kiefel J's minority decision in *Aid/Watch* that "reaching a conclusion of public benefit may be difficult where activities of an organisation largely involve the assertion of its views."⁴⁰

³⁵ *Re Centrepoint Community Growth Trust* [2000] 2 NZLR 325 (HC) ("*Re Centrepoint*").

³⁶ *Re Centrepoint* at [40]; The Charity Commission for England and Wales *Registration Decision: The Environment Foundation* (24 January 2003) www.gov.uk/government/publications/environment-foundation; The Scottish Charity Regulator *The advancement of environmental protection and improvement* www.oscr.org.uk/charities/guidance/meeting-the-charity-test-guidance/m-the-advancement-of-environmental-protection-or-improvement [notified 28 September 2016, last accessed 14 September 2017].

³⁷ *Re Greenpeace* at [71].

³⁸ *Re Greenpeace* at [71].

³⁹ *Re Greenpeace* at [76], [113]–[116].

⁴⁰ *Re Greenpeace* at [73].

34. The minority judgment in *Re Greenpeace* commented that Greenpeace's purpose of protecting the environment was closely intertwined with advocacy for causes. The minority judgment also noted that the same concerns the majority expressed regarding the public benefit of peace and nuclear disarmament would arise in the case of environmental issues.⁴¹
35. 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.⁴² The Board considers, however, that the means promoted by Greenpeace largely involve promoting its own views on environmental issues.

Nature of Greenpeace's advocacy

36. The Board considers that Greenpeace's main activity is advocacy on causes that it considers will protect the environment. At the time of the Board's consideration, Greenpeace's campaigns were:⁴³
- 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.
37. Greenpeace advocates on environmental issues through its website (through publishing media releases, blog posts, videos and articles written to support its views),⁴⁴ organising petitions,⁴⁵ sending newsletters and annual reports to its

⁴¹ *Re Greenpeace* at [125].

⁴² *Re Greenpeace* at [71] and [103].

⁴³ Greenpeace's letters to Charities Services dated 9 July 2015, 3 February 2016 and 2 May 2016. See also www.greenpeace.org/new-zealand/en/ [notified 28 September 2016, last accessed 12 October 2016].

⁴⁴ www.greenpeace.org/new-zealand/en/ [notified 28 September 2016, last accessed 12 October 2016].

⁴⁵ www.greenpeace.org/new-zealand/en/take-action/Take-action-online/ [notified 28 September 2016, last accessed 12 October 2016].

supporters,⁴⁶ maintaining its partner websites⁴⁷ and social media,⁴⁸ commissioning and carrying out reports, and making submissions on legislation.

Climate

38. Greenpeace has submitted that its advocacy on climate-change issues is based on unequivocal scientific evidence. It also submitted that the means it promotes (such as stopping the burning of fossil fuels) are interconnected and the only way to achieve the end goal of preventing catastrophic climate change.⁴⁹
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 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.⁵⁰
41. This is not to say, however that the points of view promoted by Greenpeace need to align with government legislation or policy. The Supreme Court held that charitable status should not be excluded because the policies promoted are against the majoritarian assessment or the status quo.⁵¹
42. The Board considers that where Greenpeace seeks to protect the environment by providing expert and objective evidence to assist resource management decisions,

⁴⁶ www.greenpeace.org/new-zealand/en/multimedia/e-mag/ and www.greenpeace.org/new-zealand/en/System-templates/Search-results/?sort=easysearch_startpublishshort|1&tag=annual+report [notified 28 September 2016, last accessed 12 October 2016].

⁴⁷ For example: www.getfree.org.nz/ [notified 28 September 2016, last accessed 17 September 2016]; www.oilspillmap.org.nz/ [notified 28 September 2016, last accessed 27 September 2016]; www.safesource.org.nz/ [notified 28 September 2016, last accessed 31 December 2016].

⁴⁸ For example: www.facebook.com/greenpeace.nz/; [https://twitter.com/GreenpeaceNZ?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor](https://twitter.com/GreenpeaceNZ?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor;); www.youtube.com/user/greenpeacenz/, www.instagram.com/greenpeacenz/ [notified 28 September 2016, last accessed 5 August 2015].

⁴⁹ Greenpeace's letter to Charities Services dated 2 May 2016.

⁵⁰ See for example: Cabinet Paper of the Cabinet Economic Growth and Infrastructure Committee "New Zealand's intended contribution to the new global climate change agreement" www.mfe.govt.nz/sites/default/files/media/Climate%20Change/INDC_cabinet_paper_for_public_release.pdf; Local Government and Environmental Committee *Petition 2005/111 of William McNatty on behalf of KASM and 15,113 others* (16 May 2008) www.parliament.nz/en/pb/sc/reports/document/48DBSCH_SCR4063_1/petition-20050111-of-william-leslie-mcnatty-on-behalf.

⁵¹ *Re Greenpeace* at [75].

this advances a public benefit similar to what has been accepted by the courts as charitable.⁵²

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.

Oceans

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).⁵³
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.⁵⁴
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.

⁵² For example: Evidence of Professor Elisabeth Sloot, Otago University, presented on behalf of Greenpeace, Kiwis Against Seabed Mining Incorporated (KASM) and Deep Sea Conservation Coalition Incorporated (DSCC) (12 September 2014 and 20 October 2014); Evidence of Associate Professor Barrie Michael Peake on behalf of Greenpeace, KASM and DSCC, 12 September 2014; (Non-expert) Evidence of Dr David Santillo on behalf of Greenpeace, KASM and DSCC (11 September 2014); Evidence of Professor Les Watling on behalf of Greenpeace, KASM and DSCC (11 September 2014, as part of the Environmental Protection Authority's consideration of the application for marine consent by Chatham Rock Phosphate Ltd) [notified 28 September 2016].

⁵³ See, for example: www.tuna.greenpeace.org/en-NZ [notified 28 September 2016, last accessed 27 October 2016]; www.greenpeace.org/new-zealand/en/blog/theres-slavery-in-the-seafood-industry-heres-blog/53578/; www.greenpeace.org/new-zealand/en/blog/supply-chained-human-rights-abuse-in-the-glob/blog/54648/; *Kakariki*, (Greenpeace New Zealand, Autumn 2016) at 16 [notified 28 September 2016, last accessed 12 October 2016].

⁵⁴ Greenpeace International *Rescuing the Pacific and its Tuna: How Pacific Island Nations are transforming the tuna fisheries by reclaiming their seas* (Greenpeace International, November 2011) ("*Rescuing the Pacific*"); Dr Kate Barclay, Dr Hannah Parris and Greenpeace Australia Pacific *Transforming Tuna Fisheries in Pacific Island Countries: An Alternative Model of Development* (Greenpeace Australia Pacific, July 2013) ("*Transforming Tuna Fisheries*"). From www.greenpeace.org/new-zealand/en/reports/ [notified 28 September 2016, last accessed 12 October 2016]; www.greenpeace.org/new-zealand/en/campaigns/oceans/Defending-our-Pacific/ [notified 28 September 2016, last accessed 12 October 2016].

Fresh Water

47. Greenpeace's fresh water campaign promotes the view that to improve freshwater quality in New Zealand, intensive dairy expansion must be stopped.⁵⁵
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.⁵⁶
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.

Summary of purpose – protection of the environment

50. The Board considers that most of the advocacy carried out by Greenpeace is the type that the Supreme Court anticipated would not be capable of being found to be for the benefit of the public. Specifically, Greenpeace's advocacy involves the advancement of causes, which the Supreme Court has indicated will often, perhaps most often, be non-charitable. The Supreme Court has indicated that this is for the reasons given by the authorities: it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.⁵⁷

Ancillary test

51. Applying the third step of Ellis J's three-step process,⁵⁸ the Board has considered whether Greenpeace's environmental advocacy can be said to be merely ancillary to an identified charitable purpose.

⁵⁵ See for example: https://act.greenpeace.org/ea-action/action?ea_client.id=1939&ea_campaign.id=49911&utm_source=greenpeace.org&utm_medium=post&utm_term=take%20action%20online&utm_campaign=Food&_surl=lgNjd&ots=1464645775792&step=1;www.greenpeace.org/new-zealand/en/blog/new-zealands-clean-rivers-damned-by-industria/blog/56167/;www.greenpeace.org/new-zealand/en/blog/ecological-farming-farming-for-the-future/blog/56322/ [notified 28 September 2016, last accessed 12 October 2016].

⁵⁶ Parliamentary Commissioner for the Environment *The state of New Zealand's environment: Commentary by the Parliamentary Commissioner for the Environment on Environment Aotearoa 2015* (Wellington, June 2016) at 38; Ministry for the Environment *Next steps for fresh water: Consultation document* (Ministry for the Environment, Wellington, 2016) at 7 and 10.

⁵⁷ *Re Greenpeace* at [73].

⁵⁸ *FAAR* and *FRSSH* at [88].

52. Greenpeace has submitted that its advocacy is ancillary to its primary focus on protecting the environment by educating the public on environmental issues. Greenpeace considers that its advocacy is a very small part of its activities in a labour, time and fiscal sense, with only one member of Greenpeace's full-time staff engaged in an advocacy role. Greenpeace submits that its advocacy largely involves providing the Government with information and data, often at the Government's request. This includes making submissions on environmental issues, meeting with politicians, engaging with parliamentary committees and public consultation processes on environment issues, attending meetings in relation to environment policies, and creating a climate of observance.⁵⁹
53. The Board considers Greenpeace's submissions are based on an incorrect understanding of what activities fall within political advocacy. The Supreme Court does not confine advocacy to activity that is "political" in the narrow sense; rather it "includes advocacy of views more generally".⁶⁰ As directed by the Supreme Court, the Board has considered Greenpeace's activities in light of its amended purposes. In light of the information provided by Greenpeace in support of its application, and the information considered by Charities Services from Greenpeace's websites and other public sources,⁶¹ the Board considers most of Greenpeace's activities can be characterised as advocacy.
54. Applying the second step of Ellis J's three-step process,⁶² some aspects of Greenpeace's campaigns are consistent with or supportive of an identified charitable purpose (for example, providing objective expert evidence to decision makers, and helping consumers to make sustainable decisions). The Board considers this has not been the primary focus of Greenpeace's activities, taking into account how Greenpeace expends its efforts, its public-facing materials and the information Greenpeace has provided about its campaigns. Given Greenpeace's focus on promoting its point of view on environmental issues, the Board does not consider this purpose can be said to be merely ancillary to an identified charitable purpose.
55. The Board's conclusions on Greenpeace's environmental advocacy mean that Greenpeace is not established and maintained for exclusively charitable purposes and therefore it does not qualify for registration as a charity.
56. The Board has also considered whether Greenpeace has a charitable purpose to advance education, or promote peace, nuclear disarmament and the elimination of weapons of mass destruction. The Board has also considered whether Greenpeace and its members are involved in illegal activities from which an illegal purpose can be inferred. The Board's consideration of these matters is outlined below.

⁵⁹ Greenpeace's submissions dated 9 July 2015.

⁶⁰ *Re Greenpeace* at [65].

⁶¹ For example: Greenpeace's letters to Charities Services dated 9 July 2015 and 2 May 2016; www.greenpeace.org/new-zealand/en/ [notified 28 September 2016, last accessed 12 October 2016].

⁶² *FAAR* and *FRSSH* at [88].

Does Greenpeace have a charitable purpose to advance education?

57. Greenpeace submits that it educates New Zealanders on environmental issues, using facts obtained from scientific research. The Board has considered Greenpeace's reports, websites and submissions in determining whether Greenpeace has a purpose to advance education.⁶³
58. The advancement of education falls within the description of charitable purpose at section 5 of the Act, and is capable of being charitable. The most recent New Zealand decision on whether an entity does advance education is *FAAR and FRSSH*, which applied the summary of the law from *Re Collier*.⁶⁴
59. In *Re Collier*, Hammond J stated that for research to qualify as educational:⁶⁵
- ...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.
60. Where it is established that an entity does have a purpose to advance education, it is presumed this will lead to a benefit to the public.⁶⁶
61. The education must be sufficiently structured to assist the training of the mind, or advancement of research: the compiling and publishing of facts already in the public domain will not amount to research.⁶⁷
62. The Supreme Court held that purposes to promote a point of view are also not educational.⁶⁸ The Board notes that the Supreme Court distinguished between an organisation that advances education objectively, and an organisation that promotes a cause.⁶⁹ The Board considers that an organisation that promotes a cause through the dissemination of research or information that promotes a point of view must demonstrate how the cause itself is consistent with or supportive of a charitable purpose.

⁶³ Greenpeace also has a separate charitable trust, Greenpeace Educational Trust (CC37813). As that Trust is a separate entity, the Board has not taken into account that entity's activities in determining Greenpeace's application (refer to Greenpeace's submission dated 2 May 2016).

⁶⁴ *FAAR and FRSSH* at [56]; *Re Collier* [1998] 1 NZLR 81 (HC) at 91–92.

⁶⁵ *Re Collier* at 91–92.

⁶⁶ *FAAR and FRSSH* at [67].

⁶⁷ See for example: *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10, (1999) 169 DLR (4th) 34 at [171], adopted by Ronald Young J in *Re Draco* at [75].

⁶⁸ *Greenpeace* at [74] and [98]; *Aid/Watch* at [62] and [84].

⁶⁹ *Re Greenpeace* at [103]; *Aid/Watch* at [62] and [84].

63. The Board considers that the minority approach of Kiefel J and Hayden J in *Aid/Watch* is useful in making this distinction. While Kiefel J considered that the generation of public debate might be said to be advancing education, *Aid/Watch*'s activities involved advocating for its views on aid to be accepted by decision makers, which was not charitable. Kiefel J noted that although *Aid/Watch* had provided reports on aid projects, "the views of [*Aid/Watch*] were published on its website as part of a campaign to persuade others of its views, not to educate them."⁷⁰
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.⁷¹ 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.
65. This is the approach that the Board has applied to the information submitted by Greenpeace as educating the public about environmental issues.

Assessment of Greenpeace's reports

66. The Board does not consider that Greenpeace advances education through its reports on deep sea oil drilling, fishing practices, climate change and other topics.⁷² Although Greenpeace's reports meet a minimum standard and are structured as research, the Board considers that the reports seek to promote Greenpeace's point of view on environmental issues rather than to educate.

⁷⁰ *Aid/Watch* at [84].

⁷¹ *Aid/Watch* at [68] and [84].

⁷² Laurent CM Lebreton and Timo Franz *Trajectory Analysis of Deep Oil Spill Scenarios in New Zealand Waters* (Dumpark Ltd, Wellington, October 2013); *Transforming Tuna Fisheries*; Nathan Argent and Simon Boxer *The Future is Here: New Jobs, New Prosperity and a New Clean Economy* (Greenpeace New Zealand, February 2013); Sven Teske and others *Energy Revolution: A sustainable New Zealand Energy Outlook* (Greenpeace International and European Renewable Energy Council, 2nd edition, 2013) ("*Energy Revolution*"); *Out of our depth: Deep-sea oil exploration in New Zealand* (Greenpeace New Zealand, May 2012); *Rescuing the Pacific*; Dr Maj De Poorter *While Stocks Last: Supermarkets and the Future of Seafood* (Greenpeace New Zealand, May 6 2009). All reports were enclosed with Greenpeace's letter dated 9 July 2015, and are also available from www.greenpeace.org/new-zealand/en/reports/ [notified 28 September 2016, last accessed 12 October 2016].

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*.⁷³ Most of the reports do not have an independent and objective starting point. In the reports, research and data is presented in a way that seeks to persuade the reader to a particular point of view on issues such as climate change, deep-sea oil drilling, and fishing techniques. 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.
68. The full reports are published on Greenpeace's website with summaries supporting Greenpeace's point of view on environmental issues. The Board considers this is similar to the non-charitable research discussed by Kiefel J and Heydon J in *Aid/Watch*.
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 proceeds from an independent, objective starting point and does not promote a point of view. 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 report presents an evaluation of the likely dispersal trajectory of a deep-sea oil spill at two proposed exploration sites in New Zealand. The analysis is based on industry-standard modelling techniques, using a global database of meteorological and oceanographic conditions, and takes into account scientific commentary. 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, the Board does not consider Greenpeace advances education through the report. 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.⁷⁴

⁷³ *Re Collier* at 91-92.

⁷⁴ For example: www.oilspillmap.org.nz/ [notified 28 September 2016, last accessed 27 September 2016].

71. The Board also accepts that the research in Greenpeace's other reports may meet the "minimum standard" criteria described in *Re Collier* and *FAAR and FRSSH*, and may be sufficiently structured to advance research. Greenpeace employs and commissions scientists and researchers to prepare scientific, economic and environmental impact reports, which it then disseminates to the public. Greenpeace's in-house research is carried out by its campaign and investigations teams. Their instructions are to research issues independently and follow normal scientific research methods. Greenpeace also has access to its own scientists and laboratory.⁷⁵ Greenpeace's reports are based on research from a range of sources (including original research commissioned by Greenpeace, research selected from other studies, media articles, governmental reports, and interviews and surveys carried out by Greenpeace). Greenpeace is not merely compiling and publishing facts already in the public domain to support a point of view.
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.
73. Charities Services provided a detailed analysis of the content and structure of the reports to Greenpeace.⁷⁶ Greenpeace did not contest this analysis or take up the opportunity to explain its involvement in producing and disseminating these reports.⁷⁷

Assessment of Greenpeace's websites and other information

74. The content and tone of the information on Greenpeace's main website,⁷⁸ websites created for specific campaigns⁷⁹ and social media accounts⁸⁰ suggest that the focus of these websites is on conveying information about Greenpeace's campaigns to the public in order to persuade or influence readers to Greenpeace's views on environmental issues. 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.

⁷⁵ Greenpeace's submissions dated 9 July 2015 and 2 May 2016.

⁷⁶ Letter to Greenpeace dated 28 September 2016.

⁷⁷ Greenpeace's email to Charities Services dated 31 July 2017.

⁷⁸ www.greenpeace.org/new-zealand/en/ [notified 28 September 2016, last accessed 12 October 2016].

⁷⁹ www.oilspillmap.org.nz/ [notified 28 September 2016, last accessed 27 September 2016];

www.getfree.org.nz [notified 28 September 2016, last accessed 17 September 2016];

<http://climatevoter.org.nz> [notified 28 September 2016, last accessed 2 October 2016];

<http://tuna.greenpeace.org/en-NZ> [notified 28 September 2016, last accessed 27 October 2016].

⁸⁰ www.facebook.com/greenpeace.nz/ [notified 28 September 2016, last accessed 5 August 2015];

<https://twitter.com/GreenpeaceNZ> [notified 28 September 2016, last accessed 5 August 2015];

www.youtube.com/user/greenpeacenz [notified 28 September 2016, last accessed 5 August 2015].

75. Applying the second step of Ellis J's three-step process,⁸¹ the Board considers that Greenpeace carries out some activities that are consistent with or supportive of advancing education. This includes providing information to the public on what to do if they see a stranded whale, displaying a photo exhibition to commemorate the 30th anniversary of the Rainbow warrior bombing, undertaking research and providing practical advice to individuals on reducing their environmental impact.⁸² These activities, however, form a small part of Greenpeace's overall activities.

Summary of purpose – education

76. The Board considers that Greenpeace does not have a charitable purpose to advance education. Greenpeace's reports and websites promote Greenpeace's point of view on environmental issues rather than advancing genuine, objective education. The Board acknowledges that Greenpeace's Trajectory Analysis report is capable of advancing education. Greenpeace does not present the results objectively, however, and instead uses them in a manner that promotes Greenpeace's views. Although Greenpeace's other reports may be structured as research, the reports lack an independent and objective starting point in their analysis. The Board considers that Greenpeace's other reports seek to persuade the reader to a particular point of view on environmental issues, and as such are simply Greenpeace publishing its own views.

Does Greenpeace have a charitable purpose to promote peace, nuclear disarmament and the elimination of weapons of mass destruction?

77. The Board has considered Greenpeace's submission that its purpose to promote peace and nuclear disarmament is ancillary, and so not a barrier to charitable status.
78. The Board has considered whether Greenpeace's purpose to promote peace, nuclear disarmament and elimination of weapons of mass destruction is capable of being charitable, or whether it is ancillary to another charitable purpose. In relation to this purpose, the Supreme Court commented that "although it may be doubtful on the material before the Court that charitable purpose can be established" it was inappropriate for the Supreme Court to make this determination.⁸³

⁸¹ *FAAR* and *FRSSH* at [88].

⁸² www.greenpeace.org/new-zealand/en/about/faq/; www.greenpeace.org/new-zealand/en/press/Greenpeace-to-Mark-30th-Anniversary-of-Rainbow-Warrior-Bombing-with-Exhibition-of-Courage/; www.greenpeace.org/new-zealand/en/multimedia/e-mag/ [notified 28 September 2016, last accessed 12 October 2016].

⁸³ *Re Greenpeace* at [104].

79. Applying the first step of Ellis J's three-step process,⁸⁴ the Board considers that peace, nuclear disarmament and elimination of weapons of mass destruction are abstract end goals that may be capable of being charitable.⁸⁵ To assess whether Greenpeace's purposes to promote peace, nuclear disarmament and the elimination of weapons of mass destruction are charitable, the focus must be on *how* these end goals can be achieved.⁸⁶
80. Greenpeace's activities in this area are limited to a few pages on Greenpeace's website, and an individual report that promotes Greenpeace's view that nuclear energy is not a solution to climate change, that nuclear power and nuclear weapons are inevitably linked, and that Greenpeace is opposed to the Nuclear Non-Proliferation Treaty.⁸⁷
81. The Board considers there are a range of different options by which peace, nuclear disarmament and the elimination of weapons of mass destruction can be promoted, and that this raises similar policy choices and consequences to those discussed in *Re Greenpeace*. The Supreme Court considered that:⁸⁸

The Nuclear Non-Proliferation Treaty's express recognition of the continued existence of nuclear-weapon states and Greenpeace's position that the acceptance of nuclear power is "the contradiction at the heart of the Treaty" and inextricably linked to the production of nuclear weapons illustrates the policy choices entailed in the promotion of the abstract end of nuclear disarmament and the elimination of weapons of mass destruction ... Achievement of the end of nuclear disarmament will require change in the policy pursued by such states and, to the extent to which New Zealand supports the status quo under the Treaty, to the dealings of the New Zealand government towards other nations. For the reasons discussed by Slade J in *McGovern*, the court would have no adequate means of judging the public benefit of such promotion of nuclear disarmament and elimination of all weapons of mass destruction, taking into account all the consequences, local and international. Whether promotion of these ideas is beneficial is a matter of opinion in which public benefit is not self-evident and which seems unlikely to be capable of demonstration by evidence.

82. The Board considers that Greenpeace's activities in this area involve promoting its own view on peace, nuclear disarmament and elimination of weapons of mass destruction. The Board considers it is not possible to say whether the views promoted by Greenpeace are of a benefit in the way that the law recognises as charitable.⁸⁹

⁸⁴ *FAAR* and *FRSSH* at [88].

⁸⁵ *Re Greenpeace* at [116].

⁸⁶ *Re Greenpeace* at [99]–[103], [116] and [117].

⁸⁷ For example: *Energy Revolution* at 23–24; www.greenpeace.org/new-zealand/en/campaigns/climate-change/dirty-energy/; www.greenpeace.org/new-zealand/en/campaigns/climate-change/Sign-On [notified 28 September 2016, last accessed 14 September 2017].

⁸⁸ *Re Greenpeace* at [101].

⁸⁹ *Re Greenpeace* at [73], [101] and [116].

83. Applying the third step of Ellis J's three-step process,⁹⁰ the Board has considered whether Greenpeace's peace, nuclear disarmament and elimination of weapons of mass destruction purpose can be said to be merely ancillary to an identified charitable purpose.
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.

Does Greenpeace have an illegal purpose?

85. The Supreme Court noted that an illegal purpose will disqualify an organisation from being registered as a charity. While illegal activities may indicate an illegal purpose, the assessment of illegal purpose is 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, and intention or inadvertence in the illegality, may all be relevant.⁹¹
86. The Board has considered whether Greenpeace and its members⁹² are involved in illegal activities from which an illegal purpose can be inferred.
87. Greenpeace submits that it does not have, and has never had, any object or purpose directed at breaking the law. Greenpeace accepts that in some extremely isolated cases, non-violent direct action carried out by Greenpeace can carry a risk of law infringement by Greenpeace personnel or volunteers. Greenpeace submits, however, that any breach of law is of a minor nature (for example, a trespass), a personal risk and decision taken by the activists rather than an object of Greenpeace, and incidental to Greenpeace's goals of generating public debate on environmental issues.⁹³
88. To assess whether Greenpeace has an illegal purpose, the Board has considered the factors listed in the Court of Appeal in *Re Greenpeace*, which were approved by the Supreme Court.⁹⁴
89. The Board notes the Supreme Court's comment that "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."⁹⁵ The

⁹⁰ *FAAR* and *FRSSH* at [88].

⁹¹ *Re Greenpeace* at [111] and [112].

⁹² Greenpeace's letter to Charities Services dated 9 July 2015 refers to Greenpeace personnel or volunteers taking part in direct protest actions as "Greenpeace activists". The Board uses the term "Greenpeace's members" in the same sense.

⁹³ Greenpeace's letter to Charities Services dated 9 July 2015.

⁹⁴ *Greenpeace CA* at [97]; *Re Greenpeace* at [111] and [112].

⁹⁵ *Re Greenpeace* at [112].

Board has taken into account reports by Greenpeace itself on apparent illegal activity undertaken by Greenpeace members, media reports on such activity, and the way in which Greenpeace has treated that activity. This has included activity where no convictions were recorded or no charges were filed. As directed by the Supreme Court,⁹⁶ Greenpeace was given notice of these activities and Charities Services' concerns.⁹⁷ Greenpeace was also given further opportunity to make submissions and explain its involvement in these activities, and declined to do so.⁹⁸

Greenpeace's activities that are or may be illegal

90. While the Board acknowledges that Greenpeace does not have a stated purpose to carry out illegal activity, Greenpeace and its members are involved in illegal activities from which an illegal purpose can be inferred. This conclusion is based on the nature of these activities, their frequency and the way in which they are treated by Greenpeace.
91. The Board has considered activities falling into two groups: activities directly carried out by Greenpeace's members in New Zealand, and involvement by Greenpeace (New Zealand) and its members in Greenpeace's global campaigns.
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.⁹⁹
 - In April 2017, three Greenpeace members, including Greenpeace's Executive Director, put themselves in the path of an offshore oil exploration ship.¹⁰⁰ 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 1993.¹⁰¹ 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.

⁹⁶ *Re Greenpeace at* [109], *Greenpeace CA at* [98]–[99].

⁹⁷ Charities Services' letters to Greenpeace dated 28 September 2016 and 9 August 2017.

⁹⁸ Greenpeace's emails to Charities Services dated 11 July and 27 September 2017.

⁹⁹ www.greenpeace.org/new-zealand/en/press/Greenpeace-climbers-prepare-message-above-Beehive-for-US-Secretary-of-State/ [notified 9 August 2017, last accessed 14 September 2017].

¹⁰⁰ www.greenpeace.org/new-zealand/en/press/Greenpeace-swimmers-stop-Amazon-Warrior-seismic-blasting-50-miles-out-to-sea/; www.greenpeace.org.nz/taitu/?utm_source=press+release&utm_medium=press+release&utm_campaign=climate&utm_content=live [notified 9 August 2017, last accessed 14 September 2017].

¹⁰¹ www.greenpeace.org/new-zealand/en/press/We-Wont-Back-Down-Greenpeace-activists-charged-under-Anadarko-Amendment-head-to-trial1 [notified 9 August 2017, last accessed 14 September 2017].

- In May 2016, six Greenpeace members chained themselves to a truck and blockaded the entrance of a pet factory.¹⁰² 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.¹⁰³
- 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.¹⁰⁴
- 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.¹⁰⁵
- 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.¹⁰⁶
- 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.¹⁰⁷ 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,¹⁰⁸ unlawfully being on property,¹⁰⁹

¹⁰² www.greenpeace.org/new-zealand/en/press/Greenpeace-shuts-down-Whiskas-factory-after-slavery-connection-confirmed/ [notified 9 August 2017, last accessed 14 September 2017].

¹⁰³ www.greenpeace.org/new-zealand/en/press/Greenpeace-activists-convicted-but-receive-no-further-punishment-over-10-hour-occupation-of-the-Tangaroa/ [notified 28 September 2016, last accessed 14 September 2017].

¹⁰⁴ www.greenpeace.org/new-zealand/en/blog/the-power-of-scaling-parliament-buildings-thi/blog/53428; www.greenpeace.org/new-zealand/en/press/Greenpeace-activists-convicted-over-Parliament-climate-action-protest/ [notified 28 September 2016, last accessed 14 September 2017].

¹⁰⁵ Greenpeace 2013 Annual Impact Report (Auckland, 2013) at 3 and 5.

¹⁰⁶ www.greenpeace.org/new-zealand/en/press/Star-Lawless-Slams-Oil-Giant-Shell-Outside-Court/ [notified 28 September 2016, last accessed 14 September 2017].

¹⁰⁷ www.greenpeace.org/new-zealand/en/blog/fonterra-embarrasses-the-government-over-palm/blog/33265/ [notified 28 September 2016, last accessed 14 September 2017].

¹⁰⁸ For example: www.greenpeace.org/new-zealand/en/press/Greenpeace-activists-convicted-over-Parliament-climate-action-protest/ [notified 9 August 2017, last accessed 14 September 2017].

¹⁰⁹ For example: www.greenpeace.org/new-zealand/en/press/Star-Lawless-Slams-Oil-Giant-Shell-Outside-Court/ [notified 28 September 2016, last accessed 14 September 2017].

resisting police,¹¹⁰ obstructing a public way,¹¹¹ bill sticking,¹¹² and disturbing meetings.¹¹³ Five of the protest activities led to arrest and charges being laid, and convictions followed for three activities.¹¹⁴ One protest activity was before the courts at the time of the Board's consideration.¹¹⁵

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."¹¹⁶ 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."¹¹⁷ 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."¹¹⁸ 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.¹¹⁹ 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.

¹¹⁰ For example: www.greenpeace.org/international/en/news/Blogs/makingwaves/how-new-zealand-stood-up-to-the-fossil-fools/blog/55971/ [notified 28 September 2016, last accessed 14 September 2017].

¹¹¹ For example: www.greenpeace.org/new-zealand/en/press/Six-Tonnes-of-Dairy-Sewage-Used-to-Blockade-Capital-City-ACC-Office/, www.greenpeace.org/new-zealand/en/Live-Feed-Save-Our-Rivers/ [notified 28 September 2016, last accessed 14 September 2017].

¹¹² For example: www.greenpeace.org/new-zealand/en/blog/statoil-licensed-to-spill/blog/51645/ [notified 28 September 2016, last accessed 14 September 2017], www.youtube.com/watch?v=9UfoKn4qgfk [notified 28 September 2016, last accessed 14 September 2017].

¹¹³ For example: www.greenpeace.org/new-zealand/en/blog/realclimateaction-how-nz-stood-up-to-the-foss/blog/55955/ [notified 28 September 2016, last accessed 14 September 2017].

¹¹⁴ See examples above at paragraph 91.

¹¹⁵ www.greenpeace.org/new-zealand/en/press/We-Wont-Back-Down-Greenpeace-activists-charged-under-Anadarko-Amendment-head-to-trial1 [notified 9 August 2017, last accessed 14 September 2017].

¹¹⁶ www.greenpeace.org/new-zealand/en/about/Our-core-values1/ [notified 28 September 2016, last accessed 14 September 2017].

¹¹⁷ www.greenpeace.org.nz/taitu/blog/greenpeace-swimmers-charged-under-anadarko-amendment [notified on 28 September 2016, last accessed 14 September 2017].

¹¹⁸ http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11550347 [notified 28 September 2016, last accessed 14 September 2017].

¹¹⁹ Greenpeace, *2013 Annual Impact Report* (Auckland, 2013), at 12, Greenpeace, *2012 Annual Impact Report* (Auckland, 2013) at 23, www.greenpeace.org/new-zealand/en/about/ships/the-rainbow-warrior/rainbow-warrior-bombing-30th-anniversary/, www.greenpeace.org/new-zealand/en/about/Our-core-values1/ [notified 28 September 2017, last accessed 14 September 2017].

95. Greenpeace makes a significant annual contribution to Greenpeace International, the body that coordinates global policy and strategy, and operates Greenpeace ships.¹²⁰ Greenpeace also collaborates and coordinates with Greenpeace International and other Greenpeace national offices on global campaigns.¹²¹ Greenpeace International's global campaigns can sometimes involve illegal activity such as boarding and occupying oil-drill ships,¹²² attempting to block oil ships,¹²³ trespass,¹²⁴ damaging property,¹²⁵ and occupying coal plants.¹²⁶ There is no evidence that Greenpeace has any processes in place to prevent its members from carrying out illegal activities. The Board notes that Greenpeace would consider restricting its contributions to Greenpeace International to specific purposes if that were a condition of being granted charitable status.¹²⁷
96. Greenpeace New Zealand's members have occasionally taken part in illegal activity on Greenpeace International's ships outside of New Zealand.¹²⁸ The Board considers these activities can be taken into account in assessing whether Greenpeace has an illegal purpose. The Board has placed less weight on these activities, however, compared with illegal activities in New Zealand that have been authorised and coordinated by Greenpeace.
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,¹²⁹ swimming in front of an oil-drilling ship¹³⁰ and attempting to climb an oil rig.¹³¹ 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.¹³² There is no evidence that Greenpeace has

¹²⁰ Greenpeace's letter of 16 May 2016 to Charities Services. See also:

www.greenpeace.org/international/en/about/how-is-greenpeace-structured/governance-structure/, [notified 28 September 2016, last accessed 13 September 2017].

¹²¹ www.greenpeace.org/new-zealand/en/about/governance/ [notified 28 September 2016, last accessed 12 October 2016].

¹²² For example: *Shell Offshore, Inc. v Greenpeace, Inc.* Case No. 3:15-cv-00054-SLG (D. Alaska, 11 April 2015) at [28]–[30] ("*Shell Offshore Inc*").

¹²³ *Shell Offshore Inc* [30].

¹²⁴ www.greenpeace.org/archive-international/en/press/releases/2012/Danish-court-verdict-recognises-Greenpeace-activists-right-to-peaceful-protest/ [notified 28 September 2016, last accessed 14 September 2017].

¹²⁵ For example: www.greenpeace.org/international/en/news/Blogs/makingwaves/cofrentes17/blog/51727/ [notified 28 September 2016, last accessed 14 September 2017].

¹²⁶ For example: www.greenpeace.org/international/en/news/Blogs/makingwaves/cofrentes17/blog/51727/ [notified 28 September 2016, last accessed 14 September 2017].

¹²⁷ Greenpeace's submissions dated 2 May 2016.

¹²⁸ See examples below at paragraph 97.

¹²⁹ For example: *Kākāriki* (Greenpeace New Zealand, Winter 2015) at 11–17; *Shell Offshore Inc* at [28]–[30]; www.greenpeace.org/new-zealand/en/press/New-Zealander-in-protest-over-Shells-Arctic-oil-plans/ [notified 28 September 2016, last accessed 14 September 2017].

¹³⁰ For example: www.greenpeace.org/international/en/press/releases/2012/Swimmers-block-Shell-Arctic-icebreaker-en-route-to-Alaska/ [notified 28 September 2016, last accessed 14 September 2017].

¹³¹ Greenpeace 2013 Annual Impact Report (Auckland, 2013) at 3–4.

¹³² For example: *Kākāriki* (Greenpeace New Zealand, Winter 2015) at 11–17; Greenpeace's financial statements provided to the Registrar of Incorporated Societies for the year ending 31 December 2014.

any processes in place to discourage Greenpeace members taking part in illegal activities overseas.

Summary of illegal purpose

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.

Determination

99. The Board determines that Greenpeace is not qualified for registration as a charitable entity because it is not established for exclusively charitable purposes as required by section 13(1) of the Act.
100. Greenpeace has an independent purpose to advocate its own particular views on environmental issues that cannot be determined to be for the public benefit in a way previously accepted as charitable. Greenpeace does not advance education in a charitable manner. Greenpeace also has an independent purpose to promote peace, nuclear disarmament and the elimination of weapons of mass destruction that cannot be determined to be for the public benefit in a way previously accepted as charitable.
101. Greenpeace and its members are involved in illegal activities from which an illegal purpose can be inferred, which disqualifies it from being a registered charity.
102. The decision of the Board is therefore to decline to register Greenpeace as a charity, pursuant to section 19 of the Act.

Signed for and on behalf of the Board



Simon Karipa



Date