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Advocating for the Environment, Charity Law and Greenpeace: A New Zealand Perspective

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ABSTRACT

In terms of environmental protection (and with reference to the filming location of the Lords of the Rings), New Zealand has been described as 'a friend to Middle Earth, but no friend of the Earth', which is in stark contrast to its international image that it seeks to foster of being '100% pure New Zealand'. This article considers the tension between New Zealand's approach to environmental advocacy from a charity law perspective, and in particular, the way in which charitable advocacy for the environment has been impacted by the limitations imposed on environmental charities through the charity law doctrine of political purposes. In carrying out this analysis, the article tracks the legal evolution of this doctrine and considers whether recent legal changes have resulted in charity law enabling New Zealand to become 'a friend to Middle Earth, *and* a friend of the Earth' through the apparent broadening of the actions that can be taken by environmental charity advocates.

KEYWORDS: environmental law, charity law, political purposes, public benefit, charity, advocacy, education advancement

1. INTRODUCTION

A key tourist and marketing campaign of New Zealand is the slogan '100% pure New Zealand', which suggests that New Zealand places protection and promotion of a pure environment high on its agenda.[1] This promotional image has been espoused by Aotearoa New Zealand for over 20 years.[2] However, it is not uncontested. It has been argued that the image of 'pure New Zealand' sits uncomfortably with the realities of New Zealand's relationship with environmental protection,[3] leading to assertions that the country is 'a friend to Middle Earth, but

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1 '100% Pure New Zealand', <https://www.newzealand.com/nz/>, accessed 9 June 2022.
2 Cas Carter '20 Years of 100% Pure New Zealand Controversy' (Stuff, 30 July 2019), <https://www.stuff.co.nz/business/opinion-analysis/114576906/20-years-of-100-pure-new-zealand-controversy> accessed 9 June 2022.
3 ibid.

no friend of the Earth'.[4] This tension is also reflected in New Zealand charity law, and the way in which charity law has addressed the issue of advocacy, or, more precisely, political purposes for over a hundred years. In short, New Zealand has consistently rejected advocacy from a charity law perspective, which has included advocating for the environment; that is, up until the ground-breaking cases of 2014 and 2020, *Re Greenpeace of New Zealand Inc* and *Greenpeace of New Zealand Inc v Charities Registration Board*, respectively.[5] Both cases concern the environmental advocacy group Greenpeace, and its relation to the legal charitable status of the organisation. This article considers legal advocacy for the environment through the charity law lens as a result of Greenpeace's continued legal battles to reobtain charitable status. Traditionally, charity law has not been a common area of legal investigation for environmental lawyers and environmental law scholars but with the ever-increased advocacy for environmental protection, this is likely to change. Arguably, environmental advocacy is rooted in environmental politics more generally, and so it impacts also social policy.[6] This link is significant in relation to charity law. By way of explanation, 'social policy' relates to, *inter alia*, legal and policy changes for the betterment of society, or, at least, parts of society.[7] In turn, 'the law of charities changes in response to change in social conditions',[8] and so charity law interconnects with policy and social policy changes.[9] In fact, it is seen as a creature of social policy, or 'a creature of Tudor/Stuart philosophy',[10] which resulted in one of the most important pieces of charitable legislation: the Elizabethan Statute of Charitable Uses 1601.[11] While long since repealed, the legally recognised charitable purposes set out in the preamble of the 1601 statute live on in many common law jurisdictions[12] and continue to influence the parameters of modern charitable purposes.[13] Although the connection between environmental politics and recent changes in charity law pertaining to environmental advocacy is merely implicit in the *Greenpeace* cases that are the focus of this study, they nevertheless shows a connection between charitable advocacy, and environmental politics and law. Ultimately, as this article demonstrates, Greenpeace-lines of cases on this topic has changed the charity law narrative in New Zealand through its advocacy for the environment, suggesting that New Zealand can be both a friend to Middle Earth *and* a friend to the Earth.

In structuring this finding, in Part 2, I first provide a brief overview of some key matters pertaining to the charity law framework in New Zealand, including the historical approach to advocacy, and its limited inclusion of social policies. In Part 3, I then chart through the legal decisions that have led to charity law now embracing advocating for the environment through charitable endeavours. In Part 4, I zoom in on two aspects of the case law discussed: how controversial and competing interests may now be advocated within the scope of charity law, and the new tests to determine which entities may count as charities. In Part 5, I consider 'where to' for environmental groups, and, in Part 6, I provide some concluding comments.

4 In reference to the aforementioned criticism by Carter, ibid. Similar note made by F Pearce, 'New Zealand Was a Friend to Middle Earth, but It's No Friend of the Earth' *The Guardian* (12 November 2009), <https://www.theguardian.com/environment/cif-green/2009/nov/12/new-zealand-greenwash> accessed 28 July 2022.

5 [2014] NZSC 105, and [2020] NZHC 1999, respectively.

6 Pamela S Chasek, David L Dowie and Janet Welsh Brown, *Global Environmental Politics* (7th edn, Routledge 2017) 1.

7 EP Hennock 'Welfare State, History of' in *International Encyclopaedia of the Social & Behavioural Sciences* (Elsevier 2001) chap 5.2.

8 *Re Greenpeace* [2014] (n 5) [64].

9 See generally Kerry O'Halloran, Myles McGregor-Lowndes, Karla Simon, *Charity Law & Social Policy: National and International Perspectives on the Functions of the Law Relating to Charities* (Springer 2008).

10 *Re Collier (deceased)* [1998] 1 NZLR 81 95; see generally Gareth Jones, *History of the Law of Charity 1532-1827* (CUP 1969).

11 Also known as the Statute of Elizabeth 1601.

12 See for example Charities Act 2013 (Aus); Charities Act 2005 (NZ); Charities Act 2011 (UK).

13 Gino Dal Pont, 'Charity law: "no magic in words?"', and Hubert Picarda QC, 'Charities Act 2011: A Dog's Breakfast or Dream Come True?' in Matthew Harding, Ann O'Connell and Miranda Stewart (eds), *Not-for-Profit Law Theoretical and Comparative Perspectives* (CUP 2014) 87–88 and 134, respectively.

2. CHARITIES AND THE CHARITY LAW FRAMEWORK: A BRIEF OVERVIEW

This article concerns the notion of purposes and entities being 'charitable' and in relation to charity law, this means being charitable at law and thus being able to register nationally as a charity. There are many benefits to being a charity, including tax exemptions on income, other tax benefits, and being eligible for donations. In addition, funding may be more widely available to registered charities, and charities can enjoy greater levels of public trust and confidence, not least because of the legal scrutiny to which registered charities are subject, including their financial information and the details of their officers being publicly available. It is also, at least in New Zealand, an offence to imply that an entity is registered as a charity if this is not correct.[14] In order to obtain registered status as charity, an entity must meet a set of specific legal requirements, which are not always easily expressed or understood. Generally speaking, 'charity' has no one definition at law, and its meaning at law is commonly different from the layperson's meaning.[15] Thus a layperson may utilise the word 'philanthropy' to express a form of charity but while an act may be philanthropic, it may not be legally charitable.[16] Indeed, it has been confirmed that gifts for benevolent or philanthropic purposes have not been found charitable because they go beyond that is which deemed legally charitable.[17]

In addition, there are a number of key conditions that an entity must satisfy before it can be recognised as being legally charitable, including its purposes must be of charitable nature (that is, the purposes must fall within the spirit and intendment of the aforementioned preamble of the Statute of Elizabeth 1601);[18] the entity's purposes must have public benefit; and the purposes must be exclusively charitable.[19] The preamble of the Statute of Elizabeth sets out a non-exhaustive list of purposes deemed legally charitable, which, nearly 300 years after its enactment, Lord Mcnaghten, in *Commissioners for Special Purposes of the Income Tax v Pemsel*,[20] condensed into four heads of charity: the relief of poverty, the advancement of education, the advancement of religion and any other purposes beneficial to the community.[21] These are still recognised today as being the key constructs of charity law,[22] and they are included in New Zealand's section 5 of the Charities Act 2005.[23] This means that for an entity to obtain charitable status, its purposes must fall under one or more of those heads of charity.

In relation to the requirement of public benefit, there are two matters that need to be satisfied. First, there must be a benefit, and secondly, it must be sufficiently public.[24] This means that the purpose of the charity 'must confer a benefit on the public … and the class of persons eligible to benefit'[25] must constitute a sufficient section of the public.[26] Over the centuries, courts have

14 'Benefits and obligations/Nga hua me nga here' Department of Internal Affairs—Charities Services, <https://www.charities.govt.nz/ready-to-register/benefits-and-obligations-of-registered-charities/benefits-and-obligations-of-being-registered/> accessed 6 April 2022.

15 O'Halloran and others (n 9) 9.

16 Jean Warburton, Debra Morris and NF Riddle, *Tudor on Charities* (9th edn, Sweet & Maxwell 2003) 1–2; Dal Pont (n 13) 89; Picarda (n 13) 10–11.

17 Kerry O'Halloran, *The Politics of Charity* (Routledge 2011) 22, referring to *inter alia Houston v Burns* [1918] AC 337 (HL); *Attorney General for New Zealand v Brown* [1017] AC 393 PC; and Hubert Picarda *The Law and Practice Relating to Charities* (3rd edn, Bloomsbury 1999) 221.

18 Also referred to as the 'Charitable Uses Act 1601'.

19 Warburton and others (n 16) 1–2.

20 [1891] AC 531.

21 *Pemsel* (n 20) 583.

22 Kathryn Chan, 'Constitutionalizing the Registered Charity Regime: Reflections on Canada Without Poverty' (2020) 6 CJCCL 155.

23 Section 3 of the United Kingdom's Charities Act 2011 includes the same list, as does s 12 of the Australian Charities Act 2013.

24 Jonathan Garton, *Public Benefit in Charity Law* (OUP 2013) 33; Sue Barker, 'Advocacy by Charities: What Is the Question?' (2020) 6 CJCCL 8-9.

25 ibid 33, citing Warburton and others (n 16) 5.

26 ibid 33.

generally interpreted the meaning of charity widely so as to reflect the evolving needs of society.[27] Nevertheless, charity law principles have not expanded exponentially, as reflected in the political purpose doctrine, and as explained next.

2.1 Political purposes in the context of charity law

One of the key principles of charity law has been that purposes which are said to be political in nature, or that advocate for a cause or point of view, will not be charitable. This came to be known as the 'political purpose doctrine', and it is said to be as old as the common law.[28] It is widely understood that this doctrine was first espoused by Lord Parker in *Bowman v Secular Society*, where his Lordship observed that:[29]

> [A] trust for the attainment of political objects has always been held to be invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is charitable.

Thus, and as this statement reflects, political purposes fail the public benefit test required under charity law. As Lord Parker here confirms, it is not that it is illegal to advocate for a cause, rather a court will not be able to determine the public benefit of that advocacy, hence failing the public benefit test. This approach was affirmed in later cases, including by the House of Lords in *National Anti-vivisection Society v IRC*, where Lord Wright stated that '[t]he whole complex of resulting circumstances of whatever kind must be foreseen or imagined in order to estimate whether the change advocated would or would not be beneficial to the community'.[30] It is clear, therefore, that the public benefit of such matters is evidently in dispute, echoing the sentiments of Lord Parker.

In contemporary times, the UK still follows this approach, as confirmed by the Charity Commission for England and Wales, where it is noted that even if a purpose appears to fall within section 3 of the Charities Act 2011, which sets out the recognised charitable purposes, a purpose will still not be charitable if it is for political purposes because it fails for public benefit.[31] This means that in the UK, a charity is not permitted to have political activity as any one of its purposes, although a charity may carry a political activity if it supports the delivery of its purposes. Thus, if a charity in the UK sought, for example, to advocate for law or policy change, nationally or internationally, or to further the interests of a political party, this would negate its charitable status.[32] Unsurprisingly, taking in to consideration New Zealand's colonial history and England's inevitable associated legal influence, the political purpose doctrine also became part of the New Zealand charity law landscape.

New Zealand adopted the political purpose doctrine in 1941 in *Re Wilkinson (dec'd)*,[33] where Kennedy J, in citing Lord Parker's dictum in *Bowman*, held that the gift in question to the League

27 Dal Pont (n 13) 90.
28 O'Halloran (n 17) 20.
29 Garton (n 24) 97, citing *Bowman v Secular Society* [1917] AC 406 (HL) 442.
30 [1948] AC 31 (HL); see also *Re Scowcroft* [1898] 2 Ch 638; *McGovern v Attorney-General* [1982] Ch 321; and O'Halloran (n 17) 92–4.
31 Charity Committee for England and Wales, 'Public Benefit: Analysis of the Law Relating to Public Benefit' (September 2013) 12, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/589796/Public_benefit_analysis_of_the_law.pdf> referring to *McGovern v Attorney-General* [1982] Ch 321 340B, accessed 7 April 2022.
32 Charity Commission for England and Wales, 'Campaigning and Political Activity Guidance for Charities (CC9)' 8, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610137/CC9.pdf> accessed 13 October 2021.
33 [1941] NZLR 1065 (SC).

of Nations Union of New Zealand was 'in the broadest sense, a political purpose',[34] and therefore not charitable. Subsequently, in the case of *Molloy v Commissioner of Inland Revenue*,[35] Somers J approved the political purpose doctrine. Even though the doctrine became deeply embedded in the law in New Zealand, it was not left undisputed.

It has been argued that the doctrine is a constraint on the potential for charities to carry out beneficial roles for the wider society,[36] including, for example, increasing the awareness and advocacy, for example, in support of human rights and environmental protection. Indeed, and as this article demonstrates, advocacy and charity should be welcomed as newly acquainted bedfellows, even if their newly founded relationship may still be tinged with difficulties. Prior to discussing the legal issues surrounding the relevant *Greenpeace* case law, it is useful to first consider whether environmental politics has become incorporated in to charity law through the *Greenpeace* cases, as this will position the subsequent discussions within the environmental context.

2.2 Environmental politics as a charitable purpose

In brief, environmental politics have, over the past several decades, become a key feature of many nations' political landscape 'involv[ing] personal values, local public affairs, and state and national politics',[37] eliciting responses from governments, private entities, groups and individuals, either for the benefit, or opposing the safeguarding of the environment.[38] While it is not explicit expressed in charity law itself, there is undoubtedly a nexus between charities, politics and environmentalism. This is because, as mentioned above, charities are a recognised group that sit within the public policy sector, thus they are bound to exercise political influence as part of their role in civil society.[39] Consequently, charitable bodies may be responsible for some environmental politics. Indeed, it has been asserted that non-governmental organisations, which includes charities, are able to 'contribute to a networked architecture of global environmental governance',[40] and some of their methods include also lobbying within the private sector so as to counteract regulatory bodies.[41] Historically, resource and environmental control was state-centred, today, however, there are a variety of non-state resources and environmental management initiatives and groups in addition to the state-centred environmental controls.[42] As a result, the landscape of environmental politics has said to 'become dazzlingly complex',[43] meaning that the intricacies of such non-state initiatives and groups may come about in a variety of ways. They may be a group of individuals, who mobilise and lobby around particular environmental issues, or who affiliate with local environmental bodies, such as cooperatives, or indeed, who affiliate with national and international environmental charities, such as Greenpeace or Friends of the Earth.[44] These movements may impact local and national policies as their lobbying gains in strength, and exercise social impact through, for example, 'direct action campaigns, to provision

34 *Greenpeace* [2014] (n 5) [40], citing *Re Wilkinson (dec'd) Perpetual Trustees Estate and Agency Co of New Zealand Ltd v League of Nations Union of New Zealand* [1941] NZLR 1065 (SC) 1077; see also *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522 (SC).

35 [1981] 1 NZLR 688 (CA).

36 O'Halloran (n 17) 96.

37 Samuel P Hays, *A History of Environmental Politics Since 1945* (University of Pittsburgh Press 2000) 1.

38 ibid 2.

39 Raul Pacheco-Vega, 'Transnational Environmental Activism in North America: Wielding Soft Power Through Knowledge Sharing?' in Ken Conca and Geoffrey D Dabelko (eds) *Green Planet Blues Critical Perspectives on Global Environmental Politics* (6th edn, Routledge 2019) 119.

40 ibid 120.

41 ibid 120.

42 Robert Fletcher, 'Environmentality Unbound: Multiple Governmentalities in Environmental Politics' (2017) 85 Geoforum 311.

43 ibid.

44 Jeremy Kidwell, 'Mapping the Field of Religious Environmental Politics' (2020) 96 International Affairs 2.

of expertise, to facilitating negotiations between states, to highlighting violations of international environmental law'.[45] Each method utilised by such bodies 'reflects a mechanism through which non-state actors' power is deployed to influence political processes'.[46]

Such environmental political influence has led to suggestions that what we are now seeing is a 'rescaling of global environmental politics'.[47] The *Greenpeace* line of cases whereby Greenpeace sought to challenge and thereby change charity law in New Zealand is a case in point. Whether Greenpeace has, in fact, helped create a charitable purpose that can be described as 'environmental politics' is unclear. What is certain, nevertheless, is that environmental politics is an influencer within the construct of charity law and sits within the legal machinery of the decisions that have shaped the charity law framework within New Zealand thanks to Greenpeace's political activity. Thus, the *Greenpeace* cases demonstrate that charitable environmentalism goes beyond the construct of environmental politics as mere enforces of the law, or filling the gaps whereby a state might have failed to act. Rather, a charitable environmental advocate can ensure that law or policies be changed for the benefit of communities. We now turn to the legal issues that surround this journey.

3. GREENPEACE LINE OF LITIGATION AND HOW IT CHANGED CHARITY LAW

Greenpeace in New Zeeland was historically a registered charity through the Commissioner of Inland Revenue.[48] In 2005, the then newly enacted Charities Act 2005 required all charitable entities to apply to the recently created Charities Commission to re-register as a charity.[49] The Commission rejected Greenpeace's application, asserting that its purposes, *inter alia*, were political, thus rendering it not charitable.[50] With that deregistration began Greenpeace's long journey to try to reclaim its registered status. This led to the majority Supreme Court decision in *Re Greenpeace of New Zealand Inc* [2014], which, changed the charity law narrative regarding political purposes, and culminated in the High Court decision in *Greenpeace of New Zealand Inc v Charities Registration Board* [2020], in which Mallon J confirmed the charitable nature of Greenpeace's advocacy for the environment, potentially opening the floodgates for future environmental advocacy-centred cases. Still, we need to be cautious with such predictions, as the Court sets out a restrictive test for the 'public benefit' qualifications, meaning that while the High Court decision is likely to be welcomed by environmental groups, it may not be the panacea for all charitable environmental advocacy ills. We begin these considerations with the 2014 Supreme Court decision.

3.1 Re Greenpeace of New Zealand Inc [2014]

One of the core issues for the Supreme Court in *Re Greenpeace of New Zealand Inc* [2014] related to section 5(3) of the Charities Act 2005, which states:[51]

> 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,

45 Jean-Frederic Morin, Amandine Orsini, Sikina Jinnah *Global Environmental Politics: Understanding the Governance of the Earth* (OUP 2020) 127.

46 ibid 137.

47 Christian Downie, 'Transnational Actors, Nongovernmental Organizations, Civil Society and Individuals' in Paul G Harris (ed) *Routledge Handbook of Global Environmental Politics* (2nd edn, Routledge 2022) 192–3.

48 *Re Greenpeace New Zealand Inc* [2011] 2 NZLR 815 [2].

49 The Charities Commission was created in July 2005, pursuant to the Charities Act 2005, and was responsible for registering, monitoring and managing charitable entities. It was eventually replaced by the Department of Internal Affairs—Charities Services in 2012; see Juliet Chevalier-Watts, *Law of Charity* (2nd edn, Thomson Reuters 2020) 19–23.

50 *Greenpeace* 2011 (n 48) [2]–[3], a requirement under Charities Act 2005, s 13.

51 Emphasis added.

> 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.

More precisely, the question that was of concern to the Court was whether this section codified when political purposes may be permitted, that being that political purposes may be charitable when they are ancillary to the charitable purpose of the entity, as has historically been confirmed.[52] In answer to this, the majority's view of the Supreme Court held that this was not correct. Rather, the correct interpretation of section 5(3), the Court explained, is of 'general application to all ancillary purposes',[53] meaning that the use of 'advocacy' is merely an example of a purpose that may be non-charitable, but if it is ancillary, this will not negate the overall charitable status.

The majority went on to confirm that charitable purposes and political purposes are not mutually exclusive. Indeed, the political purpose doctrine was neither 'necessary [n]or beneficial',[54] consequently it was concluded that a blanket restriction for political purposes as being charitable could not continue to be supported.[55] Such an exclusion, it was reasoned, would likely stultify the law, and this could fail society because a key purpose of charity, and thus its law, is to meet the demands of civil society. Elias CJ gave examples of the abolition of slavery and promoting human rights as recognised charitable endeavours that have evidently entailed pursuing political purposes to achieve their ends.[56] Such ends are vital to support the 'machinery or harmony of civil society',[57] all of which reflect the close nexus between politics and charity. Part of the consideration of the majority in removing the blanket ban on political purposes involved confirming that protecting the environment through advocacy may be charitable because such protection requires 'broad-based support and effort'[58] through policy and legislative reform and agitation. It is from this support and effort that the public benefit may be assuaged,[59] suggesting the influence of environmental politics on this decision-making process.

The Court, subsequently, stated that assessing whether or not advocacy, or a political purpose is charitable should be carried out through consideration of: *the end* being advocated, *the means* promoted to achieve that end, and *the manner* in which the cause is promoted to determine the public benefit within the spirit and intendment of the preamble of the Statute of Elizabeth.[60] The public benefit, in other words, will need to be assessed through the application of this new three-staged test.

As a brief point of note, the Supreme Court did not affirm that Greenpeace was charitable, rather the matter of the charitable status of Greenpeace's objects was remitted to the Board of the New Zealand Department of Internal Affairs—Charities Services for consideration in light of this decision.[61] The Board found that Greenpeace's objects were not charitable due to the lack of public benefit.[62] Greenpeace appealed the Board's decision, leading to the High Court judgment of 2020.

3.2 Greenpeace of New Zealand Inc v Charities Registration Board in the High Court 2020

In this case, Mallon J confirmed that advocating for the environment was indeed a charitable purpose. This is significant, as it was the first time that advocating for the environment was

52 See *Re Greenpeace of New Zealand Inc* [2012] NZCA 533 [56].
53 *Greenpeace* 2014 (n 5) [57].
54 ibid [59].
55 ibid.
56 ibid [71].
57 ibid [70].
58 ibid [71].
59 ibid.
60 ibid [76].
61 ibid.
62 Registration Decision: Greenpeace of New Zealand Incorporated (GRE25219) [21 March 2018].

confirmed as being charitable at law. The Supreme Court, as described above, had simply returned the question to the relevant authorities to determine, with the note that protecting the environment may be regarded as charitable.[63] Here, and more forcefully, Mallon J framed advocating for the environment in terms of preserving humankind, which is also how the public benefit was framed.

Relatedly, the Court observed that advocacy for the environment will inevitably conflict with other interests yet, the public benefit may still be satisfied. It was explained that this is because, at least in Greenpeace's situation, its primary advocacy concerns promoting measures that can avoid catastrophic climate change, meaning that the 'broad-based support and efforts' requirement described above, is met. Indeed, and as remarked by the Court, New Zealand plays an important role in international efforts to combat climate change, and national courts have acknowledged the legal significance of such measures.[64] Furthermore, New Zealand has already seen substantive grassroot environmental advocacy in action, including school marches for climate action,[65] and the call to place a levy on single use plastic bags.[66] On this note, Mallon J observed that:[67]

> 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

Therefore, if protecting the environment is charitable, as the Supreme Court determined in 2004 (although depending on the nature of the advocacy),[68] then, in Mallon J's view, it must be correct that avoiding catastrophic climate change will also be of public benefit.[69] This does not mean, her Honour clarified, that carte blanche opportunities should be given to all environmental advocacy groups to obtain charitable status; rather, she emphasised the Supreme Court's three-stage test, and that this would depend on the particular *ends* being advocated, *the means* promoted to achieve that end, and *the manner* in which the cause is promoted to determine the public benefit.

To understand how this public benefit might be interpreted, we must delve in to Greenpeace's specific types of advocacy, which in turn should help inform environmental groups to understand if their advocacy is analogous. Thus, in relation to Greenpeace's advocacy to protect the ocean environment and Greenpeace's advocating to compete with other entities for stakes in the ocean, such as large-scale industrial fishing vessels in the Pacific, Greenpeace's advocacy focused on promoting sustainable forms of fishing. Mallon J confirmed that New Zealand already recognises that there is benefit in sustainable fishing, as confirmed in section 8 of the Fisheries Act 1996, which is the provision that Greenpeace also relied on in its campaigns.[70] Thus, Greenpeace, in this case, is not advocating anything that is not already found in law

63 *Greenpeace* 2014 (n 5) [71]; see Gino Dal Pont, 'The History and Future of the Law of Charity' in Matthew Harding (ed) *Research Handbook on Not-for-Profit Law* (Edward Elgar 2018) 316–17.

64 *Greenpeace* 2020 (n 5) [89], referring to *Thomson v Minister for Climate Change Issues* [2017] NZHC 733 and New Zealand's ratification of the 2015 Paris Agreement to pursue objectives of the United Nations Framework Convention on Climate Change and enaction of the Climate Change Response (Zero Carbon) Amendment Act 2019.

65 'Students take to streets for School Strike 4 Climate protest', RNZ (9 April 2021), <https://www.rnz.co.nz/news/national/440122/students-take-to-streets-for-school-strike-4-climate-protest> accessed 14 October 2021.

66 *Greenpeace* 2020 (n 5) [89].

67 ibid citing Robyn Gulliver, Kelly Fielding and Winnifred Louis, 'Understanding the Outcomes of Climate Change Campaigns in the Australian Environmental Movement' (2019) 3 Case Studies in the Environment 1.

68 *Greenpeace* 2014 (n 5) [71].

69 ibid [90].

70 ibid [93].

suggesting a close nexus between advocacy activities, public benefit and current national policies.

A similar approach was taken by Mallon J in considering Greenpeace's advocacy for preserving freshwater, and indeed, her Honour acknowledged that it has long been recognised in law that there is public benefit in preserving waterways.[71] The benefits include stopping intensive dairy expansion, and because dairy farming is mainstay of many districts within New Zealand, this advocacy conflicts with economic interests that support this particular industry. On this point, Greenpeace relies, *inter alia*, on evidence from the Parliamentary Commissioner for the Environment, which states:[72]

> 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.

In addition, the Commissioner observed that:[73]

> 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.

In this way, Greenpeace relied on government research to advocate for the improvement of water quality. Indeed, her Honour confirmed that the Supreme Court could not 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'.[74] Therefore, in Mallon J's view, competing interests will not automatically negate the public benefit of the advocacy.

Indeed, it appears that Mallon J had little issue with aligning Greenpeace's objects with current regulatory and policy practices in New Zealand, and indeed, historical national approaches. Her Honour acknowledged that there are many environmental groups that have similar objects to Greenpeace that are registered charities, including the Royal Forest and Bird Protection Society of New Zealand Inc (Forest and Bird), whose main purposes include advocating for the protection of the environment, indigenous species and ecosystems.[75] It was unclear how the Charities Services came to register this entity in 2008 when its main purposes clearly demonstrate that it advocates for causes, which appears contrary to the historical political purpose doctrine at the time of its registration. The Attorney-General set out a summary of the then Charities Commission decision-making process for Forest and Bird being registered at the time as a possible explanation:[76]

> 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.

71 ibid [95], referring to *Kaikoura v Boyd* [149] NZLR 233 268.
72 ibid [95], citing *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) 38.
73 ibid [96], citing *Update Report: Water quality in New Zealand: Land use and nutrient pollution* (Parliamentary Commissioner for the Environment, June 2015) 13.
74 ibid [85].
75 ibid [98].
76 ibid [99].

Mallon J found this summary unhelpful because there was no information as to the details of Forest and Bird's advocacy, even if the Commission noted that its advocacy was a 'means' to achieving its other purposes, which, interestingly, is the second limb of the new three-stage test established by the Supreme Court in *Greenpeace*.

The point that Mallon J, however, highlighted is that even prior to the current judgment, advocacy for the environment has been found to fulfil the public benefit requirement, even if these cases were not fully consistent or clear.[77] What the High Court in *Greenpeace* clarifies is that advocacy that tends to current laws, policies, and general political atmosphere, may satisfy the public benefit requirement in charity law, even if there are competing interests at stake.

4. REFLECTIONS

The two cases outlined above raise various significant points for charity law, but for the purposes here, two points will be discussed in more detail: controversial advocacy and the implications of the three-stage test.

4.1 Competing Claims and Controversial Advocacy

As confirmed by Mallon J in the High Court 2020 *Greenpeace* case, even controversial advocacy for environmental protection that opposes competing interests may be of public benefit and thus charitable. By way of illustration, her Honour gave the example of an environmental group opposing the issuing of a permit to extract coal for an open-cast mine: in the case that the group's advocacy succeeds, their advocacy may still be deemed charitable on the basis that it protects flora and fauna—regardless of competing commercial and economic interests involved. Her Honour determined that, in such circumstances, the public benefit would be found in the group's work to raise awareness of environmental issues and ensuring that there was public interest in protecting the environment, which can be considered part of the decision-making process. Consequently, it was asserted that without such advocacy, the real impacts to the environment would either not be known, or they would not be granted sufficient gravitas in comparison with the relevant commercial and economic interests furthered by, for example, the coal industry.[78]

Thus, environmental charities might be reassured that while historically advocating for controversial view points was not charitable,[79] this has since been revisited. Indeed, the majority in the Supreme Court *Greenpeace* noted that any 'general emphasis on controversy…may be misplaced'.[80] This is because if lack of popularity or controversial causes were said not to be charitable, this would have the effect of imposing a majority view, or maintaining the status quo of charitable causes, which would be unlikely to reflect the realities of the demands of society.[81] Of note is that many historical causes were unpopular, or lacked support initially, such as demanding the right for women to vote and abolishing slavery but nonetheless such causes had charitable roots and eventually led to law changes.[82]

This view was further considered in the 2022 Supreme Court case *Attorney-General v Family First New Zealand*,[83] and in particular by Williams J, agreeing with the conclusions of his colleagues but writing separately. His Honour confirmed that advocating for controversial causes

77 ibid [100].
78 ibid [86], referring to *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 347 in reference to public benefit.
79 *Re Greenpeace of New Zealand Inc* [2012] NZCA 533 [64].
80 *Greenpeace* 2014 (n 5) [75].
81 ibid.
82 See Barker (n 24) 14–15.
83 *Attorney-General v Family First New Zealand* [2022] NZSC 80 [28 June 2022].

or ideas will not automatically negate an entity's charitable status, thus echoing Mallon J's views. In Williams J's opinion, this is because a pluralist and democratic society thrives on differing views and perspectives. However, and of note to environmental groups that wish to promote controversial objectives, Williams J was clear that caution is still required when espousing such controversial objectives. Charity is underpinned by selflessness and thus advocating for objectives that are obviously self-fulfilling and controversial may tip the balance away from charitability. Therefore, environmental groups should take care to ensure that their controversial views are balanced (but that does not mean that those views cannot weigh more evidently over to one side).[84] What is required is that those views are honest and respectful and in fact, honesty and respect for other's views will 'contribute to social cohesion and the empowerment of individuals'.[85] This has the benefit of enabling communities to traverse through problematic matters, of which, as his Honour noted, there are many right now. Of course, the judgment in *Family First* did not concern environmental advocacy but rather promoting and supporting heterosexual marriage. However, as charity law 'has been built up not logically but empirically',[86] it is submitted that the principles elucidated by Williams J could be 'applied outside of their original context, where appropriate to do so'.[87] Indeed, it has been confirmed that charitable constructs are not always confined to one or more heads of charity, and may be applied to other charitable purposes.[88] Consequently, what this means for environmental advocacy is that controversial pursuits could be charitable even if their advocacy is weighted in favour of a particular viewpoint but only if that viewpoint embraces the ethos of selflessness and is not discriminatory. The latter point was confirmed in *Family First*, where the support for the 'traditional family' meant advocating against legal changes that would benefit other types of family was found to be discriminatory, and so contrary to the principles of a charity.[89]

4.2 The three-step test: the ends, the means and the manner

While the Supreme Court in *Greenpeace* in 2014 established the three-step test of the ends, the means, and the manner qualification for public benefit of advocacy, Mallon J's approach in the 2020 *Greenpeace* case reflected a lack of clarity in the practical application of the test. Indeed, her Honour acknowledged that '[c]onceptually, there may be difficulty in distinguishing between "end", "means" and "manner"',[90] and it does appear that Mallon J did not necessarily distinguish between these elements. There may, however, be a reason for this. Greenpeace itself submitted that the Supreme Court's approach did not require the three-strands test to be separated but rather it should be considered as a whole when examining whether the objects advance public benefit.[91] This appear to be the way in which Mallon J approached the test, noting: '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'.[92] This view interlinks with how the Supreme Court in 2014 affirmed that the public benefit would depend on the nature of the advocacy,[93] suggesting that each strand of the test is to be assessed as one to assess in terms of the overall public benefit.

84 ibid [180].
85 ibid.
86 *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [38].
87 Juliet Chevalier-Watts, 'Faith, Hope and Charity—a Critical Review of Charity Law's Socio-legal Reconciliation of the Advancement of Religion as a Recognised Head of Charity' (Unpublished PhD thesis, University of Waikato, 2019) 147.
88 *Ip Cheung Kwok v Ip Siu Bun* [1990] HKLR 499 [130].
89 *Family First* (n 83) [136], [139].
90 ibid [51]; see Barker (n 24) 49–50.
91 *Greenpeace* 2020 (n 5) [66].
92 ibid [84].
93 *Greenpeace* 2020 (n 5) [85].

Nevertheless, this does not make assessing the three-stage test any simpler because it may be that, in some circumstances, each strand will be applied independently to assess the public benefit. Indeed, Cull J in *Better Public Media Trust v Attorney-General*[94] appeared to be doing that exactly, arguing: 'it is necessary to assess the goal being advocated, the means by which the organisation advocates to achieve that goal and the manner in which it advocates that goal and those means'.[95] Thus, in Cull J's view, the 'manner' is unlikely to cause difficulties because where the manner of the objects involves illegal activities, for example, then this will not be advocating for the entity's stated purposes. In this particular case, the 'manner' was not explored further because no illegal activity had occurred. In relation to the 'end' and the 'means', on the other hand, these matters were addressed extensively,[96] in contrast with Mallon J's conflated approach in *Greenpeace*.

The Supreme Court in the *Family First* case also addressed the three-stage test, although in a less structured manner than Cull J, and adopting a similar conflated approach to that of Mallon J.[97] This adds little to the clarity of the issue, however, what that Court explained was that it was for Family First to establish if their means and the manner—that of advocating for or against legislative changes—were charitable. This means that the onus is upon the entity itself to establish the benefits of their activities relating to their purposes. Family First failed on this account, as what it was advocating were matters of opinion, which, in turn, was difficult for the Court to assess in light of public benefit, nor could it show that its advocacy was charitable. In other words, promoting their own views to achieve their ends was not charitable.

This appears a rather imprecise formula. However, the Supreme Court in *Family First* confirmed that advocacy for ends such as human rights, protecting the environment, and promoting public amenities are in themselves charitable.[98] As a result, environmental groups may be encouraged that by their very nature their environmental purposes may *prima facie* be considered charitable. However, entities must also take note that even if the purposes are to advocate for the environment, this may still not meet the public benefit test. The Court holds that '[t]he less self-evidently charitable the purpose of the giver, the more important the manner and means of achieving it becomes'.[99] In other words, the very nature of advocacy can be intangible and ambiguous, which means that a court must pay more attention to the objective nature of the entity's purposes.[100]

Consequently, entities must now have in mind how they will achieve their ends because the inquiry as to charitability does not just involve ensuring that the end is charitable.[101] This is clear from the 2014 *Greenpeace* case, and it was noted by Williams J in *Family First*,[102] that in reality, the *Greenpeace* Supreme Court judgment demonstrated that 'the gateway for pure advocacy-based purposes is narrow'.[103] In other words, advocacy will more often than not fail public benefit because it is 'too self-referential'.[104] Williams J, nevertheless, helpfully set out ways in which an entity may determine if its means and manner fulfil the public benefit requirement, including finding that there is general societal agreement that the purpose's function contributes to community harmony and welfare; and that it is compatible with the values of society.[105]

94 *Better Public Media Trust* [2020] NZHC 350.
95 ibid [54].
96 ibid [61]–[81].
97 *Family First* (n 83) [141].
98 ibid [143].
99 ibid [173].
100 ibid [172].
101 ibid [173].
102 ibid.
103 ibid [178].
104 ibid.
105 ibid [179].

This may seem straightforward but it is not so easy to determine in practice. Even if there does not have to be 'social unanimity about the purpose's benefits',[106] there must be some overall agreement that the purposes are self-evidently charitable, as those purposes that have already been found to be charitable. However, there is no one way in which that purpose can be pursued,[107] and so this theoretical advocacy framework that was set out in the 2014 *Greenpeace* case, and further developed in the 2020 *Greenpeace* and *Family First* cases, will likely be of concern to environmental advocacy groups in relation to how they should frame their advocacy if they are to demonstrate their charitability.

5. THE NATURE OF THE ADVOCACY—WHERE TO NOW FOR ENVIRONMENTAL ADVOCACY?

The key uncertainty that many advocacy groups (still) face following the above-discussed case law relates to the nature of the advocacy itself, and being able to demonstrate the public benefit.[108] The majority of the Supreme Court in 2014 in *Greenpeace* insisted on the earlier mentioned three-stage test, which in essence, involves assessing the ends, the means and the manner of the advocacy to assess the public benefit of the advocacy. It might be argued that this iteration of political purposes may have added some certainty to the law whereby entities must now ensure that their ends, means and manner of their advocacy are of public benefit. However, as has been noted, the reality is that the majority here did not change the overall reluctance to acknowledge political purposes as being charity,[109] and the difficulty in the application of this three-stage test reflects that continued reluctance.

This difficulty was highlighted by Cull J in the aforementioned *Better Public Media Trust v A-G*,[110] where her Honour confirmed that in reality this test 'requires more complex considerations'[111] than would be required for charities that do not have political purposes. This is because not only is the test unique to advocacy of political purposes but also because in these cases, entities are not necessarily carrying out the charitable acts themselves, rather they are advocating for those acts to be carried out by others. That means that both the cause must be charitable, as well as the way in which the entity advocates for that cause, which leads to a 'level of abstraction inherent in advocating for a cause'.[112] That is why it was key for the Supreme Court in *Greenpeace* to formulate the assessment of the end being advocated, the means by which the entity advocates to achieve that end, and the manner in which the entity advocates that goal.[113]

What can be asserted, therefore, is that this new test appears to be a double-edged sword.[114] This is because, on the one hand, it may widen the field to allow advocacy for causes which previously would have defeated the charitable nature of the entities, but, on the other hand, the test is unclear to apply. Indeed, it might be said that the historical approach was narrower, but at least it was clear in excluding political purposes that were more than ancillary. This is still the position in the UK where a registered charity cannot have political activity as a charitable purpose, based on section 3 of the Charities Act 2011, but that charity may carry out a political activity to further the delivery of its charitable purposes.[115] This approach is favoured

106 ibid.
107 ibid [179].
108 *Greenpeace* 2020 (n 5) [90]; see also *Family First* (n 83) [16].
109 *Better Public Media Trust* (n 94) [51].
110 ibid.
111 ibid [54].
112 ibid.
113 ibid.
114 Juliet Chevalier-Watts, 'Post Greenpeace, Better Public Media Trust, and advocacy' (2020) 5 New Zealand Law Journal 195.
115 'Campaigning and political activity guidance for charities (n 32).

by the dissenting judges in the 2014 Supreme Court case of *Greenpeace*, where their Honours acknowledge that while excluding political advocacy may give rise to difficulties in application, for example, where it is difficult to interpret what is meant by 'political advocacy', the doctrine's continued exclusion, nevertheless, is consistent with the preamble of the Statute of Elizabeth, and that the judiciary are not in a position to determine whether a cause in question would be of public benefit.[116]

In relation to advocacy on environmental matters, the dissenting judges were of the view that the same doctrine applies, as environmental advocacy is closely related to advocacy for causes whose benefit are not easily determined.[117] Furthermore, their Honours noted that even disregarding the difficulty for a judge to form a judgment on whether environmental advocacy is or is not of public benefit, engaging in such deliberation is beyond their scope as a judge.[118] A number of other cases have expressed similar caution.[119] Nevertheless, this historical approach towards political advocacy, as favoured by the dissenting judges, has also been criticised due to the lack of clarity as to what is meant by 'political'; the lack of judicial basis for the doctrine; and possible stultification of the law due to the doctrine's continued existence.[120]

In addition, Hammond J (as he was then) noted in *Re Collier (deceased)*[121] that some of the 'rationales [in relation to the exclusion of political purposes from charity law] are today distinctly debatable',[122] as is the fact that the judiciary should not be entering into this debate. In many instances, he argues, it would be straightforward for a judge to determine the merit of a cause, for instance, if the cause were to bring about a revolution, or to disobey the law, this would be illegal and therefore of no public benefit. In other circumstances, the debate becomes more problematic and judges are called upon to determine the worth of a cause, which they have done on many occasions, for example, in relation to birth control. He points out that all charity law-related cases are in fact requiring a judge to consider the public benefit of a purpose, be that advocacy or otherwise.[123] Still, Hammond J found himself bound to leave the political purpose doctrine as it lay, even though 'admirable objectives too often fall foul of them'.[124]

Ultimately, the removal of the blanket exclusion of political purposes in charity law by the New Zealand Supreme Court is to be welcomed. Yet, in practice, the introduction of the three-stage test, and more precisely, the fact that there seems to be no ascertainable distinction between the 'means' and the 'manner',[125] means that this area of law remains riddled with legal unclarity—both for environmental advocacy and political advocacy for generally. Some environmental groups may see to define advancement of education as part of their advocacy objectives, and in this way, find support in falling in line with the requirements of charity law and the related case law in the 2020 *Greenpeace* decision, as well as *Family First*.

5.1 Advancement of Education and Advocacy

In the 2020 High Court decision, Mallon J found that Greenpeace's main activity was to advocate for the protection of the environment—which fell under the fourth head of charity; that of

116 *Greenpeace* 2014 (n 5) [125].
117 ibid.
118 ibid.
119 ibid, referring to, *inter alia*, *McGovern v Attorney-General* [1982] 321 (Ch) and *Southwood v Attorney-General* [2008] EWHC 330.
120 ibid [59]–[71]; see also Garton (n 24) chap 8.
121 *Re Collier* (n 10).
122 ibid 89.
123 *Re Collier* (n 10) 90, referring to for instance, Sheridan 'Charity versus Politics' (1973) 2 Anglo-American Law Rev 47; Charles Rickett 'Charity and Politics' (1982) 10 NZULR 169.
124 *Re Collier* (n 10) 90.
125 See Barker (n 24) 1-57 for further discussion.

any matters beneficial to the community[126]—but she also remarked that Greenpeace undertook activities to advance education,[127] which is the second head of the charity statute. This is important. The advancement of education is construed broadly under charity law and extends beyond teaching,[128] and research for educational purposes:[129]

> [advancement of education] must either be of educational value to the researcher or must be so directed as to lead to something which will pass into the store of educational material, or so as to improve the sum of communicable knowledge in an area which education may cover.

Based on this, Mallon J concluded that Greenpeace advanced education, specifically in relation to the publication of its report entitled 'Trajectory Analysis of Deep Sea Oil Spill Scenarios in New Zealand Waters', which was commissioned by Greenpeace and was found by the Board of the Charities Services to be independent, objective, neutral and balanced. It was made available to the public for free on its website, and Greenpeace relied on the findings from that report to further its advocacy. Although her Honour a had already concluded that activities used to support advocacy to promote environmental concerns were charitable,[130] the question was raised whether research can advance education even though the it focuses on issues of concern to Greenpeace itself.[131] Mallon J affirmed that research of this kind does help advance education because it contributes 'to the store of human knowledge'.[132] This means that environmental groups may commission research to support their advocacy, and in this way, they may be found to advance education, thereby falling within the scope of possible ways through which to secure charitable status.

Nevertheless, some caution is required here because the Supreme Court in *Family First* considered a similar issue, that of whether research reports, which promote a single point of view, can advance education.[133] It was clear that 'propaganda does not provide the public benefit that comes from education',[134] meaning that it fails the public benefit test but it is not clear where and how to draw the line between advancing education and propaganda.[135] The Supreme Court in *Family First* confirmed that expounding a single view point will not automatically negate charitability but what should be considered is whether that purpose will be of public benefit, even if it is promoting a single view.[136] In addition, the Court set out two principles to provide guidance.

First, the entity must genuinely be educating, as opposed to promoting a cause. While persuasion is common characteristic of education and advocacy, the distinction lies in whether the purpose seeks to convert or indoctrinate the reader. Advancing education is seen as making the reader aware of a particular point, and enabling the reader to make up their own mind, while propaganda insists on a particular outcome, or view.[137] Secondly, the means undertaken to advance that viewpoint must relate specifically to the purpose on which education is furthered. This means that where the educational advancement is not balanced and looks to sway readers to a particular conclusion, this might suggest that the line between advocacy and education has been overstepped and that the particular purpose is not charitable.[138] In essence, Family First's

126 *Greenpeace* 2020 (n 5) [113]; Charities Act 2005, s 5(1).
127 ibid [117].
128 *Re Hopkins' Will Trusts* [1965] Ch 669 (Ch) 680.
129 ibid.
130 *Greenpeace* 2020 (n 5) [116].
131 ibid [114].
132 ibid [116].
133 *Family First* (n 83) [56].
134 ibid [58].
135 ibid [59].
136 ibid [62] and [66].
137 ibid [66].
138 ibid [66].

educative purposes were held to persuade persons of a particular point of view and garner support to advocate for changes in policy and law, thus were found not to be charitable.

These principles may help guide environmental groups in determining whether their education purposes could be found as advancing education. However, as Williams J in *Family First* notes, 'one disseminator's education is another's propaganda',[139] and so drawing the line between the two is inevitably a difficult and ultimately, subjective task, which, in his Honour's view, will likely be a matter of degree.

An interesting note is that Mallon J confirmed in 2020 in the *Greenpeace* case that making research available on the internet is a method of advancing education within the charitable meaning.[140] Similarly, the Supreme Court in *Family First* agreed that virtual reading rooms could equally advance education.[141] Still, Mallon J notes that while research made available on the internet can advance education, it will depend on the 'content of the information provided'[142] as to whether this can be charitable. Mallon J did not make clear what kind of information would fall outside in this context, although in *Family First*, the Court found that Family First's virtual reading room did not advance education, as the relevant materials did not present a balanced view but instead insisted on the advocacy's opinions on a variety of matters.[143] This suggests that with other forms of educative propaganda, material on the internet should reflect the ethos of charity and likely represent a balanced and objective stance.[144]

6. CONCLUDING REMARKS

As shown in this article, the political purpose doctrine relevant to New Zealand charity law has long been subject to criticism due to the vague meaning of 'political'; its ambiguous historical basis; and its chilling effect on the charitable sector. The current iteration of the political purpose doctrine, however, continues to pose challenges for charities, and in particular the application of the new test pertaining to advocacy, and how public benefit is determined.

This is not to resist the necessary developments brought to charity law. Indeed, it is a welcomed move to remove the blanket ban on political purposes from New Zealand charity law not least because in doing so, it will give charities a greater voice to advocate for change to better society, even if their advocacy is controversial or unpopular.[145] Also, charity law should be fit for purpose, and the purpose is to 'support the machinery or harmony of civil society'.[146] Purposes that advocate for the prevention of catastrophic climate change, as promoted by Greenpeace, surely must fall within this rubric and so, also within the scope of what is charitable.

This is all to say that the socio-legal boundaries between the environment, advocacy and charity law have begun begin to overlap,[147] and so it might be said that New Zealand has taken some steps to ensure that it can be a friend to Middle Earth *and* a friend to the Earth simultaneously. While it cannot be claimed with any certainty that Greenpeace's legal journey has resulted in a political purpose that can be described as environmental politics, it is undeniable that environmental politics has played an important role in the construction of charity law in New Zealand, and is likely to shape that law to meet the needs of contemporary society. This surely has to be good news for environmental groups, for the earth, and for humankind also.

139 ibid [174].
140 *Greenpeace* 2020 (n 5) [116].
141 *Family First* (n 83) [99].
142 *Greenpeace* 2020 (n 5) [116].
143 *Family First* (n 83) [99].
144 ibid.
145 Barker (n 24) 55.
146 *Family First* (n 9483) [135].
147 O'Halloran (n 17) 79.