

**Judge Damian Stone**  
**Maori Land Court**  
**Wellington**

Mon 25 May 2020

**Tena koe e te Kaiwhakawa,**

**INDEPENDENT REVIEW OF THE PORT NICHOLSON BLOCK SETTLEMENT TRUST -  
REGISTRATION PROCESS AND ELECTION**

**1. APPOINTMENT INDEPENDENT REVIEWER**

1.1. My name is Sir Wira Gardiner and I was appointed as an independent expert pursuant to section 69(2) of Te Ture Whenua Māori Act 1993 (the **Act**) to carry out a review of matters relating to the Trust's members register and the registration process.

**2. TERMS OF REFERENCE**

2.1. The terms of the Expert's review are set out below.

2.2. The Expert is to review and report on:

- (a) the Trust's existing processes, practices and policies relating to the Members Register and registration generally (including the conduct of elections where the Expert considers that the conduct of elections is linked to issues with the Members Register/registration); and
- (b) the Trust's proposals to address issues relating to the Members Register and registration generally.

2.3. The Expert's review is not restricted to whether the Trustees' existing processes, practices and policies and its proposals to remediate issues are sufficient to discharge the Trustees' obligations under the Trust Deed, tikanga or otherwise, but extends to:

- (c) whether the Trustees are adopting best practices; and
- (d) whether the Trustees ought to be adopting interim processes, policies and practices (for example, to the suppressions carried out as part of

the voting process) pending the remediation of any identified issues to mitigate the effect of those issues.

- 2.4. For the avoidance of doubt, and without limitation to (a) above, the Expert is expected to review and report on:
- (a) the Trust's existing processes, policies and practices in respect of ensuring that members database and the Members' Register is maintained in a condition that is up to date, accurate and as complete as possible;
  - (b) the Trust's processes, policies and practices for the identification and registration of members not yet on the Members Register (including those recorded in the Trust's database as an unverified member and those members not yet in the Trust's database) and including whether the Trust provides sufficient assistance to persons who believe they are members of Taranaki Whānui but for whatever reason are not able to establish such membership; and
  - (c) to the extent that there are currently no processes, policies and practices in place on any relevant matter, what processes, policies and practices should be implemented by the Trust.
- 2.5. It will be a matter for the Expert as to who the Expert considers that they ought to consult with on these matters as part of their review, save that:
- (a) the Expert must consult with the Trustees themselves on these issues (that is, it is not sufficient for the Expert to consult solely with the Management Team appointed by Taranaki Whānui Limited); and
  - (b) the Expert must consult with the five members of the Whakapapa Committee on matters relating to the process for registration of new members, including assistance provided to persons trying to register as members.
- 2.6. The Trustees will provide such assistance, as the Expert requires, to enable the Expert to consult with those persons who the Expert, in the Expert's sole discretion, considers ought to be consulted as part of this review.

- 2.7. The Expert is to be provided with a copy of the following documents, as context to their appointment:
- (a) the initial application dated 12 August 2019 outlining the register issues;
  - (b) the Trustees' written report;
  - (c) the Applicants' memoranda of counsel dated 6 December 2019 and 14 February 2020;
  - (d) the affidavit of William Makea.
- 2.8. The Expert is to provide the parties and the Court with a written report by 30 May 2020 or such other date as ordered by the Court.
- 2.9. The Trust is not to incur significant expenditure on its proposals to address issues relating to the Members Register and registration generally (including as to the purchase of new database software), until the Expert has presented his report and that report has been considered. However, the existing work stream of updating members details outlined in the affidavit of William Makea is to be continued.
- 2.10. The costs of the Expert are to be met from the Court's Special Aid Fund pursuant to section 98 of the Act.
- 2.11. A judicial teleconference be scheduled for May 2020 to monitor progress of the review.

### **3. APPROACH TO REVIEW**

- 3.1. At the heart of this review is the right to vote. An adult individual has that right conferred on them if they are able to satisfy the membership criteria set out in the PNBST Trust Deed 2008. The Trust Deed sets out the steps required for a potential member to become a verified member of PNBST and, if over 18 years of age, thus eligible to cast a vote.
- 3.2. Clause 5.3. of the Trust Deed, places responsibility upon members of Taranaki Whanau ki Te Upoko o Te Ika, to ensure his or her name is included in the Taranaki Whanau ki Te Upoko o Te Ika Register. Ultimately though an

individual has the choice whether to join, or not join and indeed if they join, whether to cast a vote or not. However, the process for them to exercise their rights must be proactively available, user-friendly and supported by a process of encouragement to join.

- 3.3. The novelty of dealing with a complex matter of this kind by zoom and email, does not and cannot yet replace the traditional method of a-tinana and kanohi ki te kanohi (in person and face to face). There are some aspects of this review that would have benefitted from sighting physical evidence of matters raised and meeting with individuals for more extensive discussions. Nevertheless, notwithstanding the limitations of the virtual world, I am satisfied that I have used best endeavours to gather enough information to arrive at conclusions and recommendations that I can support.
- 3.4. I have reviewed a range of documents provided for me by Rachel Pinny of Thorndon Chambers, Wellington and Susan Hughes of Bank Chambers, New Plymouth. In particular three major documents identified in paragraphs 27 (a) – (d) above. In addition I have sought and received from the Trust a number of other documents.
- 3.5. Additionally I met by zoom with a number of individuals and groups including: management (Kirsty Tamanui, William Makea and Huia Puketapu), the chair of PNBST, members of the Whakapapa Committee past and present, principals of *electionNZ.com* and representatives of four iwi. Throughout the process, except for my iwi meetings, I kept counsel for the parties advised of my meetings.
- 3.6. Issues relating to the register, registration processes and election of trustees as well as voting on matters relating to the management of the PMBST assets are all intertwined. My focus was on the register and its processes and the deployment of the register for election purposes. Accordingly I only refer to property matters as it might impact on the process of registration and elections (for example: Special Resolution 2016).

- 3.7. I was directed by the terms of reference set out above. Contextually I am not unfamiliar with the public matters surrounding the PNBST. However, I come to this review without history or knowledge of the processes adopted by the PNBST Trust. So for the sake of completeness where possible I have followed the main elements of Appendix 1 of the Trust Deed, beginning at paragraph 4, “Decisions as to Membership” and in doing so, hope to deal with many of the issues raised either by Applicants or the Trustees (and management). Other matters will be covered separately.
- 3.8. The Trust Deed is the primary source of direction. So that is my starting point: what was expected of the trustees in accordance with the Trust Deed? What did they do to give effect to these directions? What deficiencies, if any, arise from my review? And finally, where possible, what recommendations can be offered to resolve/solve identified deficiencies for the Trustees’ consideration.
- 3.9. The review must not only look to the past and present in respect of registrations and possible anomalies, but it must also address the question raised by the Applicants: ‘that the issues are resolved in advance of the upcoming trustee election in September 2020.’ This will require the review to identify what actions can be undertaken by the Trustees, before September, that will measurably grow the membership of PNBST, eligible to vote.

#### **4. MAORI LAND COURT SUBMISSIONS**

- 4.1. I reviewed the chronology of events triggered by the Applicants filing in the MLC, their memorandum of 6 August 2019. In doing so I highlight the key issues and concerns from the Applicants’ perspective and also the Trustees’ responses.

##### **Application for Review – 6 August 2019**

- 4.2. The Applicants sought an order from the MLC to review the management of PNBST of assets held for Maori. Paragraphs 10 – 25 of their application set

out the grounds for their request for the MLC to review the Trust. In particular the following issues were raised<sup>1</sup>:

- (a) Some members who had previously been registered were subsequently advised by the Trust that they were no longer registered as members.
- (b) Some members who had previously been registered failed to receive voting papers and/or the notice of the special resolution advanced by the Trustees in respect of the proposed sale of the Shelly Bay Properties in February 2016 (the 2016 Special Resolution).
- (c) The process for registration (or re-registration for “lost members”) was unduly lengthy.
- (d) There were a significant number of applications by Adult Members for registration outstanding as at the date of the 2016 Special Resolution.

4.3. The Applicants placed on record their numerous attempts, between 2016 and 2018, through telephone calls, written requests and meetings, to seek information from the Trustees. The Applicants’ enquiries related to: ‘...the nature and extent of issues with the Register’, and ‘...steps taken to remedy the issues with the Register’.<sup>2</sup> Applicants also met with Trustees to discuss the sale of Shelley Bay, which, while connected to this review, is not germane to my deliberations, other than the Special Resolution of 2016. The Applicants reported to the MLC they had also triggered the dispute mechanism in the Trust Deed. However, notwithstanding all of these actions, ‘These attempts have been unsuccessful, with the Trustees providing only the minimum information legally required to be provided to beneficiaries under general law.’<sup>3</sup>

#### **Trustees’ Response – 25 October 2019**

4.4. Trustees responded in their affidavit to the MLC.<sup>4</sup> ‘The Trust has taken two reviews (2016<sup>5</sup> and 2017<sup>6</sup>), to identify areas of issue and recommend

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<sup>1</sup> Application to Maori Land Court 6 August 2019

<sup>2</sup> Application to Maori Land Court 6 August 2019, para 6 (a) (i) (ii)

<sup>3</sup> Application to Maori Land Court 6 August 2019, para 6 (b) (c) -8

<sup>4</sup> Trustees PNBST Response dated 25 October 2019

<sup>5</sup> Trustees PNBST Response dated 25 October 2019: Appdx 2

<sup>6</sup> Trustees PNBST Response dated 25 October 2019: Appdx 3

solutions. These reviews were based on voiced concern from members as to the integrity of the data held by the Trust within the database, along with the review of the Trusts' operations in 2017. The considerations of this review set the approach and actions for further work to be undertaken in 2019<sup>7</sup>, which is ongoing, and will review:

- (a) the integrity of the data being held;
- (b) the database software; and
- (c) policies and procedures used to maintain the database.

4.5. The Trustees advised the MLC that they had 'sought further independent advice'<sup>8</sup>, to test the stability and history of the data base software. The Trustees noted that the 2019 review was multifaceted and that it was prioritising a focus on data integrity, with the key areas being Members listed as "Gone No Address (GNA)"; Dependent members that need to be turned into adult members; and Whakapapa information not entered into the system from the original paper application forms.<sup>9</sup>

#### **Memorandum of Counsel for Applicants – 6 December 2019**

4.6. Counsel for the Applicants responded and observed that the Trustees' Report '...suggests that the Trustees do not fully appreciate the extent of their obligations in respect of registration of members and may have systematically failed to comply with their obligations for a number of years. This has had a significant resulting impact on the election processes, with a significant number of voting papers being suppressed from being sent to adult members, disenfranchising thousands of adult members (in one year over a quarter of all members) who might otherwise have been entitled to vote.'

4.7. Counsel's response also noted that the Trustees had knowledge of the '...issues with the members register, and the resulting impact on elections at least as early as February 2016 and probably earlier;<sup>10</sup> and in or about April 2019, the Trustees advanced some proposals, intended to address some of

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<sup>7</sup> Trustees PNBST Response dated 25 October 2019: Appdx 5

<sup>8</sup> Trustees PNBST Response dated 25 October 2019: Appdx 4

<sup>9</sup> Trustees PNBST Response dated 25 October 2019, paras 22-25

<sup>10</sup> Trustees PNBST Response dated 25 October, Appdx 2 and 6

those issues relating to the upgrade and maintenance of the member database.’<sup>11</sup>

- 4.8. The Applicants remained unconvinced that the Trustees’ would be able to adequately deal with outstanding issues given the ‘...failure to prioritise and pro-actively deal with these issues over the previous five years...’ They conclude with the observation that: ‘... there would be real benefit to the Trust in having the advice of and recommendations from an expert in Māori trusts governance, who may also be able to draw upon their experiences and knowledge of the practices of other iwi organisations.’

**William Makea Affidavit 31 January 2020**

- 4.9. The Affidavit submitted by William Makea ‘...acknowledges that the situation regarding the Trust’s functions and processes at the end of 2016 was not well organised and a significant amount of work was required to ensure that improvements were made.’<sup>12</sup>
- 4.10. As a consequence Trustees engaged staff to address the issues. Makea and Lisle McErlane were employed in December 2016 and Kirsty Tamanui in July 2017. Makea noted that, ‘...addressing issues with the Members Register was significantly hampered by the Trust’s financial situation, as it had been losing significant assets and revenue since 2010, when the Treaty settlement was recognised.’ The consequence of limited finances was that reviews undertaken in and before 2016 were ‘effectively “surface level”.’<sup>13</sup>

**Memorandum of Counsel for Applicants – 14 February 2020**

- 4.11. In a further submission, counsel for the Applicants noted the ‘Trustees had finally begun to take steps to address the issues with the register, with a number of initiatives apparently having been instigated since these proceedings were commenced. This recent change in approach is welcomed.’<sup>14</sup>

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<sup>11</sup> Trustees PNBST Response dated 25 October, Appdx 5

<sup>12</sup> William Allan Makea Affidavit dated 31 January 2020, para 18

<sup>13</sup> William Allan Makea Affidavit dated 31 January 2020, para 20 (c), (d)

<sup>14</sup> Applicants Memorandum dated 14 February 2020, para 5

4.12. Counsel further noted: ‘However, the Applicants remain concerned as to whether the steps that the Trustees are now taking will resolve and remedy these issues in the most efficient and appropriate manner. In particular, the applicants wish to ensure that the issues are resolved in advance of the upcoming trustee election in September 2020. This means time is of the essence.’<sup>15</sup>

## **5. DECISIONS AS TO MEMBERSHIP**

### **Whakapapa Committee to be established**

5.1. The Trustees shall establish a Whakapapa Committee to make decisions on all applications made pursuant to rule 3.1 of this Schedule by any person for the recording in the Taranaki Whanui ki Te Upoko o Te Ika Register of that person’s membership of Taranaki Whanui ki Te Upoko o Te Ika.<sup>16</sup>

5.2. The composition of the Whakapapa Committee, its, considerations of applications, decisions, and notification and registration are all set out in paragraphs 4.2 – 4.5 of the Trust Deed. Paragraphs 4.6 and 4.7, deal with those applications that have been unsuccessful and the process for re-application.

5.3. The Whakapapa Committee is the gateway to the conferring of voter eligibility on an individual, as long as they meet the requirements of Appendix 1 of the Trust Deed. William Makea states in his Affidavit of January 202, ‘Verified members are those who whakapapa has established to confirm their eligibility as Taranaki whanau. That is, irrespective of whether they are Registered Members with their date of birth, full name and contact details confirmed and accurate. Unverified members are those whose whakapapa has not been confirmed.’

5.4. On 5 May 2020 I met with a number of past and present members<sup>17</sup> of the Whakapapa Committee. They explained to me the complexities associated

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<sup>15</sup> Applicants Memorandum dated 14 February 2020, para 5

<sup>16</sup> PNBST Trust Deed, Appendix 1, p 26, para 4.1.

<sup>17</sup> Jamie Tuuta, Peter Jackson, Martha Gilbert (apologies Honiana Love)

with membership of the PNTB Settlement Trust and indicated that staff associated with the whakapapa process should have an intimate knowledge of the whakapapa lines and be known widely across the iwi. The committee members opined that the registration process was straightforward and they followed the rules of the Trust Deed. The absence of written policies did not seem to hamper their considerations.

- 5.5. I asked them for their thoughts on the poor state of the database and especially the possible loss of the bulk of the declined paper files. One suggestion was that the paper files could have been misplaced during the frequent move to different locations of the PNTB Settlement Trust offices. Another thought was that the paper files might have been sent to the national archives for safekeeping?
- 5.6. Subsequently I wrote to those who were at the meeting, including Honiana Love who could not attend the meeting, to pursue further why the declined numbers were so high. Of the three members who responded, two indicated that during their time on the committee very few applications were declined. The third person, also a past member recalled that few applications were declined as a number of kaumatua and kuia, like June Jackson went out of their way to help applicants. She did say that when they got to a stage where they required further information, the forms were returned to the office for follow-up. Her final thoughts were: 'I am not sure what the office then did with them. The kaumatua were not advised either - although a box of applications requiring further information was found during one of the office moves so they hadn't been returned.'<sup>18</sup>

## **6. MAINTENANCE OF REGISTER**

### **Background**

- 6.1. Trustees have not been unaware of the problems with the database and member registrations. As well as the reviews of 2016 and 2017 (see paragraph 4.4 above) in 2019 they undertook a further set of reviews. William Makea stated in his affidavit: 'That from early 2019 once the Trust

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<sup>18</sup> Peter Jackson, Honiana Love and Martha Gilbert replied to my email of 9 May 20

had started to achieve financial stability and sufficient resources could be allocated to genuinely address the issues identified, we started to make real progress in undertaking these tasks.<sup>19</sup>

6.2. In April 2019, the Trust response was to engage Huia Puketapu to update the member details in the database. Given the need for more time required to review, check and verify membership details in May 2019, her term was extended for a further 6 months. Two further contractors were engaged in July 2019 to assist with checking data integrity. Their task ‘...involved ensuring the members’ records were both completed and correct. The issue with a lot of these records was that they had either incorrect or incomplete information, which meant that the software did not identify members as verified and able to vote.’<sup>20</sup>

6.3. As at 30 August 2019 three significant negative facts stood out in the membership database.

- (a) The first of these was the 2752 potential members that have been declined with the annotation: ‘Many do not have a clear reason as to why they have been declined.’
- (b) The second relates to the inadequate state (many deficient of critical information) of the whakapapa files entered into the database. The Trust has identified this as a major piece of work and has allocated staff resources to upload all whakapapa information from original application forms to the database.
- (c) The third relates to ‘member verification’. ‘No form of identification has ever been requested from 1,131 members [who] have no date of birth.’<sup>21</sup>

#### **Work in Progress**

6.4. In a briefing note, dated 21 October 2019, Makea noted progress has been made on all issues. Management has located 260 declined files, but do not indicate what action has been taken. In respect of the whakapapa data, the

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<sup>19</sup> William Allan Makea Affidavit dated 31 January 2020, para 33

<sup>20</sup> William Allan Makea Affidavit dated 31 January 2020, para 37

<sup>20</sup> William Allan Makea Affidavit dated 31 January 2020, para 20 (d)

<sup>21</sup> William Makea Report to Trustees dated 30 August 2019

Trust's database entry staff report that: '932 files (approx. 9%) have been entered. This has taken approximately 140 hours and we estimate a further 1,448 hours to complete the remaining 9,600 files'. In addressing the issue of 'member verification' management has noted that they have engaged the Department of Internal Affairs 'regarding matching with their birth records.'<sup>22</sup>

- 6.5. By 30 January 2020, some five months later, no progress has been made on dealing with the declined files. However significant progress has been made on the whakapapa files: '4,010 files (approx. 45%) have been entered. This has taken approximately 436 hours, and we estimate a further 269 hours (7 weeks) to complete the remaining 4,838 files, with 2 FTEs'.
- 6.6. In respect of dealing with the issue of 'member verification' management advise that 'A comparison has been run against a database export from 2014. 902 of these records with no date of birth (DofB) have been matched against records with a DofB from 2014.' Management are unclear as to why these records changed? They propose checking out each application against the original application form and then entering DofB into the database. Management estimates that this process will take 1-2 weeks to complete and it will likely rectify almost all the records<sup>23</sup> with no DofB. The engagement with DIA is continuing.
- 6.7. In a report to Trustees on 2 April 2020, significant progress has been made in uploading whakapapa information from the original application forms. '7,866 files (approx. 89%) have been entered'. It is estimated that the further week and half will be required to complete the task.<sup>24</sup> Management confirms the 260 paper records of 'declined members' are now ready to be scanned into the system. No further progress has been made on the issue of 1,131 members with no date of birth.<sup>25</sup>

### **Completion Data Integrity Tasks**

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<sup>22</sup> William Makea Report to Trustees dated 21 October 2019

<sup>23</sup> William Makea Report to Trustees dated 10 January 2020

<sup>24</sup> William Makea email to Trustees, dated 2 April 2020

<sup>25</sup> William Makea email to Trustees, dated 2 April 2020

- 6.8. Management signalled to Trustees In January 2020, that the whakapapa work stream would be completed by mid-March. The work on the whakapapa transfer has been delayed by the Corona virus lockdown, as staff were not able to work from the office to complete this task.

**Comment**

- 6.9. **Catalyst for the Review:** In their application to the MLC in August 2019 the Applicants set out their concerns and the failure of the Trustees to properly address them. Level 101 of governance is for those responsible to make best endeavours to address concerns of shareholders or beneficiaries. One-off efforts to ignore complaints can be weathered. But sustained letter writing, telephone calls and meetings cannot be easily ignored. Either there was a total breakdown in communications or the Trustees were not treating seriously enough with a vociferous group of their beneficiaries?
- 6.10. The Trustees did eventually acknowledge (see paragraph 4.4. above) that their reviews of 2016 and 2017 were based on ‘...voiced concerns from members as to the integrity of the data...’ Regrettably they seem not to have conveyed this message explicitly enough to their membership, as frustrations continued to be expressed by some members.
- 6.11. My understanding of the context of the time was that PNBST was riven with issues and divisions relating to property matters. And to an extent one can imagine Trustees making difficult progress. In this divisive context the decision-making processes and outcomes on key decisions became vital. And the success of otherwise of a particular point of view relied on the numbers able to participate in voting on major resolutions or elections. Success for one side or other depended on an up to date and accurate Register, enabling those entitled to vote, to be able to do so.
- 6.12. **Data Integrity:** The question of the integrity of the data lies at the heart of the anomalies identified in this review. As early as 2016 a report to Trustees made the point: ‘The database has gone through numerous members of staff over the years, who have clearly had different ways of approaching the process.’ The Report then gets to the nub of the inadequacies of the data

entry process stating: 'Some previous staff have let the database fall into an exponentially poorer state'.<sup>26</sup> If ever there was a red flag this was it. I find it difficult to understand how an obviously deteriorating system can be let drag on when it appears as if the remedies did not require complex solutions. Rather it required a competent administrator/database entry person to transfer information from a paper base to an IT Platform? In this respect it is apposite that members should hold the Trustees to account for their dereliction of a basic responsibility to keep an accurate database!

- 6.13. **Declined Membership:** The procedures set out in the Trust Deed are straightforward. If members of the Whakapapa Committee follow the step-by-step process there is little room for error. However one of the outstanding issues arising from the database is the number of potential members who have been declined. The number of 2752 potential members that have been declined by the Whakapapa Committee should have been a matter of some considerable concern to the Trustees, both present and past. (See the comments of the iwi of 71,000 who have had only 10 members declined in the last five years).
- 6.14. The Whakapapa Committee holds the keys to determining eligibility and must take some responsibility for having such a large number of potential members declined. It is not sufficient an excuse to say they gave the forms to the staff and didn't know what happened to them? I recalled that they were surprised at the large number of declined members. Furthermore I find it administratively inefficient not to keep a copy of documents sent back to applicants for further information, in the filing system.
- 6.15. To complicate matters further It would appear that most of the paper records of those declined, except for 260 paper files (see para 5.5 above) have been misplaced as they cannot, at this time, be found. It would seem that the remedial action if the paper files cannot be recovered is to contact those who have been declined and either have them reapply, or establish an alternative process? While this might not be an immediate priority it does

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<sup>26</sup> Trustees PNBST Response dated 25 October 2019: Appdx 2

nonetheless raise the prospect that potential members are missing out on their birth right (assuming their re-applications are accepted). So, in the meantime, at best the Trust can expect to deal with the 260 paper files, which might require them to be resubmitted to the Whakapapa Committee, if necessary.

6.16. **Whakapapa Transfer:** It is commendable that the Trust has nearly completed the task of transferring the data from the paper records to the database. Again this relates more to the quality and oversight of previous administrators rather than any flaws in the process itself.

6.17. **Member Verification.** The Trust has available to it a large number of addresses, email contacts and phone numbers (see table below). Management could use the emails of those GNA to trace members. As suggested by the staff from *electionnz.com*, emails could be used to track down members to get their new addresses and contact points. The table below shows the progress achieved.

|             | Start Point May 2019   | Updates   |
|-------------|--|---|
| 30 Aug 2019 | 7,994 unique addresses<br>2,100 unique email addresses<br>6,615 unique phone numbers | 296 have updated their contact details (presumably from May 2019?)                            |
| 21 Oct 2019 | 7,994 unique addresses<br>2,100 unique email addresses<br>6,615 unique phone number  | Members only FB<br>252 current members 84 requests pending approval                           |
| 10 Jan 2020 | 8,123 unique addresses<br>2,339 unique email addresses<br>6,839 unique phone number  | 379 <sup>27</sup> have updated contact details<br>FB 268 current members, 94 requests pending |

6.18. The resolution of the major issues raised in this section of my review is not complex. It is a matter of prioritising tasks and providing resources to engage contractors to carry out the task of checking individual record, contacting individuals and making the corrections and scanning the data into the

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<sup>27</sup> This figure does not make sense!

database. Management has advised that it is important to have a local person familiar with the major whakapapa lines and whanau and individuals to facilitate updating personal data. On the other hand data entry staff need not have the same level of local expertise.

- 6.19. The primary focus in the short-term for the Trustees is how to convert as many members as possible and enter them onto the eligible voter roll. Their priority should be on those files that can be cleared expeditiously to enable the member, if qualified, to vote in the September 2020 elections.

## **7. TRUSTEES TO ESTABLISH POLICIES**

### **Trust Deed**

- 7.1. The Trustees shall take such steps and institute such policies as are necessary to ensure that the Taranaki Whanui ki Te Upoko o Te Ika Register is maintained in a condition that is as up to date, accurate and complete as possible in recording the members of Taranaki Whanui ki Te Upoko o Te Ika, including taking steps to ensure that, upon the receipt of appropriate evidence, the names of any deceased Members of Taranaki Whanui ki Te Upoko o Te Ika are removed from the Taranaki Whanui ki Te Upoko o Te Ika Register.<sup>28</sup>
- 7.2. The requirements of the Trust Deed are for the records to be accurate, complete as possible, and the names of deceased to be removed from the Register.

### **Background**

- 7.3. William Makea stated in his affidavit: 'When I commenced employment with the Trust in 2016 there were no formal policies in place to ensure that the Register was maintained in a condition that was up to date, accurate and complete as possible in recording the members, and for assisting in the identification and registration of new members. This was an operational deficiency that the new Management Team and Trustees inherited from our predecessors. The Trustees recognise their obligation to develop such

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<sup>28</sup> PNBST Trust Deed, Appendix 1, p 27, para 5.1.

policies --- this is one of the work streams we are undertaking as part of the project to rectify the Register.’<sup>29</sup>

- 7.4. Makea further reported to the Trustees on 21 October 2019, that the policies and procedures work stream was in progress. ‘Management will continue to collate as the 2019 review continues.’ He notes that the application process requires some tidying up to reduce errors getting in for new applications and with respect to the verification process, further observed ‘the current process takes too long and is too reliant on the whakapapa committee.’<sup>30</sup>
- 7.5. Trustees in their submission of 25 October 2019 reported an: ‘...ongoing process in dealing with policies and procedures used to maintain the database’.<sup>31</sup> While trustees focus on data integrity and the software platform there is no further reference to how the Trust might carry out its obligations to develop policies and procedures.
- 7.6. This shortcoming is highlighted by counsel for the Applicants in their response of 6 December 2019: ‘Significantly, the Report does not identify any policies which have been in place which comply with the obligations set out in the Trust Deed relating to the Register outlined in paragraph 3.2 above. While the Report at Appendix 5 records the Trustees’ intention, as at May 2019, to develop “robust policies and practices” no details of what those policies and practices might be are provided.’<sup>32</sup>
- 7.7. Makea in a further submission in January 2020 acknowledges: ‘The other main work stream is the development of formal policies to address the maintenance of the Register and the identification and registration of new members.’ He further notes: ‘The content of these policies is still being considered.... Whilst we have not began [sic] the task of preparing draft policies for wider consideration, we expect to have these completed in draft by May 2020.’<sup>33</sup>

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<sup>29</sup> William Allan Makea Affidavit dated 31 January 2020, para 86

<sup>30</sup> Willy Makea email to trustees dated 21 October 2019

<sup>31</sup> Trustees PNBST Response dated 25 October

<sup>32</sup> Memo counsel for Applicants dated 6 December 2019, para 3.7

<sup>33</sup> Memo counsel for Applicants dated 6 December 2019, para 42

### **Work in Progress**

- 7.8. On April 2020 Willy Makea furnished me with two documents, both in a draft state. They are a useful indicator that the matter is under consideration but work in progress.

### **Other Iwi Practices**

- 7.9. As part of the review I made contact with a number of iwi to understand how they approached the development of policy documents to give effect to the registration process as set out in their respective trust deeds. The trust deeds of these iwi were similar in most respects to the PNBST Trust Deed.
- 7.10. I spoke to the person responsible for the register of an iwi of 20,000 members. This iwi's rohe is a mix of rural and three small towns. They have no specific written policy documents as set out in their own trust deed. This iwi suffers the same range of challenges as the PNBST: in one of their smaller hapu of approximately 400 members 185 are "Gone no Address". The administrator told me that each hapu representative was given a list of those "Gone no Address" and asked to help track down the information. This process had mixed results.
- 7.11. I approached another iwi, which has 71,000 members. The majority of this iwi reside outside of the iwi rohe, across New Zealand and overseas. I asked the CEO about issues like numbers of GNA and "Declined Membership". He advised me that the figure of up to 25% GNA was not uncommon. But in the five years that he had been CEO, the whakapapa committee had only declined ten members! He also advised me that while the provision for explicit written policies are set out in their trust deed they did not have them, as the steps set out in the trust deed were sufficiently explicit enough to guide their committees.
- 7.12. The CEO also told me that like Ngaitahu they took a multi-faceted approach to encouraging potential new members to fill in applications to join the iwi. As well as social media and the traditional means of reaching their people like radio and print media, not unsurprisingly, there was a significant

investment in social media. As well they utilised major tribal events to encourage potential members to register themselves and their whanau.

7.13. The Applicants identified Ngaitahu as a model for communicating with its people. Ngaitahu sets its vision on an ambitious platform: 'Our dream is that all tribal members participate in tribal affairs and activities.... ' While many iwi try to reach their people by way of social media and technology Ngaitahu's preference is to '...conduct our tribal business kanohi ki te kanohi (face to face).' <sup>34</sup> Realistically though Ngaitahu acknowledges that kanohi ki te kanohi is not fully possible. They also acknowledge the need to embrace: '...print media, radio, digital and web platforms to reach our people. Te Karaka, our flagship quarterly magazine, celebrates being Ngāi Tahu by profiling tribal members, bringing Ngāi Tahu perspectives to national issues and stimulating discussion on tribal development.' Additionally they engage their people with the full range of social media: blogs, twitter as well as face book.<sup>35</sup>

7.14. Ngaitahu: '...also convenes a number of tribal hui, anchored by our annual Hui-ā-Iwi and AGM which has pride of place on the calendar as the time to re-connect with whānau, debate, laugh, sing and feast together'.

#### **Comment**

7.15. **New Members:** The Trust Deed requires Trustees to assist in the identifying and registering '...those Members of Taranaki Whanau ki Te Upoko o Te Ika that are not for the time being on the Taranaki Whanau ki Te Upoko o Te Ika Register.' The Trust has expanded its reach to potential members of the through using the website, face book and regular updates. These tools will be helpful but in the meantime the current reach is limited.

7.16. PNBST has begun this journey to utilise social media but is still at an early stage of the journey. With more investment there is no reason why the Trustees cannot also embrace the broad suite of communication tools used by Ngaitahu. However, any future development must be anchored on a solid IT platform. The Trust is beginning this process in replacing the current

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<sup>34</sup> Ngaitahu.iwi.nz/Communications

<sup>35</sup> Ngaitahu.iwi.nz/Communications

antiquated IT platform and decisions and budget appropriations are likely to be made by July 2020.

- 7.17. Makea's draft policy application process mirrors the steps set out in the Trust Deed. Paragraph 4 sets out the procedure for securing the information provided by members. Once the data is entered into electronic format it should be secure and able to be used indefinitely. However 4 (d) (2) proposes that 'Paper files once transferred into an electronic format, can be disposed of immediately.'<sup>36</sup> The Trust should ensure that any disposal policy should take into account the provisions of the Public Records Act 2005 Archives New Zealand. Moreover the PNBST Trust Deed requires documents to be kept for a period of seven years. And at the expiry of seven years the files are to be archived.<sup>37</sup>
- 7.18. The application flow chart setting out the process is consistent with similar types of flow charts used by other iwi. The only addition to the chart Trustees might consider is the process for an individual re-applying should their application be declined. Whakapapa Committee members indicated a point of weakness occurred when the files were handed to staff for clarification or re-submission. The information loop did not always return to them. Hence perhaps their surprise at such a large number of declined member applications?
- 7.19. The Trust Deed directs that Trustees should take '...steps to ensure that, upon the receipt of appropriate evidence, the names of any deceased Members of Taranaki Whanui ki Te Upoko o Te Ika are removed from the Taranaki Whanui ki Te Upoko o Te Ika Register.'<sup>38</sup> While the annual numbers are relatively small there is nevertheless an obligation for Trustees to take account of deceased to ensure the accuracy of the database. Trustees need to consider putting in place more regular checks on members and perhaps introducing a more proactive programme to get members to loop back to the Trust's administration. The current process seems to be a one-way path with many members not connecting back to the Trust on important data; like

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<sup>36</sup> Draft Operational Policies and Procedures, para 4 (d) (2)

<sup>37</sup> PNBST Trust Deed para 29

<sup>38</sup> Draft Operational Policies and Procedures, Appendix – Application Process Flowchart

changes of address, changes of their personal details or advising on members who have died.

## **8. ASSISTANCE IN IDENTIFYING MEMBERSHIP**

### **Trust Deed**

- 8.1. In maintaining the Taranaki Whanau ki Te Upoko o Te Ika Register the Trustees shall include in the policies that it develops policies for assisting in the identification and registration of those Members of Taranaki Whanau ki Te Upoko o Te Ika that are not for the time being on the Taranaki Whanau ki Te Upoko o Te Ika Register. Such policies shall include policies as to the nature of the assistance that Trust will provide to those persons that believe that they are Members of Taranaki Whanau ki Te Upoko o Te Ika but for whatever reason are not able to establish such membership.<sup>39 40</sup>

### **Comment**

- 8.2. My review of documentation and my request to management for such documents indicate that no such policy documents exists to give effect to the explicit directions of the Trust Deed. Having said that the Trust, as indicated above, has undertaken a number of initiatives which include social media and the development of a website to encourage potential members to consider registration as a member of the PNBST.
- 8.3. The website like other parts of the PNBST processes and procedures is ‘...old and requires updating and our ambition is to have a secure membership area in our website that can be used for us to send our members important information and also a place for our members to update their contact details.’ The website was set up a number of years ago and parts of it were modified to take account of different functions. For example the website was modified in 2012 to receive contact updates and new registrations.
- 8.4. I requested management to provide me with the number of friends on the PNBST face book page. The face book page has 291 members with 102 awaiting approval. Management has noted: ‘...we are not trying to replicate

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<sup>39</sup> William Makea email dated 29 April 2020 to Wira Gardiner

<sup>40</sup> PNBST Trust Deed, Appendix 1, p 27, para 5.2.

our main database of approx. 19,000 members through the Facebook group. This is simply a tool we are using to connect with members for which we have no current contact details.’<sup>41</sup>

## **9. DATABASE SOFTWARE REVIEW**

### **Background**

9.1. The database software was purpose built in 2010 for the Trust.

It would appear that no significant review prior to 2017 had been undertaken of any deficiencies of the system and as observed by Willy Makea: ‘to the extent that reviews were undertaken in and prior to 2016, they were effectively “surface level” and did not delve into the various underlying issues that were affecting the Members register, including for example any issue with the data itself, the software and whether it was fit for purpose and had all the functions we required, and the way in which the data was stored.’<sup>42</sup>

9.2. In August 2017 Louise Mulligan of CreNative Limited was commissioned to review the existing database platform. She noted in her report: ‘The database has been upgraded to a modern database and has had the NZ Post Postal Address File (PAF) integrated. The integrated PAF has not been tested.’<sup>43</sup> She observed two major issues with the database: the first was the integrity of the data in the database. ‘There are whakapapa data missing, contact details that are not up-to-date and an issue with the status of some deceased members.’

9.3. Mulligan specifies the deficiencies in the business process related to management of the database. ‘The business process is not being followed and data is not being maintained adequately.’<sup>44</sup> Data was not being entered until well after the information had been received, leading to the possibility of losing paper applications and uncertain application status. It appeared

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<sup>41</sup> William Makea email dated 29 April 2020 to Wira Gardiner

<sup>42</sup> Trustees PNBST Response dated 25 October 2019, Appdx 3 - Louise Mulligan CreNative Limited dated 11 August 2017

<sup>43</sup> Trustees PNBST Response dated 25 October 2019, Appdx 3 - Louise Mulligan CreNative Limited dated 11 August 2017

<sup>44</sup> Trustees PNBST Response dated 25 October Appdx 3

that the 'pending' status, which indicates that the entry is in progress or awaiting further information, was not being used.

- 9.4. Furthermore, she points out that because of confidentiality only one person has access to the database and the records. She noted that 'The business process for entering registration and updating people information was last updated in February 2016, however this process is no longer being followed and only verified applications are being entered into the database.'<sup>45</sup>
- 9.5. In April 2019, the Trust engaged software developers enSynergy Consulting 2017 Limited, to assist with reviewing the software holding and managing the membership details.<sup>46</sup> The Trust was advised in May 2019: 'The current software provides for some basic functionality but lacks many desired features.'<sup>47</sup> In his report to the trustees on 21 October 2019, Makea briefed trustees on the recommendation from enSynergy, that data integrity was prioritised. And while further work software work was put on hold 'as management focused on improving data integrity (mainly contact details)...' Trust staff had further discussions with enSynergy about the next steps in the development of the data system.
- 9.6. EnSynergy recommended that the core system be replaced as soon as possible. Additional elements could be added to the new core system in the future. The recommendation arose out of the anomalies faced by management in running two systems as '...updates to contact details cannot be made to dependent members in the existing software, so a secondary spread sheet is currently being used. This significantly increases the potential for data entry error.'<sup>48</sup> Management also advised trustees that they had made enquiries about an off-the-shelf product.

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<sup>45</sup> Trustees PNBST Response dated 25 October 2019, Appdx 3 - Louise Mulligan CreNative Limited dated 11 August 2017

<sup>46</sup> William Allan Makea Affidavit dated 31 January 2020, para 36

<sup>47</sup> William Makea email to Trustees dated 20 May 2019

<sup>48</sup> William Makea email to Trustees dated 21 October 2019

### **Work in Progress<sup>49</sup>**

- 9.7. Management has indicated that the Trust will make a decision whether to replace or upgrade the existing database software by the end of April 2020. Matters currently under consideration include: whether to buy a stand-alone software package or instead subscribe to an existing software package.
- 9.8. As well, management has approached other iwi including the Tuwharetoa Settlement Trust. In terms of cost and installation period: If the Trust buys a new system the software can be installed in stages and the basic software in 14 weeks for an approximate costs of \$25,000 plus GST.<sup>50</sup>
- 9.9. The expectation is that if agreed to the new software can be installed by the end of July 2020. On 10 January 2020 management reported to trustees advising that they are continuing discussions with enSynergy and the project has faced further delay due to budget uncertainty.<sup>51</sup>

### **Comment**

- 9.10. There can be no doubt as to the required actions. The system introduced nine years ago is antiquated and incapable of handling the range of applications required. A better system to store the data securely and capable of accuracy will obviously enhance an election process. The Trustees have considered the matter and are making progress, albeit slowly, and it is highly unlikely that a new system and software and the appropriate training can be effected by the September elections.

## **10. ELECTION PROCESS**

- 10.1. **Application 6 August 2019:** The Applicants in their Application for Orders of 6 August, inter alia set out their concerns relating to the election process (see paragraph 4.2.above).<sup>52</sup>

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<sup>49</sup> William Allan Makea Affidavit dated 31 January 2020, para 39-41 & Willy Makea email to trustees dated 21 October 2020

<sup>50</sup> Erica Hanna email to William Makea dated 15 October

<sup>51</sup> William Makea email to Trustees dated 10 January 2020

<sup>52</sup> Application to Maori Land Court 6 August 2019

- 10.2. The Applicants also stated the Trustees, by the actions set out below, breached the Trust Deed in the voting process used during the 2016 Special Resolution
- (a) Ballot boxes (including in the form of Tupperware containers) were placed at huis promoted by the Trust as “consultation huis”, held in advance of the special general meeting.
  - (b) Trustees encouraged attendees at the consultation huis to place their votes in the ballot boxes available.
  - (c) Those ballot boxes were held and/or overseen by employees of the Trust.
  - (d) Votes were counted prior to the expiry of the date for the receipt of votes.
  - (e) Trustees were provided with “progress reports” on voting results in advance of the expiry of the date for the receipt of votes.
- 10.3. **Trustees’ Response, 25 October 2019:** The Trustees of the PNBST, in their reply of 25 October 2019, set out in paragraphs 33-47 their response. The Trustees do not address the specific concerns set out above but rather present from their perspective the process that is used for elections. And the bulk of the paragraphs relate to the roles and responsibilities of *electionnz.com*, the company engaged to conduct trustee elections and voting on special resolutions.
- 10.4. The Trustees provided *electionnz.com* with a full list of the membership and invited *electionnz.com* to make the necessary suppressions. Between 2014 and 2015, 1,786 members were GNA and accordingly were suppressed. These suppressions led to a reduction in the voter packs sent out.
- 10.5. Trustees asserted that eligible voter numbers between 2016 and 2019, climbed from 9,948 to 14,028. Trustees attribute the increase in numbers to the work done in 2019 to update dependent members to full voting members. More interestingly the Trustees decided to send packs to those registered as GNA!<sup>53</sup> This seems like an act of desperation to address the

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<sup>53</sup> Trustees PNBST Response dated 25 October 2019, para 33-47

issue of falling voter numbers in previous years, as I cannot see any reason why you would send packs to those GNA! It was an extra cost and the returns are unlikely to have matched the investment?

10.6. **Applicants Response 6 December 2019** The Applicants continued to raise concerns<sup>54</sup> reiterated two of the key concerns (a) and (b) they highlighted in their submission of 6 August 2019, and added two further matters (c) and (d) that:

- (a) Some members who had been previously registered had been advised by the Trust that they were no longer registered members.
- (b) Some members who had previously been registered failed to receive voting papers.
- (c) The number of election notices sent to Adult Members between 2014 and 2016 dropped significantly.
- (d) The Trustees having access to votes in order to suppress votes after the voting papers were sent out but before ElectionsNZ certified the results.

10.7. The Applicants' set out in detail the instances of suppressed votes. Furthermore they note that information from *electionnz.com* for elections held in 2014, 2015 and 2016: '...illustrates the significant impact the register issues are having on Taranaki Whānui members and the failure of the Trustees to address what must have been known issues'. Their points are summarised in the table below:

| Activity  | 2014 <sup>55</sup> | 2015 <sup>56</sup> | 2016 <sup>57</sup> |
|---|--------------------|--------------------|--------------------|
| Total members incl under 18 years   | 17,831             | 18,076             | 18,451             |
| Members deemed eligible to vote   | 11,398             | 9,754              | 9,948              |
| Deemed not eligible to vote – under 18 years  | 3,154              | 3,533              | 2,937              |
| Deemed not eligible to vote – deceased  | 343                | 370                | 418                |
| % of database suppressions relate largely to quality of information in register or for reasons unknown. | 16%                | 25%                | 28%                |

<sup>54</sup> Memo counsel for Applicants dated 6 December 2019, para 3.4. (a) – (d)

<sup>55</sup> Trustees PNBST Response dated 25 October, Appdx 6

<sup>56</sup> Trustees PNBST Response dated 25 October, Appdx 6

<sup>57</sup> Trustees PNBST Response dated 25 October, Appdx 6

|                                     |       |       |       |
|-------------------------------------|-------|-------|-------|
| 'Not verified in the original data' | 1,121 | 1,233 | 2,455 |
| 'No date of birth supplied'         | 1,348 | 1,137 |       |
| 'Gone no Address'                   | 165   | 1,786 | 2,151 |
| Deficient address details           |       | 543   | 411   |
| Suppression during election process | 24    | 23    | 49    |

10.8. The applicants noted a number of serious concerns arising from the Trustees' response, in particular, that:

- (a) *electionnz.com* indicating that a vast majority of the suppressions were conducted by the Trustees.<sup>58</sup>
- (e) Trustees had not provided any detail as to the criteria the Trustees applied for many of these suppressions.<sup>59</sup>
- (f) Trustees did not proactively address the reasons for the extensive suppressions being applied each year.
- (g) Trustees were aware of a number of systemic issues with the Register, which should have impacted the way in which they approached the elections.
- (h) Trustees knew that a large number of members were showing up as GNA even though their address was in fact up to date and accurate. Therefore, the wholesale suppression in 2016 of voting notices for over 2,100 members recorded, as GNA was plainly not appropriate. It likely disenfranchised members who were entitled to vote in the election'.

10.9. **William Makea Affidavit 31 January 2020:** William Makea again acknowledges '...the functions and processes at the end of 2016 was not well organised and a significant amount of work was required to ensure improvements were made.'<sup>60</sup> Notwithstanding the Trust's financial situation some progress was made. Staff were appointed and a database review was conducted. 'Between 2017 and the beginning of 2019, progress addressing the Members Register was made, but admittedly was not given top priority for a number of reasons including that the Trust's financial position remained somewhat constrained.'<sup>61</sup>

<sup>58</sup> *electionnz.com*, Letter dated 23 October 2019

<sup>59</sup> Applicants Memorandum dated 6 December 2019, paras 16 to 22.

<sup>60</sup> William Allan Makea Affidavit dated 31 January 2020, para 18

<sup>61</sup> William Allan Makea Affidavit dated 31 January 2020, para 21

- 10.10. Makea also observed that the priority to improve the significant issues bedevilling the register was less during 2017 and 2018 as ‘...in 2017 none of the Trustees were required to stand for re-election and in 2018 no election was required as the number of nominees was equal to the number of positions available.’<sup>62</sup>
- 10.11. With respect to the specific allegations set out by the Applicants relating to members being removed from the Register, Makea refutes the allegation. He states ‘During my employment with the Trust, I am not aware of any members being deregistered or removed from the Members Register.’ To address the concern management engaged an expert IT company, enSynergy to review the database. enSynergy reports ‘...we can conclude that no member record has been deleted from the database since 7 Jun-2014.’<sup>63</sup>
- 10.12. In response to the allegation that members did not receive their voting packs William Makea points out that to receive a voting pack the member must be ‘a verified member of Taranaki whanui; be over 18 years old (as verified by accurate date of birth); not be listed as “deceased” and having a full physical address or email address.’
- 10.13. For the purposes of the 2019 Trustee election the Trustees instructed *electionnz.com* to send voting packs to ‘...all members who were verified and over 18’ regardless of whether or not their contact details were confirmed, or if they were listed as GNA.’ *Electionnz.com* sent out 14,028 packs out of a total of 19,046 members in the database, having suppressed 194 members for a variety of reasons.<sup>64</sup>
- 10.14. William Makea states that the Applicants’ allegations that Trustees had access to and made suppressions when the votes were received and before the results were declared ‘...is false and also implausible.’ He

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<sup>62</sup> William Allan Makea Affidavit dated 31 January 2020, para 28-30

<sup>63</sup> Email Terry Xiao [enSynergy] to Willy Makea dated 14 May 2019

<sup>64</sup> William Allan Makea Affidavit dated 31 January 2020, para 76-77

further states that the whole process, once the voter registration list was handed to *electionnz.com* was in their hands ‘...from beginning to end and from distribution of the voting papers to tally and confirmation of the final vote numbers.’<sup>65</sup>

- 10.15. The *electionnz.com* Returning Officer, in a letter dated 23 January 2020, to the Chair of the PNBST, addresses the concern relating to ‘Trustees having access to votes in order to suppress votes after the voting papers were sent out, but before the Returning Officer certified the results and that suppressions were carried out by the Trustees not the Returning officer.’ The Returning Officer further noted: ‘As a matter of practice for all elections, no voting papers or indications off how electors have voted are referred back to clients by *electionnz.com*. An elector’s voter intention is confidential and is not shared with any other party by the Returning Officer.’<sup>66</sup>
- 10.16. Makea produced a table, which sets out the suppressions carried out by *electionnz.com* for each of years 2014, 2015 and 2018. The main difference in the totals of the table, occurs in the category GNA, ‘as these were not removed in 2014 but were removed in 2015 and 2016.’<sup>67</sup>
- 10.17. Makea’s evidence also addresses the allegation that ‘Between September 2014 and 2016 the number of election notices sent to adult Taranaki Whanui members dropped significantly.’<sup>68</sup> He points out that the deficiencies occurred when *electionnz.com* did not send packs to those GNA in 2014 but did so in 2015 and 2016.
- 10.18. Makea refutes the suggestion that the Trustees had ‘...access to votes and [were able to] suppress them after voting papers are sent out but before *electionNZ.com* certified the results.’ He reiterates the point

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<sup>65</sup> William Allan Makea Affidavit dated 31 January 2020, para 78-79

<sup>66</sup> *electionnz.com* letter to chair PNBST dated 23 January 2020

<sup>67</sup> William Allan Makea Affidavit dated 31 January 2020, para 81-82

<sup>68</sup> Applicants Memorandum dated 6 December 2019

that the process was in the hands of *electionnz.com* and Trustees had no way of interfering with the process.

10.19. Makea acknowledges the assertion that the 'Report does not identify policies that have been put in place, which comply with the Trust Deed's obligations.' However he reiterates earlier points regarding the state in which he and his colleagues found the procedures that '...there were no formal policies in place to ensure that the register was maintained in a condition that was up to date, accurate and complete as possible...' Nevertheless he does note that management is aware of the deficiencies and have a number of work streams underway to address the deficiencies including the lack of formal policies.<sup>69</sup>

10.20. For reasons he has set out in his affidavit he regards as 'untrue' the assertion by the Applicants that Trustees are not taking steps to resolve issues around the suppressions.<sup>70</sup>

10.21. **Memo Counsel for Applicants 14 February 2020.** The Applicants note 'The recent change in approach is welcomed. However, the Applicants remain concerned as to whether the steps that the Trustees are now taking will resolve and remedy these issues in the most efficient and appropriate manner. In particular the Applicants wish to ensure that the issues are resolved in advance of the upcoming trustee election in September 2020.'<sup>71</sup> But in 2019 packs were sent to all eligible electors regardless of whether or not their contact details were accurate or could be verified.

#### **Comment**

10.22. Elections and votes on special resolutions is where the 'rubber hits the road' for an entity. For the reasons outlined in this review the Trust was not able to deal effectively or efficiently with either of these events, as its database was woefully inadequate. But as the team from

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<sup>69</sup> William Allan Makea Affidavit dated 31 January 2020, para 85

<sup>70</sup> William Allan Makea Affidavit dated 31 January 2020, para 86

<sup>71</sup> Applicants Memorandum dated 14 February 2020, para 5-6

*electionnz.com* observed, in the early years of their association with the PNBST the database was well maintained and the integrity of the excellence of the database was a reflection on the competence of the administrator of the time.

10.23. As the years have advanced; the integrity of the data and other associated matters have regressed. Trustees and management have not shied away from the state of the database and the integrity of the data. They have argued consistently that they are making progress. However it is clear from the scale of the challenges facing management that this will be a significant task requiring focused effort and a major investment of resources to overcome.

10.24. I met with Warwick Lampp and Anthony Morton of *electionnz.com* to understand better their processes and procedures and to put to them a number of questions relating to the practice of suppressions. The conduct of elections by *electionsnz.com* is based on the Trust providing *electionsnz.com* with a list of voters. *electionnz.com*, unless otherwise instructed takes this list as a given. The company has been associated with the PNBST from 2008. During that period they have supervised 11 elections and votes on special resolutions.

10.25. I asked them about the integrity of the data and repeated an earlier observation that in the first few years of their association with PNBST the integrity of the data was very good and reflected the administrator at the time who was experienced and understood the need for accuracy of the database. Over the years the standard has deteriorated with the changing of staff. The current database has a number of flagged actions, which no longer have meaning, as it seems the administrators have either failed to brief incoming database administrators or the actions are no longer relevant.

10.26. Anthony Morton advised that one of the advantages of the PNBST relationship is that *electionsnz.com* have over the years flagged actions required or anomalies with the PNBST membership Register. This helps

them when it comes to checking the eligibility of electors who might have been flagged in previous elections.

- 10.27. I put to them the suggestion that a ‘...vast majority of suppressions were conducted by the Trustees?’ *electionnz.com* said that once the list of electors was handed to them by the Trustees then it was not possible for the Trustees to influence suppressions as the process was out of their hands. However, they did acknowledge that the Trust provides them with the database to be used and *electionnz.com* adopts its standard practice in reviewing those files.
- 10.28. In a letter dated 23 January 2020, *electionnz.com* clarifies the situation. ‘To clarify, any ‘suppression’ that we would carry out in an election year... would be to suppress elector records where address records were incomplete: we had a previous record of the address being out of date or; we had been advised that the member had since died or their original registration was incorrect. Most of these updates are applied prior to the start of the voting period so removal of votes usually isn’t required. These types of edits are carried out in conjunction with the trust staff not the trustees.’<sup>72</sup>
- 10.29. When I asked *electionnz.com* as to why it is that they sent packs to members GNA in 2019, they advised me that the client instructed them to do so. They also told me that a number of those with GNA had emails. On further discussion we considered the possibility that prior to an election that emails be sent to those registered as GNA to provide an address. It would seem sensible also, that after an election, where voter packs are returned, GNA that Trustees and management should follow up with emails to check the elector’s address. Unless practical steps like this are taken the situation is unlikely to change from election to election.
- 10.30. In respect of the allegations brought by the Applicants regarding the

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<sup>72</sup> *electionnz.com* letter to chairperson PNBST dated 23 January 2020

2016 Special Resolution I wrote to *electionnz.com* and sought their response to the complaints. Their explanations are set out in the paragraphs following:

- 10.31. The complaint about ballot boxes<sup>73</sup>: *electionnz.com* responded: ‘Given the significance of the major transaction being voted on, the Trust decided to follow the same practice used for Deed of Settlement (DOS) and Post Settlement Governance Entity (PSGE) voting process and undertook consultation hui in addition to the SGM. That included provision of vote issue and vote receipt (ballot box) options. We weren’t involved in the consultation process, other than to provide advice and standard operating procedures for handling votes. The form of the ballot box will vary depending on the number of hui to be held and the expected volume of votes to be received back. It is typically a cardboard box format, but in this case a plastic ballot box was used as they’re more robust.’<sup>74</sup>
- 10.32. The complaint about Trustees encouraging attendees at Hui to place their votes in the ballot boxes available<sup>75</sup>: *electionnz.com* responded: ‘Again, this follows the process used at DOS and PSGE consultation hui, where those attending the hui and wanting to vote at the hui then have to have a process for returning their votes i.e. a ballot box. Often (as in this case), there is not enough time before the close of voting to be confident that a postal vote will be returned on time, so attendees prefer to vote at the hui. Those attendees usually aren’t confident to vote online, or there are registration forms that they also need to return, so prefer to vote at the hui.’
- 10.33. The complaint about the ballot boxes being controlled by Trust<sup>76</sup> staff<sup>77</sup>: *electionnz.com*, responded: ‘Again, as per standard practice for DOS and PSGE consultation hui, they were overseen by Trust staff. I believe we engaged one of our own voter representatives to carry out

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<sup>73</sup> Application to Maori Land Court 6 August 2019, para 42 (a)

<sup>74</sup> *electionnz.com* email to independent reviewer 11 May 2020

<sup>75</sup> Application to Maori Land Court 6 August 2019, para 42 (b)

<sup>76</sup> *electionnz.com* email to independent reviewer 11 May 2020

<sup>77</sup> *electionnz.com* email to independent reviewer 11 May 2020

that function at the SGM, but I'd need access to hard copy records to confirm that and won't be in a position to do that until later in the week at the earliest. The Trust Deed includes a provision for Trust employees not to assist with Trustee election processing, but that restriction is not listed in their special resolution-processing schedule. The use of Trust staff to assist with the issue and processing of voting documents is quite common and is akin to the process used for local body elections where the staff involved, are typically local body employees. We did offer to attend these hui (for an appropriate fee), but the trust office decided to manage it in-house, which is common practice for AGMs and SGMs.<sup>78</sup>

- 10.34. The complaint that votes were counted prior to the expiry of the date for the receipt of votes.<sup>79</sup> *electionnz.com* responded: 'That is common practice for most private election voting processes and allows us to then send reminders to those that haven't voted and sort out other reconciliation issues as they arise instead of after voting has closed. Trustees were provided with "progress reports" on voting results in advance of the expiry of the date for the receipt of votes. Again, that is a relatively common requirement that we allow for resolution based voting processes, i.e. AGMs and SGMs. A progress result is typically released on a confidential basis to management only so they can prepare expected outputs depending on how the voting process eventuates. In this case, the progress results were then circulated to the Trustees without our knowledge at which point the confidentiality aspect was lost and other members became aware of them. We stopped releasing the progress reports as soon as we became aware they weren't being kept confidential.'<sup>80</sup>

## **11 SUMMARY OF FINDINGS**

- 11.1. The independent review of the PNBST's processes and procedures relates to the registration and election process set out in the Trust

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<sup>78</sup> Application to Maori Land Court 6 August 2019, para 42 (c)

<sup>79</sup> Application to Maori Land Court 6 August 2019, para 42 (d)

<sup>80</sup> *electionnz.com* email to independent reviewer 11 May 2020

Deed. At its root is the fundamental right of an iwi individual to register with their iwi in accordance with the provisions of the Trust Deed for that iwi. This entitles the individual to exercise to the fullest extent, the benefit of those rights, including participating in an election process to elect trustees or to take part in a vote on matters of significance, which requires a vote to be cast.

11.2. The focus of PNBST on these matters arises in part through the controversy surrounding aspects of the treaty settlement process and in particular the sale of land transferred to PNBST as a part of its treaty settlement process. In times of significant crisis when schisms divide hapu or iwi groups, the default position is to go to the rules. In this case the rules are the provisions set out in the Trust Deed, establishing PNBST, especially with regard to Appendix 1 of the Trust Deed, which deals with membership registration.

11.3. Essentially the nub of the current impasse is who can raise sufficient number of votes, to make their point of view prevail. As this requires an election, or a special resolution vote, the focus turns to eligibility of the electors. My review has found one side suggesting that votes have been suppressed and thus individuals have been deprived of their right to vote. And the other side saying no such thing has occurred or that there are good reasons why certain actions have taken place or not taken place.

11.4. From the outset one thing became quickly clear to me. Except for the earlier years, successive generations of Trustees and administrators, over the past nearly ten years have failed in their obligations, to give effect to the requirements of the Trust Deed. While I can understand the straightened financial circumstances of the time, or indeed the focus of Trustees on the highly charged environment they were operating in, it nevertheless remains a fact that the affairs of the Trust with respect to registration and the election process was and in part continues to be a mess.

- 11.5. Whichever side of the debate one sits on there are a number of obvious factors affecting the administration of the Members Register, which both parties acknowledge: firstly, the integrity of the data is suspect, secondly there is an absence of policies and thirdly the database is not fit for purpose.
- 11.6. It is fair to observe that perhaps the pressure of the Applicants and their demands for the Trustees to address the identified deficiencies has had a positive impact. Trustees have had to act expeditiously. And, as acknowledged by the Applicants, there has been progress. The appointment of Huia Puketapu to begin the task of updating the members' details was followed in July, with the appointment of two part-time data entry staff. In November 2019, they became full-time and were expected to complete their task in March 2020. Their task is not enviable, as they have to correct the poor work of their predecessors and at the same time cope with an antiquated IT system. Nevertheless they have made some progress.
- 11.7. Appendix 1 of the Trust Deed sets out the roles and responsibilities of the Whakapapa Committee. I have canvassed with some members of the committee, both past and present, the reasons for such a high number (2,572) of declined applications. Whether it is because of committee membership turnover or other reasons, I could not get a satisfactory answer from the members. I also found it illogical why the Trust did not keep a copy of papers returned to those applying for further information.
- 11.8. The loss of 2,572 potential members, raises questions about both the whakapapa process and the administration of this aspect of membership registration. As indicated earlier, a large iwi three times the size of PNBST has only declined 10 applicants over a period of five years. However, since management can only find 260 paper files and did not know where the other files were, it might be a mystery that can only be resolved by approaching those who have been declined and restarting the application process.

- 11.9. Since the later part of 2019, Management has currently been charged with the responsibility to address the integrity of the data as its first priority. Initially there was an effort to try and achieve resolution of the integrity of the data and upgrading the software at the same time. Trustees agreed to accord highest priority to the integrity of the data. In addressing this priority, Management selected matching the whakapapa paper records with the database, as the number one focus. Data entry personnel have been working for the past few months on 8,825 files, to upload all whakapapa information from the original application forms to the database.
- 11.10. Management is now confident that they have an alignment between the paper files and the database system. The work over the past few months in updating 8,825 files has, understandably, given them confidence they can competently tackle the other work streams. This piece of work gives me a degree of confidence that the outstanding tasks of updating and matching files to the database can be achieved. But it will take time as there are thousands of files and each one more than likely will require staff to contact and have a conversation/s with the individuals concerned. Moreover there is no quality assurance step in the process to ensure that the mistakes of the past are not continuing to be repeated.
- 11.11. Currently the Trust has 9139 members who have been recorded as GNA. This is a large number of “lost” potential voters. Again the solution to the challenge is not complex. But it does require dedicated staff to call individuals or whanau members who might help in reaching the member. Staff required for the role of updating and contacting members should have a wide network of contacts and know and be known by the members.
- 11.12. Another area where net new voters might be collected is amongst the 1.131 members, whose files have no date of birth. The check by Management, which found that these membership files showed no

date of birth in 2014, was yet another red flag that has been raised over the years. In effect we have potentially 1,131 voters that have been disenfranchised because no strategy or follow up action has been taken by Trustees, or Management to track down the members for their date of birth!

11.13. While the Trust Deed sets out the requirements for written policies the Trust acknowledged that it had none. Management has begun the process of drafting written policies to reflect the requirements of the Trust Deed. However, the experience of other iwi demonstrates that the absence of written policies has not affected their registration processes to the extent it has in this review. In my view this is as much to do with the heightened anxieties and tensions associated with property matters, especially Shelley Bay, which has driven critics of the process to demand an accountability to the fullest extent of the Trust Deed.

11.14 Aligned with the integrity of the data is the quality of the current software and IT platform. Two of four iwi I have approached indicate that they have had recurring problems with their software systems. The large iwi whose software system has been in place for the 14 years is in the process of reviewing that system for replacement. While it might be convenient to blame the technology for ones ills it is not for want of trying by management to modify the system over the past nearly 10 years. Trustees have acknowledged the deficiency and last year approved management exploring options for replacing the current system. The Trust has made the decisions to replace the current system and has budgeted for this replacement.

11.15. Applicants argued that Trustees suppressed an excessive number of members, which in turn denied voters their rights. My review of the use of the suppression mechanism does not find large cause for concern that a deliberate strategy of depriving voters of their rights is at play. Rather the suppressions that are occurring each election cycle, or on special resolutions, are a legacy of the known historical and

cumulative administrative deficiencies, the poor data integrity and the inadequate IT platform.

- 11.16. The Applicants were very concerned about the way in which voting for the Special resolution 2016 was conducted. I have set out *electionnz.com*' response (paragraphs 10.30-10.34). Except for the behaviour observed in paragraph 10.34, *electionnz.com* were satisfied that the actions carried out by the Trustees was not out of line with general practice. When they were advised that progress results were being provided to Trustees they stopped providing progress updates.
- 11.17. The September election process will soon be underway and the Trust will need to provide the Returning Officer on the 3 August, with a file of all the registered members. This does not leave PNBST with much time to try and release new eligible members from the work streams underway.
- 11.18. Some progress can be made by contract staff starting to tackle the 1,131 members whose files have no birth date and therefore will automatically be suppressed; the 2,572 declined membership applications (less the 260 files already in hand); and the 9139 members GNA. Given the labour intensive effort required for each file and the efforts to try and contact the individual it would be unrealistic to expect more than a handful of new eligible voters.
- 11.19. Applicants in their submission to the MLC of February 2020 still had doubts about whether the Trustees could effect the changes necessary before the September elections. On the basis of what I have seen and notwithstanding the good effort in aligning whakapapa files with the database, it is highly unlikely that the Applicants' 'wish to ensure that the issues are resolved in advance of the upcoming trustee election in September 2020'<sup>81</sup> can be achieved. Not through any recalcitrance on the part of the Trust but because of the sheer size and scale of the

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<sup>81</sup> Applicants Memorandum dated 14 February 2020, para 5

outstanding tasks, requiring a painstaking process of chasing down and interviewing thousands of individuals!

- 11.20. I began this review looking for complex reasons for why the PNBST finds itself and some of its members at loggerheads in the MLC. The sustained efforts by the Applicants to get answers from the Trustees eventually leading to a request to the MLC to appoint an independent reviewer, suggested a much deeper set of issues. In the end, simply, it came down to a failure on the part of successive administrations and Trustees to fulfil their obligations in accordance with their Trust Deed.
- 11.21. The consequences of this failure of duty of care is that some beneficiaries (and it could be thousands?) have not been able to exercise their right to cast a vote in an election for trustees or cast a vote for special resolutions. This does raise the question of why PNBST proposes to continue with the elections of trustees in September when the database is still flawed and many members will not have the opportunity to vote.
- 11.22. Trustees in their response to my draft suggested that the elections be postponed for six months to enable the current Trustees to resolve the data integrity matters, and install the new software system. This idea does resonate with me and it is some thing perhaps the Court might consider. It does not make sense to me if the main thrust of the Applicants' review succeeds in showing that that generations of Trustees and administrators were delinquent in their duties and obligations; if a September election of trustees takes place with the same range of deficiencies still in place!
- 11.23. On the eve of the completion of this review, counsel for the Trustees (copied to the counsel for the Applicants) sent me further details of Trustees' efforts to deal with the integrity of the data. Again I see a significant effort being made to address the concerns of the Applicants. The progress that is being made as a consequence of staff now being able to access their physical records is helpful and suggests

that Trustees and management can significantly reduce the number of anomalies in the database.

## **12. CONCLUSIONS**

- 12.1. Both parties have agreed there are deficiencies in data integrity, lack of written policies and an inadequate IT database system. The review confirms and to an extent quantifies the deficiencies in terms of the outstanding issues.
- 12.2. To hold an election in September in 4 months time when the voter register will need to be with *electionnz.com* by early June 2020, will compound rather than exacerbate the current state of the database. The level of frustration might be slightly mitigated by efforts in the next short while, to increase the numbers of voters eligible to cast a vote. However, it is more than likely to add fuel to the fire, especially when potentially large numbers of voters will be suppressed as in recent elections, in some cases with a lack of logical reason. The large number of GNA (9,139) alone would ensure a very poor response and more than likely continue the current instability between Trustees and some of their members.
- 12.3. It will be extraordinarily difficult to unwind the history of the past ten years. There is an understandable wish by some to sheet home the blame and hold past/present Trustees to account. The Applicants pressed home hard on this point and the evidence shows there is merit in their criticisms. Trustees have mounted a muted response but must also know that the current situation is not tenable even though it is not of their own making.
- 12.4. In my view the blame game has limited utility. There was an understandable request to try and determine when the 'rot' started (paragraph 10.25). And as recently as the 21<sup>st</sup> of May I received another example of 'lost votes' and actions taken by past

administrators, which does not make sense.<sup>82</sup> Frankly we have more than enough evidence to demonstrate the deficiencies in the system.

- 12.5. To unwind the past mistakes and to try and identify the culprits will require a lot more time and effort to interview individuals and to review minutes of meetings and resolutions. And to what purpose? What is more important is to look forward and to collectively chart a way forward that is in the best interests of the beneficiaries.
- 12.6. It is possible for this generation of Trustees to reset the foundations upon which to build a strong and credible PNBST. But it will require the Applicants and the Trustees to agree to a work plan to address and rectify the deficiencies over the next few months. This will require both parties to jointly agree an approach to resolve the deficiencies. To give time to address these matters the parties will also need to approach the MLC to seek a postponement of the elections for an agreed period.
- 12.7. The Trustees have suggested a period of six months to rectify the deficiencies. Since the Covid level has dropped to level 2, management have been able to return physically to the office. Counsel for the Trustees has forwarded to me, and counsel for the Applicants an outline proposal. This illustrates how some aspects of the larger problem might be tackled. There is merit in their proposal and is worthy of further consideration. My opinion is that rectification is not a complex project – rather it will be staff-intensive to make contact with members of the PNBST and check details. It might need the Trustees to seek further resources: both internally and externally to bring the requisite level of expertise to the challenges.
- 12.8. If both Trustees and Applicants can agree to a work programme and the MLC agrees to defer the September elections the likely outcome in terms of significantly reduced suppressions is a worthy objective. There is still an element of give and take between the parties and this

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<sup>82</sup> Email thread Rachel Pinny to Reviewer dated 20 May 2020

process would need to be belted and braced by perhaps both parties considering the appointment of an independent Custodian of the Register, who would oversee the work required to fix the mess. If this is too strong a measure, then perhaps a facilitated meeting as suggested by counsel for the Trustees might achieve the same result? Either of these mechanisms could give a level of comfort for the Applicants and would also assure the MLC that the identified deficiencies are being properly fixed to enable eligible beneficiaries to cast their vote.

- 12.9. Finally, I want to commend the parties to this dispute for the open and constructive way they have participated in this process. I also want to commend the various individuals and groups who gave of their time to assist. The broader political and commercial challenges that have beset the PNBST might not be resolved overnight; but at the very least there should be a unanimity of focus to deal with that which is resolvable: the current administrative issues of: data integrity, written policies and the IT platform!

A handwritten signature in black ink, appearing to read 'Wira Gardiner', with a long horizontal line extending to the right.

Wira Gardiner  
Independent Reviewer