

Mau Whenua – Q & A

What are the proceedings Mau Whenua has filed in the High Court?

Mau Whenua has filed proceedings in the High Court seeking orders to bring three blocks of land located at Shelly Bay formerly owned by the Port Nicholson Block Settlement Trust (**PNBST**) back into iwi ownership.

In early July 2017 Tai-Kuru Limited Partnership (**TKLP**), an entity controlled by the trustees of the PNBST (the **Trustees**) owned four blocks of land located at Shelly Bay (the **Shelly Bay Properties**). In July 2017 TKLP sold three of those blocks of land to Shelly Bay Investments Limited (**SBIL**) a company controlled by Mr Ian Cassels and granted SBIL or another entity controlled by Mr Cassels an option to purchase the fourth block of land.

Mau Whenua considers that these transactions were a breach of trust by the Trustees and that SBIL knew or ought to have known it was acquiring trust property in breach of trust. Mau Whenua argues that in these circumstances SBIL should not be allowed to retain ownership of the Shelly Bay Properties and that those properties should be returned to iwi ownership.

Why were these transactions a breach of trust?

The PNBST Trust Deed requires a major transaction – defined as including a transaction involving the sale or disposition of over half of the value of the Trust Fund – to be approved by a special resolution of the PNBST members.

In February 2016 the Trustees proposed selling the Shelly Bay Properties to The Wellington Company Limited, another company controlled by Mr Ian Cassels, for \$11.4 million. The Trustees acknowledged that this proposed sale was a major transaction, as it involved a sale of over half of the value of the Trust Fund, and therefore required approval of 75% of PNBST's members.

The Trustees advanced a special resolution to approve that sale. That special resolution failed with only 50% of voting members being in favour – far from the required 75%.

Following the failed special resolution, the Trustees started publicly discussing a joint venture with a company controlled by Mr Cassels to develop the land at Shelly Bay. Despite requests, the Trustees refused to provide any details on the joint venture arrangement to its members or kaumātua.

In October 2016 members passed a resolution at the PNBST Annual General Meeting that the Trustees stop all activity regarding Shelly Bay and reports back to its members to let them decide what happens with the Shelly Bay Properties.

Despite this, in July 2017 the Trustees entered into agreements with SBIL to sell three blocks of land at Shelly Bay and grant an option to SBIL or another entity controlled by Mr Cassels to purchase the fourth block of land.

The Trustees did not advise its members of these sales. While the Trustees publicly discussed a joint venture with SBIL to develop Shelly Bay, it was understood until recently that the four blocks of land comprising the Shelly Bay Properties were still owned by iwi.

Who are the defendants to the High Court proceedings?

There are, essentially, two sets of defendants to the High Court proceedings:

- (a) the current trustees of the PNBST and those former trustees who were trustees at the time of the sale of the Shelly Bay Properties to SBIL; and