

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE TAITOKERAU**

*In the Māori Land Court of New Zealand
Taitokerau District*

AP-20250000004764

WEHENGĀ
Under

Sections 215, 219, 220, 222, Te Ture Whenua
Māori Act 1993

MŌ TE TAKE
In the matter of

Motatau No 1C No 3F

NĀ
By

NORMA (KUI) MERE CROFT AND PAMELA
ANNE NGOHE SIMON
Ngā kaitono
Applicants

Kōtitanga: 17 July 2026, 319 Taitokerau MB 196-227
Hearing (Heard at Kaikohe)

Whakataunga: 8 September 2026
Judgment date

TE WHAKATAUNGA A KAIWHAKAWĀ W W ISAAC
Judgment of Judge W W Isaac

Hei tīmatanga kōrero*Introduction*

[1] This application concerns the proposed constitution of the Pukatea Ahu Whenua Trust (the proposed Trust) over Motatau No 1C No 3F (Pukatea, as it is known to the whānau), pursuant to ss 215 and 219 of Te Ture Whenua Māori Act 1993 (the Act). The Applicants also seek the appointment of Johanne Te Ao Kapurangi Te Rangikaheke Whillis, Hera Winnie Arani Waetford-Naera, Seaton Smith, Norma (Kui) Mere Croft and Pamela-Anne Ngohe-Simon as responsible trustees under s 222 of the Act, together with an order vesting the land in those trustees under s 220 of the Act.

[2] Pukatea comprises approximately 61.3098 hectares situated within the Far North District. There are 42 recorded owners, of whom 11 are deceased. The proposed Trust will administer all of Pukatea.

[3] A number of notices have been filed in support of the application to constitute the Trust, both from owners and beneficiaries of owners. Additionally, the Court has received a number of notices objecting to the application, also from owners and beneficiaries of owners.

Ko ngā take*Issues*

[4] The issues requiring determination are:

- (a) whether the statutory requirements for constituting an ahu whenua trust under ss 215 and 219 of the Act have been satisfied; and
- (b) whether the proposed trustees should be appointed as responsible trustees under s 222.

Kōrero whānui*Background**Whānau hui to constitute the proposed ahu whenua trust*

[5] Three hui were held in relation to the proposal to constitute an ahu whenua trust over Pukatea.

[6] The first hui was held on 15 December 2024 to introduce the proposal and present a draft trust deed. 28 people attended. No trustees were elected, and no formal resolutions were passed.

[7] A second hui was held on 23 February 2025. 38 owners/beneficiaries attended and discussed the proposed trust, the draft trust deed, and the proposed management structure. It was agreed that each uri would convene its own whānau hui to select representatives for appointment as trustees. The draft trust deed was adopted without objection by those present.

[8] A third hui was held on 30 March 2025. At that hui, the representatives selected through the respective whānau processes were announced. No further voting took place because each whānau had already undertaken its own process for selecting its representative. 31 owner-beneficiaries attended.

[9] Following the hui on 23 February 2025, the respective uri undertook separate processes to select their proposed representatives. At the hui on 30 March 2025, five representatives were announced:

- (a) Hera Waetford and Johanne Whillis for the Iro Mau Mangu Waetford whānau;
- (b) Pamela-Anne Ngohe-Simon for the Maraea Mau Mangu Waa whānau;
- (c) Kui Croft for the Tahi Mau Mangu Croft whānau; and
- (d) Seaton Smith for the Hipingaro Mau Mangu Croft whānau.

[10] Pamela-Anne Ngohe-Simon, Kui Croft and Seaton Smith had been selected at separate whānau hui held during March 2025, by majority or unanimous vote. The Court record notes that no minutes or notice had been provided in respect of the process by which Hera Waetford and Johanne Whillis were selected as representatives of the Iro Mau Mangu Waetford whānau.

[11] Each of the three hui was advertised in advance by newspaper advertisement in the New Zealand Herald.

Support for and opposition to the application

[12] When the application was initially filed, 21 written consents accompanied it, 12 of which were from current owners. A further 39 consents were filed shortly before the hearing, although only three of those were from current owners, with the remainder being beneficiaries. By the time of the hearing, eight owner consents had subsequently been withdrawn. The majority consent previously recorded for the Hipi rāua ko Mere Croft Whānau Trust was also withdrawn.

[13] The numerical summaries in the Court record do not produce a consistent total of remaining owner consents. I do not therefore rely on an exact number. It is clear, however, that some current owners continued to support the application. 21 notices of intention to appear in opposition had been filed, 10 by current owners and the remainder by beneficiaries of owners.

Kōrerorero ā ngā Kaitono me ngā kaitautoko*Position of the Applicants and supporters*

[14] The Applicants seek the constitution of the Pukatea Ahu Whenua Trust to provide a formal governance structure for the administration and management of Pukatea.

[15] Ms Ngohe-Simon submits that the present informal arrangements have resulted in longstanding dysfunction, with some whānau excluded from access to the whenua and participation in decisions concerning it. She says that a relatively small group of whānau members have exercised de facto control over Pukatea, while other ownership lines and younger generations have experienced difficulty accessing the whenua and participating in decisions concerning it.

[16] The Applicants say the proposed Trust would provide a shared governance structure through which the different whānau groups can participate in the management of the whenua for present and future generations.

[17] Ms Ngohe-Simon also raises concerns about the existing management arrangements. She refers to grazing arrangements said to have been entered into by a person who was not a registered owner, associated payments which she says were not declared, audited or

distributed to the owners, and a booking system requiring a cash bond to be paid into a private account. She also raises concerns about the condition, safety and insurability of the homestead. The Applicants rely on those matters as demonstrating the need for formal and transparent governance of Pukatea. In practical terms, the applicants say that income and benefits derived from the land have flowed to only some whānau without transparent accounting, while other whānau have been excluded from its use and management. They rely on those matters as demonstrating the need for formal, shared and accountable governance.

[18] As to the level of support, Ms Ngohe-Simon submits that this cannot be assessed simply by counting the individual registered owners recorded as supporting or opposing the application. She relies also on support expressed by beneficiaries and whānau trusts and says that, for some whānau, one person has been authorised in accordance with their tikanga to convey the position of the wider whānau. She characterised the support as including whānau interests representing three of the five original shares, together with some support also within the remaining whānau lines.

[19] The Applicants dispute the objections concerning consultation and trustee selection. Ms Ngohe-Simon says the proposed trust deed was released on 8 October 2024 and that, after concerns were raised that some whānau did not understand it, the period for consideration was extended. She also says a whānau member had agreed to provide assistance to those requiring it. As to trustee selection, she says the process was designed so that the respective whānau groups selected their own representatives and each had a voice in the proposed governance structure.

Supporters' comments

[20] The Court also heard from Hera Waetford-Naera, John Patrick Marsh, Lester White and Jodie Owen in support of the application. Recurring themes in their evidence were greater whānau involvement in Pukatea, the need for an enduring management structure, and responsibility to future generations.

[21] Ms Naera said her whānau supported the trust so that they could become involved in the future of the whenua. She referred to her father having previously been denied that

opportunity and his wish that the next generation take responsibility for moving the whenua forward for their children and future generations. Mr Marsh similarly emphasised that his support was not for his own benefit, but for those who would come after him. He also identified his whakapapa through Maraea and said he wished to speak for his father.

[22] Mr White said he spoke with the approval of his siblings and supported putting in place a management structure that would survive beyond their lifetimes. He expressly acknowledged Ms Aldom and her whānau for their past care of Pukatea and said he did not intend to say anything negative or derogatory about those who had managed the whenua in the past. In his view, the conflict between the whānau was a matter they could resolve amongst themselves; what was required was a legal structure to support them in moving forward together. Mr White later clarified that he and each of his siblings were owners and that he represented them at the hearing.

[23] Ms Owen endorsed Mr White's comments. She spoke of her mother's connection to and love for Pukatea, acknowledged the care Ms Aldom and her whānau had provided to the whenua, and considered it was time for the next generation to move Pukatea forward as taonga tuku iho for their mokopuna.

Kōrero ā ngā kaiwhakahē *Position of the objectors*

[24] As detailed above, twenty-one notices of intention to appear in opposition to the application were received by the Court prior to hearing. At the hearing, the Court heard from Miri-Mae Aldom, Mary Leanne Croft-Briggs, Roy Marsh, Lidia Croft, Ferlin Marsh and Tiho Croft in opposition to the application. Several of those who spoke had initially supported the establishment of an ahu whenua trust, or accepted that the concept could be beneficial, but said their position had changed as the present proposal progressed. Recurring concerns included the pace of the process, communication and explanation of the proposal, the proposed governance arrangements, and confidence in some of the proposed trustees.

[25] Ms Aldom explained that she initially supported establishing a trust after people had occupied Pukatea without permission. She understood a trust would help prevent that occurring again. She said that, as the proposal progressed, matters moved too quickly, she did not understand what was contained in the proposed trust deed and it had not been

adequately explained to her. She also felt that she and others were not heard or acknowledged for their work as kaitiaki of Pukatea over the preceding 30 years. When asked whether the reason that had originally caused her to support a trust remained, Ms Aldom said that it did. She also agreed that her concerns included the way the application had been organised and feeling that she had not been acknowledged or respected, while adding that there were further issues.

[26] Ms Croft-Briggs raised more specific concerns about the proposed governance arrangements. She said the Hipi rāua ko Mere Croft Whānau Trust opposed the application and disputed whether the applicants had accurately represented the support of that trust. Although she had initially considered an ahu whenua trust beneficial, she withdrew her support because of concerns about the conduct of proposed trustees, the adequacy of the proposed trust order and safeguards for beneficial owners, and whether the governance arrangements would fairly represent the different ownership groups. In particular, she objected to the process used by her whānau branch to select its proposed trustee, which she considered gave disproportionate influence to branches with larger numbers of beneficiaries rather than reflecting the wishes of owners and shareholders.

[27] Ms Lidia Croft similarly said she had initially supported the proposal but came to oppose it because she considered the process had progressed too quickly and without sufficient explanation or communication. She said members of the older generation had felt left behind and had not understood aspects of what was being proposed. Her concerns ultimately extended to a lack of trust in the proposed representatives and the effect the process had had on relationships within the whānau.

[28] Mr Ferlin Marsh had also initially supported the establishment of an ahu whenua trust but withdrew that support following later hui. His concerns related to the manner in which the proposal had been advanced, the treatment of senior whānau members, his lack of confidence in his proposed representative, and the potential for proposed developments to alter the character of Pukatea as a historic family homestead. He nevertheless accepted that an ahu whenua trust could provide an additional layer of protection for the property.

[29] Mr Roy Marsh and Mr Tiho Croft also opposed the application. Mr Marsh acknowledged that the concept of an ahu whenua trust appeared plausible, but described his

opposition as largely emotional and arising from his support for Ms Aldom and concerns about Ms Ngohe-Simon's integrity. Mr Croft expressed a lack of trust in the trustees proposed to represent his whānau and considered that the process had failed to respect senior members of the whānau.

[30] The Court also heard from a non-owner who appeared as a support person for members of the whānau. She raised concerns about the rates for Pukatea, saying that responsibility for the rates had been transferred to the proposed trust or a proposed representative before the proposed Trust had been constituted, without the knowledge of the owners or the previous ratepayer.

Te ture

The law

[31] Section 215(1) of the Act authorises the Court to constitution an ahu whenua trust in respect of Māori land or General land owned by Māori. Under s 215(2), the Court may do so where it is satisfied that the constitution of the trust would promote and facilitate the use and administration of the land in the interests of the persons beneficially entitled to it.¹

[32] An application must relate to all beneficial interests in the land. Under s 215(4) of the Act, the Court must not grant the application unless satisfied that the owners have had sufficient notice of the application and sufficient opportunity to discuss and consider it, and that there is no meritorious objection among the owners, having regard to the nature and importance of the matter.

[33] Rules 12.1 and 12.4 of the Māori Land Court Rules 2011 support those requirements. Among other matters, an application must state its grounds, identify the proposed trustees and the process used to select them, and be accompanied by the proposed trustees' consents, information about notice and consultation, the minutes and attendance record of any meeting approving the proposal, and a list of those who opposed or objected to the proposed formation of the trust. Those who opposed the proposal must also be notified of the hearing.²

¹ *The Trustees of the Pukeroa Oruawhata Trust v Mitchell* [2008] NZCA 518 at [3].

² Māori Land Court Rules 2011, rr 12.1 and 12.4.

[34] In *Far North District Council – Okahu 3B2B2*,³ the Court held that the requirements in s 215(4) are mandatory and that there is no express owner-support threshold. Nevertheless, the wishes of the owners remain important under s 17 of the Act. There must be some owner support, and support and opposition are assessed by reference to both the number of participating owners and the size of their interests. Strictly, living owners or their representatives express the owners' views as of right, although the views of prospective successors may be noted.⁴

[35] That approach was adopted in *Napia – Waihou A No 2A No 1*.⁵ The absence of a numerical threshold means that a vote count is not determinative.⁶ The Court's primary inquiry under s 215(4)(b) remains whether an objection is meritorious, assessed in light of the nature and importance of the proposal and the circumstances of the land and its owners.⁷

[36] Section 219(1) requires the Court, by order, to set out the terms of any trust constituted under Part 12 of the Act. Section 220 permits the Court, on constituting a trust, to vest the land and other trust assets in the persons appointed as trustees.

[37] When deciding whether to appoint a trustee, s 222(2) of the Act requires the Court to have regard to that person's ability, experience and knowledge. The Court must not make an appointment unless satisfied that it would be broadly acceptable to the beneficiaries. Section 222(3) also requires the proposed trustee to consent to appointment. Section 222(5) requires at least one responsible trustee for every trust constituted under Part 12.

[38] In *Clarke v Karaitiana*,⁸ the Court of Appeal held that s 222(2) is the touchstone. The Court is not bound by the outcome of an election and may consider matters such as conflicts of interest and the need for an appropriate spread of skills. It must, however, ordinarily give substantial weight to the owners' views, and meeting procedures should be designed to secure the widest possible input from them.⁹

³ *Far North District Council – Okahu 3B2B2* (2014) 91 Taitokerau MB 284 (91 TTK 284).

⁴ At [73]–[77].

⁵ *Napia – Waihou A No 2A No 1* (2015) 97 Taitokerau MB 212 (97 TTK 212).

⁶ At [23]–[24].

⁷ At [42], [50] and [64].

⁸ *Clarke v Karaitiana* [2011] NZCA 154, [2011] NZAR 370.

⁹ At [51]–[53].

[39] In *Mahoney*,¹⁰ the Māori Appellate Court upheld a finding that a flawed nomination process could not be relied on to appoint permanent trustees. It also confirmed that ability and experience, evidence supporting allegations made against a nominee, and broad acceptability are distinct matters requiring consideration under s 222(2).¹¹

Kōrerorero

Discussion

Constitution of the Trust

[40] The constitution of the Trust and the appointment of its trustees must be considered separately. An objection which does not justify refusing to establish a formal governance structure may nevertheless be relevant to whether a particular person should be appointed as a trustee.

[41] The application was brought because the Applicants say the existing informal arrangements have allowed a small group to control access to and decisions about Pukatea. They allege that grazing income and booking payments have not been transparently accounted for or distributed, that responsibility for rates and administration has been unclear, and that other ownership lines and younger whānau members have not had a meaningful voice. These concerns expressed by owners demonstrate the practical need for a transparent and accountable governance structure which is fair to all owners.

[42] Upon hearing from owners both in favour and opposed to the application, I am satisfied that establishing an ahu whenua trust would promote and facilitate the use and administration of Pukatea in the interests of its beneficial owners. The land has 42 recorded owners, 11 of whom are deceased. The evidence discloses uncertainty and disagreement concerning access, responsibility for rates, administration of the homestead, grazing income, booking payments, health and safety, and the participation of different ownership lines in decision-making. A formal trust would identify the persons legally responsible for those matters and provide an accountable structure for their administration.

¹⁰ *Mahoney v Trustees of the Nicholas George Te Paa Whānau Trust – Okahu 1 and other blocks* [2015] Māori Appellate Court MB 417 (2015 APPEAL 417).

¹¹ At [17]–[21].

[43] I am also satisfied that the owners had sufficient notice and opportunity to discuss and consider the proposal. Three advertised hui were held between December 2024 and March 2025. The proposal and draft trust deed were considered at those hui, and the deed was adopted without objection by those present at the February hui. The application was not heard until July 2026. The volume of consents, notices of opposition and participation at the hearing further demonstrates that the proposal was widely known. The fact that some owners considered that their views were not adequately heard does not mean that they lacked notice or an opportunity to participate.

[44] There is some support for the proposal among current owners. Ms Ngohe-Simon also described support across whānau interests representing three of the five original shares. The Court record contains inconsistent numerical summaries of the remaining owner consents, and I have therefore not treated any precise count as decisive. Consistently with s 215 of the Act and the authorities, I have considered the nature and substance of the objections, as well as the support and opposition by number and interest.

[45] Most of the objectors who spoke accepted that an ahu whenua trust could benefit Pukatea, or had initially supported establishing one. Ms Aldom confirmed that the reason which led her to support a trust remained. Ms Croft-Briggs accepted the idea could be beneficial. Mr Marsh described the proposal as plausible, while Ms Croft and Mr Ferlin Marsh had also initially supported it. Mr Ferlin Marsh accepted that a trust could provide an additional layer of protection for the property.

[46] Their present objections principally concern the speed and manner of the process, a perceived failure to explain aspects of the proposal, the treatment of senior whānau members, the selection and conduct of proposed trustees, and longstanding interpersonal conflict. Those concerns are sincerely held. They do not, however, demonstrate that formal governance would be contrary to the interests of the land or its owners, or that the establishment of a governance body is not supported by the overall ownership.

[47] To the extent that allegations of conflicts of interest, inappropriate conduct or premature actions were raised, including the alteration of rating arrangements before the Trust existed, those matters are more directly relevant to the appointment of trustees and the future management of conflicts. They do not undermine the need for a formal structure.

Indeed, the existing uncertainty over rates, income, administration and access reinforces the benefit of accountable governance.

[48] I therefore find that there is no meritorious objection to the constitution of the Trust. I am satisfied that the requirements of s 215 are met and I therefore grant the application to constitute the ahu whenua trust.

Appointment of trustees

[49] Each of the five nominees has signed a consent to appointment. Trustee training certificates and curricula vitae were provided for Ms Ngohe-Simon, Ms Croft and Ms Smith but not for Ms Waetford-Naera or Ms Whillis. The Court record also contains no minutes or notice concerning the process by which Ms Waetford-Naera and Ms Whillis were selected.

[50] The hearing disclosed specific objections to several nominees and disagreement about whether the selection processes reflected the wishes of the owners. Those objections do not establish misconduct, and I make no such finding. They are nevertheless relevant to broad acceptability. The whānau-based nomination process is evidence of support within particular branches, but in the present circumstances it does not provide a sufficiently clear basis for me to be satisfied that each proposed appointment would be broadly acceptable to the beneficiaries as a whole.

[51] The incomplete information about the selection of two nominees and about their ability, experience and knowledge presents a further difficulty. In relation to the other nominees, the disputed voting process and the concerns expressed at the hearing require a clearer and more inclusive record of the owners' views.

[52] As a result, I adjourn the application for the appointment of trustees on the following basis:

- (a) A meeting of the owners is to be called by the Court and chaired by an officer of the Court;
- (b) The meeting is to determine the number of trustees for this trust and who those trustees should be;
- (c) If there are more trustees nominated than required a vote is to be held.

Whakataunga

Decision

[53] As set out above, the application to establish the ahu whenua trust is granted. In relation to the appointment of trustees this part of the application is adjourned to a time to be set by the Registrar after the process set out in paragraph [52] above has been completed.

I whakapuaki i te 4.00 pm i Turanganui a Kiwa, i te waru o ngā rā o Hepetema i te tau 2026.
Pronounced at 4.00 pm in Gisborne on this 8th day of September 2026.

W W Isaac
JUDGE