

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TĀKITIMU***In the Māori Land Court of New Zealand
Tākitimu District***AP-20250000001566****AP-20240000010196****WEHENGĀ**
*Under*Sections 43, 214, 219, 220 and 222, Te Ture
Whenua Māori Act 1993**MŌ TE TAKE**
In the matter of

Lynnette Te Maari Whata Whānau Trust

I WAENGA I A
*Between***LYNNETTE TE MAARI WHATA**
Te kaitono
*Applicant***ME**
*And***CUSHLA KERR AND REON HUNE KERR**
Ngā kaiurupare
*Respondents***Kōtitanga:**
*Hearing*5 December 2024, 327 Waiariki MB 199-206
15 May 2025, 337 Waiariki MB 157
4 September 2025, 123 Tākitimu MB 250-272
4 December 2025, 126 Tākitimu MB 114-121
17 March 2026, 128 Tākitimu MB 278-304
(Heard at Masterton)**Whakataunga:**
Judgment date

2 June 2026

TE WHAKATAUNGA A KAIWHAKAWĀ D H STONE
Judgment of Judge D H Stone

Hei tīmatanga kōrero*Introduction*

[1] Lynette Whata applied to establish a whānau trust over her Māori land interests for the benefit of her husband, Brian Whata, and three of her grandchildren. Her children, Reon Kerr and Cushla Kerr, opposed this step and sought to be included as beneficiaries of the whānau trust. Following mediation and various Court hearings, Lynette now wishes to establish the whānau trust for all of her children and grandchildren. Accordingly, the whānau trust can now be established.

Whakarāpopototanga*Summary*

[2] The Lynette Te Maari Whata Whānau Trust is established. The beneficiaries of the trust are Lynette and all of Lynette's descendants. Lynette and Levi Kerr are appointed as trustees. Levi's appointment is conditional on him undertaking trustee training. All orders are conditional on Lynette confirming that she still wishes to establish the whānau trust.

Kōrero whānui*Background*

[3] Lynette's initial application to establish a whānau trust over her Māori land interests for the benefit of Brian and three of her grandchildren was granted on 5 December 2024.¹ The terms of the approved whānau trust order expressly excluded Lynette's children as beneficiaries. Lynette's children are Reon Kerr and Cushla Kerr. The whānau trust order also only named some of Lynette's mokopuna as beneficiaries, being Levi Kerr, Cash Kerr and Asha Kerr. Lynette, Brian Whata and Levi Kerr were appointed as trustees.

[4] Lynette's children subsequently sought a rehearing of the application because they were not informed of the initial hearing and opposed the application. On 15 May 2025, a rehearing was granted.² The rehearing was adjourned to the Tākitimu district.

[5] I presided over the rehearing on 4 September 2025.³ Lynette was represented by counsel. Unfortunately, Lynette and her counsel had not been provided with all of the

¹ 327 Waiariki MB 199-206 (327 WAR 199-206).

² 337 Waiariki MB 157 (337 WAR 157).

³ 123 Tākitimu MB 250-272 (123 TKT 250-272).

evidence that had been filed by the respondents. However, the evidence of Nelson Francis Rangi had been circulated, so he presented his evidence and was questioned on it by counsel for the applicant and the Court. Mr Rangi raised tikanga issues. I considered that it was important for Lynette to file her own tikanga evidence, should she wish to do so. The parties also expressed a preparedness at that hearing to enter mediation. I therefore adjourned the application to December 2025 and set down a timetable for the filing of further evidence.

[6] Following the 2 September 2025 hearing, the parties confirmed their consent to mediation. On 9 September 2025, I therefore referred the application to mediation.⁴ Subsequently, the parties indicated that they wished to proceed to a court hearing.

[7] As scheduled, the application was next heard on 4 December 2025.⁵ Again, some of the evidence had not been served prior to this hearing. In addition, an unexpected whānau event meant that some of the parties were unable to attend this hearing. I again adjourned the application.

[8] The application was finally heard on 17 March 2026. The evidence was presented and tested at this hearing. Jenishavorne Waipuka gave oral evidence on tikanga. Her evidence was not filed in writing before the hearing. I therefore provided Lynette with an opportunity to file written questions or reply evidence (on tikanga) following the hearing. No questions or evidence was subsequently filed.

[9] At this final hearing, Lynette indicated that she had never intended to exclude her children as beneficiaries of the whānau trust. I explored this with her. At the conclusion of this discussion, the transcript of the hearing records the following exchange:

The Court: Ka pai, I think that is a helpful discussion, Lynette. Okay, so that is the evidence done, the only additional piece of evidence that potentially could come forward from now on is if Lynette wishes to file anything that responds to Jenishavorne's tikanga evidence, just because Lynette has only heard that today and has not had a chance to respond to it. Lynette may choose not to.

⁴ 122 Tākitimu MB 224-225 (122 TKT 224-225).

⁵ 126 Tākitimu MB 114-121 (126 TKT 114-121).

But where I think we have landed in terms of that discussion with Lynette is, Lynette is prepared to establish the whānau trust on the terms that she and I discussed, that the beneficiaries are all of her descendants, so that would capture Reon and Cushla as beneficiaries. She is saying that she would not want either of you to be trustees of that whānau trust, but that would not prevent you from being elected as trustees of trusts where the interests are held, this is just the whānau trust. That there would be a particular purpose of the trust to provide educational support to the beneficiaries and that is not necessarily limited to the moko, as Lynette said if Reon or Cushla wish to further their education, then they could apply to the trust for support in the same way that the moko can.

But that would be a particular focus of the whānau trust and finally, to be a trustee of this whānau trust you must have whakapapa to the blocks that the whānau trust manages, well, blocks that the whānau trust holds. Have I misrepresented any of that, Lynette? I think I have been accurate in what you have said.

L Whata: No, Your Honour.

The Court: Thank you.

L Whata: You understand clearly where I'm coming from. Thank you.

The Court: Ka pai.

L Whata: Ngā mihi

Ngā take

Issues

[10] The primary issue in these proceedings had been whether Lynette, as a matter of tikanga, could exclude her children as beneficiaries of the proposed whānau trust. Much of the evidence focussed on the relationship between Lynette and her children, the association her children have with the Māori land interests that will be vested into the whānau trust and the relevant tikanga.

[11] As noted, at the final hearing on 17 March 2026, Lynette confirmed to the Court that she wishes to include her children as beneficiaries of the whānau trust. This essentially

resolved the primary issue before the Court. Thus, the only remaining issues to determine are:

- (a) Who are to be the beneficiaries of the whānau trust?
- (b) Who should be appointed as trustees of the whānau trust?

Te ture

The law

[12] Whānau trusts are constituted under s 214 of Te Ture Whenua Māori Act 1993. An owner of Māori land interests can apply to constitute a whānau trust.⁶ Once constituted, s 214(3) of the Act confirms:

the land, money and assets of a whānau trust are held, and the income derived from those assets are to be applied, for the purposes of promoting the health, social, cultural and economic welfare, education and vocational training, and general advancement in life of the descendants of any tipuna (whether living or dead) named in the trust order.

[13] In appointing trustees, I must be satisfied they are broadly acceptable to the beneficiaries of the trust and I must have regard to their ability, experience and knowledge.⁷

Ko wai ngā kaiwhiwhi takuhe o te taratī a-whānau nei?

Who are to be the beneficiaries of this whānau trust?

[14] Lynette has now confirmed that the beneficiaries of the whānau trust are to be all of her children and grandchildren, together with her spouse, Brian Whata. Can Brian be a beneficiary of the trust?

[15] Surprisingly, there is no case law on whether a spouse can be named as a beneficiary of a whānau trust. On succession and pursuant to ss 108A or 109AA of the Act, Brian is entitled to two specific rights in relation to Lynette's Māori land interests: the right to occupy the principal family home if it is on the land and the right to receive any income and discretionary grants from those interests. Where there is a will, it may gift to the will maker's spouse, civil union partner, or de facto partner one or both of these rights. Where there is no

⁶ Te Ture Whenua Māori Act 1993, s 214(2)(a)(i).

⁷ Te Ture Whenua Māori Act 1993, s 222(2).

will, a spouse, civil union partner, or de facto partner receives these rights by default but can give them up in writing. In both scenarios, the rights end when the spouse dies or gives them up. On intestacy (but, interestingly, not where there is a will), the right ends if the spouse or partner marries or enters a new civil union or de facto relationship.

[16] Although Brian is entitled to these rights on succession, the Act does not expressly contemplate that a spouse can be a beneficiary of a whānau trust established over a spouse's Māori land interests. Instead, s 214(3) of the Act confirms that the beneficiaries of a whānau trust are the descendants of any tipuna named in the trust order. This wording contemplates that a trust order may name more than one tipuna. Further, a named tipuna may be living or dead. Importantly, however, the beneficiaries are the descendants of those tipuna. The beneficiary class is whakapapa based.

[17] There is, therefore, a potential clash within the Act when it comes to the rights of spouses. On succession, spouses are entitled to specified rights over their spouse's Māori land interests "as of right", even if they do not whakapapa to the interests in question. Yet, if those interests are vested into a whānau trust, a spouse does not come within the statutorily defined beneficiary class (unless they too descend from a tipuna named in the trust order).⁸ How should this clash be resolved?

[18] The starting point is s 214(3) of the Act, because this is the provision that applies to the constitution of whānau trusts. As noted, this provision provides for a whakapapa-based beneficiary class for all whānau trusts. It does not readily allow for persons who do not descend from a named tipuna to be beneficiaries of whānau trusts.

[19] In *Inia v Julian*, the Court of Appeal considered that a Court order that inadvertently included as beneficiaries of a whānau trust people who did not whakapapa to the land within the whānau trust was an error.⁹ Although the Court did not confirm that all beneficiaries of a whānau trust must descend from the named tipuna, the enlarging of the beneficiary class to include persons lacking the requisite whakapapa connection was considered erroneous.

⁸ It is theoretically possible for spouses to descend from a common named tipuna, however that tipuna is likely to be a person who lived several generations ago. If that person is named as the tipuna in a trust order, all of that person's descendants, likely a large number spanning several generations, will be beneficiaries. It is difficult to envisage a scenario where that would be considered desirable or appropriate.

⁹ *Inia v Julian* [2020] NZCA 423.

[20] It is also relevant that the provisions in the Act dealing with the rights of spouses were recently amended. Sections 108A and 109AA of the Act were enacted in 2020. As noted at [15] above, these provisions set out the rights that a spouse or partner is entitled to on succession to their deceased spouse or partner.

[21] In its report back to the House, the Select Committee, after noting that surviving spouses and partners may receive a life interest in the Māori land interests of their deceased spouse or partner, explained the intention of these amendments:¹⁰

The bill would enable descendants to succeed to their interests immediately, even when the deceased is survived by their spouse or partner. The spouse or partner would be entitled to lifetime rights to income and grants from the deceased owner's interests, as well as to occupy the family home if it is on the land. However, the surviving spouse or partner would no longer be able to vote in decisions about the land.

[22] Thus, the major change effected in 2020 in relation to the rights of spouses and partners was to allow succession to the absolute owners to occur immediately (previously, they would receive those interests once the life interest in favour of the spouse or partner ended). Importantly, the purpose of these amendments was not to expand the potential beneficiary class for whānau trusts. Consistent with the purpose of these amendments, s 214 of the Act was not amended at this time. Accordingly, I consider that the 2020 amendments did not signal a change in the potential beneficiary class for whānau trusts. By the operation of s 214(3) of the Act, that class remains whakapapa based.

[23] It follows that Brian cannot be a beneficiary of the whānau trust. The beneficiaries of the whānau trust are therefore confirmed as Lynette and her descendants.

[24] I am mindful that this outcome may come as a surprise to Lynette, particularly because Brian was included as a beneficiary of the whānau trust when her application was first heard (and granted) on 5 December 2024. Lynette may no longer wish to establish the whānau trust if Brian cannot be a beneficiary, particularly because Brian will be entitled to certain rights to her Māori land interests on succession. That, of course, is her choice to make. To enable that choice to be properly made, my orders are conditional on Lynette confirming that she still wishes to set up the whānau trust.

¹⁰ Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Bill (179—2) (select committee report) at 4.

Ko wai ngā tarahitī o te taratī a-whānau nei?*Who should be the trustees of this whānau trust?*

[25] When the application was first granted on 5 December 2024, Lynette, Brian and Levi Kerr were appointed as trustees. Lynette's children, who were not present at that hearing, now oppose Brian's appointment as a trustee on the basis that he does not whakapapa to the Māori land interests that will be vested into the whānau trust.

[26] Ordinarily, a trustee of a whānau trust need not whakapapa to the Māori land interests within the trust. The fact that Brian does not whakapapa to Lynette's Māori land interests does not disqualify him from being a trustee. That said, Lynette confirmed at the hearing that the trustees of the whānau trust must whakapapa to the Māori land blocks in which the whānau trust holds interests. Brian does not meet that criterion. Accordingly, he is not eligible to be appointed as a trustee based on the proposed terms of the whānau trust.

[27] Levi Kerr has consented to being appointed as a trustee. He has no prior trustee experience, nor any specific and relevant qualifications. His appointment is conditional on him undertaking appropriate trustee training.

[28] Lynette wishes to preclude Reon and Cushla from being trustees of the whānau trust. Neither Reon nor Cushla opposed this proposal when it was proposed in Court. The trust order for the whānau trust is to include a provision to this effect. Of course, this provision will not prevent Reon or Cushla from standing as trustees for ahu whenua trusts over land in which the whānau trust holds interests.

Te whakataunga*Decision*

[29] The Lynette Te Maari Whata Whānau Trust is established. The beneficiaries of the trust are Lynette and all of Lynette's descendants. Lynette and Levi Kerr are appointed as trustees. Levi's appointment is conditional on him undertaking trustee training. All orders are conditional on Lynette confirming that she still wishes to set up the whānau trust.

Ngā ōta
Orders

[30] The Court makes orders under Te Ture Whenua Māori Act 1993 as follows:

- (a) *sections 214 and 219*: constituting the Lynette Te Maari Whata Whānau Trust over the interests listed in the application on the terms set out in the approved trust order, which:
 - (i) names Lynette Te Maari Whata as the tipuna and confirms her and her descendants as the beneficiaries;
 - (ii) requires that every trustee must whakapapa to the Māori land interests vested in the whānau trust; and
 - (iii) precludes Reon Kerr and Cushla Kerr from being appointed as trustees;
- (b) *section 222*: appointing Lynette Te Maari Whata and Levi Tokoarangi Makiri Kerr as trustees; and
- (c) *section 220*: vesting the interests in the trustees.

[31] Per s 73 of the Act:

- (a) the orders set out above are conditional on Lynette Te Maari Whata confirming to the Court within one month of the date of this decision that she wishes to set up the whānau trust on the terms set out in the orders. To avoid doubt, if Lynette Te Maari Whata does not provide that confirmation (including if she fails to respond to the Court within the stated timeframe), the application to establish the whānau trust will be dismissed.
- (b) if the condition set out above is satisfied, the order under s 222 of the Act appointing Levi Tokoarangi Makiri Kerr as a trustee is conditional on him completing trustee training within 6 months.

I whakapuaki i te 3.00 pm i Heretaunga, i te 2 o ngā rā o Hune i te tau 2026.

D H Stone
JUDGE