Hi Shane,

Thank you for your email. I'm sorry it has taken me a little bit of time to come back to you, but I have been undertaking a significant amount of research into the background of Okokori B Block and Okokori A Block.

Application RC 2300463-RMALUC is currently in dispute as the owners/trustees of Okokori B Block wish to undertake development and the trustees of A Block are opposed.

Background

The site labelled "B" in Figure 1 below is a small south eastern portion of Okokori B Block while the site labelled "A" is Okokori A Block. The red outline indicates that both A and part of B, are scheduled in the Far North District Plan as a Site of Significance to Maori referenced MS05-38.

Figure 1: Sites of Significance to Maori (Okokori A and B)

Under Rule 12.5.6.2.2 of the District Plan any activity within a Site of Significance to Maori requires resource consent unless the activity is proposed by the requesting party in which case the rule does not apply. The rule further states that when an application is made under this rule that the requesting party, the relevant iwi authority and HNZPT shall be considered an affected party.

In this case the Requesting Party for MS05-38 Awapoko Reserve are the "Maori Owners" of Pt Okokori Block (Awapoko Reserve). The Processing Planner's preliminary recommendation is to limited notify to the Maori owners of Okokori A Block as half of the requesting party to the Site of Significance (MS05-38) that is recorded in the District Plan maps to include both Blocks A and partial B Block.

The Site of Significance to Maori MS05-38 was included into the operative District Plan through a legislative process under Schedule 1 of the Resource Management Act 1991. Historically MS05-38 has been first identified in the 1988 Mangonui County Operative District Scheme where it appears as reference M23 and in Appendix F under the Town and Country Planning Act 1977. The site was carried over into the Operative District Plan from the earlier district scheme.

History

A Partition Order was issued by the Court on 11 March 1954 under Court reference 81 N 292 which created Okokori A and B Blocks. Okokori B Block was defined by the Maori Land Court in a Consolidation Order on 1 June 1954. Title did not issue for Okokori A until 26 February 2010 and B Block on 29 July 1980 under NA46C/958.

I note that on the Title Diagram referenced 200682839 dated Mar-April 1978 that Okokori Block B is referred to as "Okokori B" while the adjacent site now referred to as Okokori A Block is labelled "Pt Okokori Block". This is relevant in that in the Mangonui County Operative District Scheme Maps showing reference M23, also clearly references Okokori B and Pt Okokori (not Okokori A Block). This is shown in Figure 2 below. I further note that Appendix F of the Mangonui County Operative District Scheme states only that Pt Okokori Blk is included in the Scheduling as a Site of Significance to Maori and does not include Okokori Block B (see Figure 3).

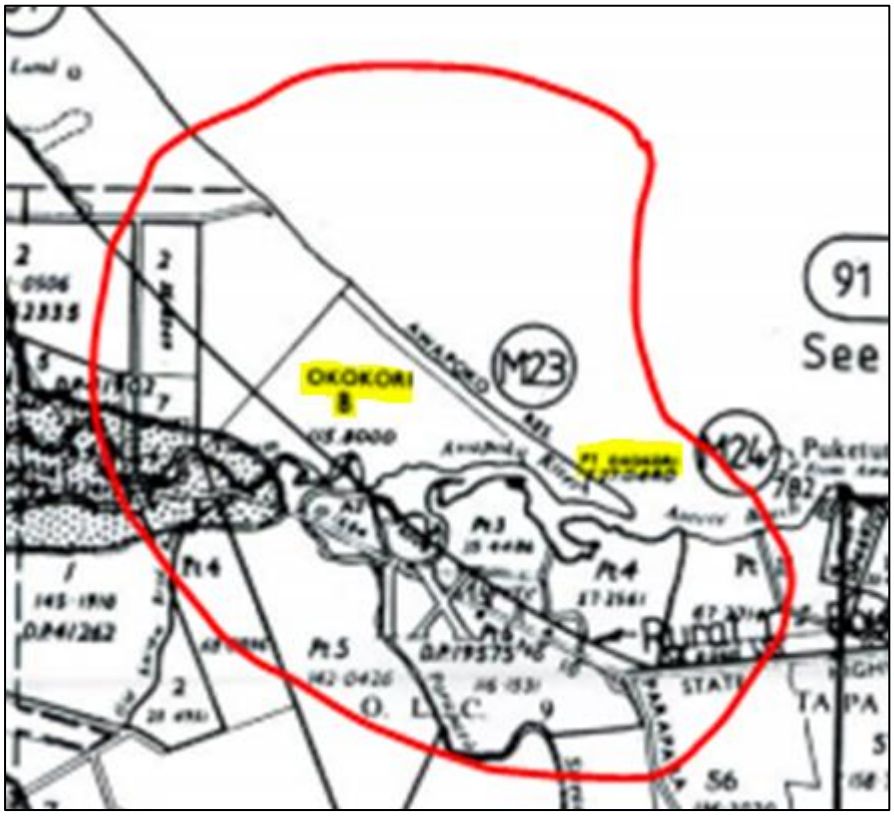


Figure 1: Sites of Significance to Maori (Okokori A and B)

Reference on Planning Maps	Name of Reserve	Purpose	Identification	Administering Body
M23	Okokori/Kaimaua	Recreation Reserve and Wahi Tapu	Pt Okokori Blk 27.04 ha (Awapoko Reserve)	Maori owners

Figure 3: Excerpt Mangonui County Operative District Scheme Appendix F

In Busby MLC (50TTK 9) [2012], Ambler J comments that when the Court dealt with the partition of Okokori into A and B in the 1950s that there was express reference to "tapu" being on Okokori A. In the minute of the meeting Prichard J referred to the proposed reservation to be partitioned (that would become Okokori A) as being for a camping and fishing reserve and to include the tapu. It is noted in the excerpt Mangonui County Operative District Scheme Appendix F that Pt Okokori Block is also called Awapoko Reserve (see Figure 3). The minutes by Prichard J (11 March 1954) confirm that Okokori A is Awapoko Reserve. The Title Order from 1954 further confirms this.

In light of the above, it seems reasonable to conclude that the Site of Significance to Maori Scheduling may have been applied in error by Council to Okokori B Block within the District Plan during the transition from the Town and Country Planning Act 1977 planning environment to the Resource Management Act 1991.

I have been unable to locate any documentation relating to the scheduling from with the District Plan Team or Council's Legal Team. I do note that the owners of Okokori B Block have not challenged the scheduling of the site in the past. However, this may be due to oversite or the scheduling having not been important in the past.

It is therefore my assessment that:

1. It appears that MS05-38 Awapoko Reserve may have been incorrectly applied to Okokori B Block. I recommend that the owners of Okokori B Block make contact with the District Plan Team to discuss the future scheduling of MS05-38 in the Draft District Plan.

2. Rule 12.5.6.2.2 of the District Plan applies to RC 2300463-RMALUC as the scheduling is in the District Plan and cannot be disregarded even though it may be the scheduling is an error. The rule breach should be included in the assessment of environmental effects for RC 2300463-RMALUC as a technical breach; however, the breach should not be a reason to limited notify the owners of Okokori Block A as a requesting party.

Note

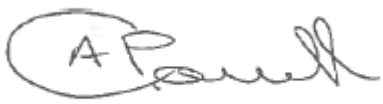
1. The above recommendations do not limit the assessment of the Processing Planner on any other potential effects of the proposal on the trustees/owners of Okokori Block A.

2. The Resource Consent Team's position does not pre-determine the outcome of any investigation undertaken by the District Plan Team with regards to the scheduling of MS05-38 within the District Plan.

I hope that this clarifies the Resource Consent Teams position.

Should you wish to discuss further please don't hesitate to get in contact.

Kind regards



Esther Powell

Team Leader – Resource Consents

IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

(50 TTK 9)
50 Taitokerau MB 9
A20070011627

	UNDER	Section 338, Te Ture Whenua Māori Act 1993
	IN THE MATTER OF	Okokori B
	BETWEEN	HEC BUSBY Applicant

Hearing: 8 May 2008
17 September 2012
(Heard at Kaitaia)

Judgment: 26 October 2012

RESERVED JUDGMENT OF JUDGE D J AMBLER

Introduction

[1] Hekenukumai Busby (more commonly known as Hec Busby) is a recognised tohunga in the construction of traditional ocean-going waka and in the traditional navigation of those waka. Since the 1980s he has convened whare wānanga concerning all aspects of traditional waka on his land, Okokori B, at Aurere, Tokerau Beach. In 2008 he applied to the Court to set aside part of the land as a Māori reservation for the purpose of whare wānanga for kaupapa waka and encountered opposition from some of his whanāunga of Ngāti Tara. After an initial hearing, I adjourned the application for Mr Busby to consult further with Ngāti Tara. A second hearing has now taken place where members of Ngāti Tara continue to oppose the application. In this decision I address the grounds of opposition and the scope of the proposed Māori reservation in terms of s 338 of Te Ture Whenua Māori Act 1993 ("the Act").

Background

[2] Okokori B comprises 115.8 hectares. It borders the Aurere stream and Awapoko river, and the Okokori A block which fronts Tokerau Beach. Until 1966 Okokori B was Māori freehold land. Mr Busby's whānau had interests in the land – he says substantial interests – and he himself may well have owned interests. In any event, in March 1966 the owners of Okokori B resolved to sell the land to Mr Busby.[1] The sale was effected by the Māori Trustee on 22 April 1966. Pursuant to s 2(2)(f) of the Māori Affairs Act 1953, the status of the land changed to general land upon the transfer being registered. Mr Busby remains the sole owner of the land, where his home is situated as well as the whare wānanga mentioned earlier.

[3] In 2008 Mr Busby applied to the Court to set aside 2.5 hectares of the land as a Māori reservation. The area was defined on a plan he had drawn up. The application was supported by Chappy Harrison, the chairperson of Parapara Marae – which is the marae most closely associated with the land. It was also supported by a letter from Lady Emily Latimer as secretary of the Taitokerau District Māori Council

[1] 3 Kaitaia MB 340 (3 KT 340).

and Taitokerau Māori Trust Board. As per minutes of a meeting held at Mr Busby's home on 14 July 2007, Mr Busby, Robert Gabel, Rawiri Henare, Alex Busby, Brian Wiki and Michael Harding agreed to be trustees of the Māori reservation.

[4] Mr Busby attended the first hearing on 8 May 2008. After clarifying aspects of the application with him I heard from Reece Burgoyne and Tina Lee Yates who opposed the application. Mr Busby was somewhat taken aback by their opposition to what he sees as a longstanding kaupapa for the benefit of present and future generations. In fact, he was so taken aback that he contemplated withdrawing the application on the spot. Nevertheless, after a little persuasion from me, I adjourned the application for Mr Busby to clarify two aspects of the proposal and to convene a hui with the people of Parapara Marae, Ngāti Tara, to discuss the proposal. If Mr Busby no longer wished to pursue the proposal, he could simply file a letter and the application would be dismissed.

[5] In May 2010 Mr Busby wrote to the Court to advise that he was still pursuing the proposal. A hui eventually took place at Parapara Marae on 26 March 2012. Five people attended of whom four supported Mr Busby's application and one opposed. The application came back to Court on 17 September 2012. At the hearing Mr Burgoyne, Kelvin Piripi and Lavinia Sykes spoke in opposition to the application.

Grounds of opposition

[6] Mr Burgoyne, Ms Yates, Mr Piripi and Mrs Sykes raised several grounds of opposition to the proposed Māori reservation.

[7] First, Mr Burgoyne challenged Mr Busby's ownership of Okokori B and questioned the circumstances in which he acquired the land. Mr Piripi similarly disputed Mr Busby's ownership of the land and claimed that it should be returned to the "rightful owners", that is, Ngāti Tara. Ms Yates touched on the history of Okokori A and B and indicated that her mother had objected to the splitting of the land and subsequent sale of Okokori B to Mr Busby. Mrs Sykes spoke in similar

terms of the unresolved *nawe* that had remained over Mr Busby's ownership of Okokori B. She had raised these concerns at the hui at Parapara Marae on 26 March 2012.

[8] As I explained to the parties at both hearings, I cannot look behind Mr Busby's ownership of Okokori B. Some members of Ngāti Tara may well have unresolved grievances over the manner in which Mr Busby acquired the land in 1966 but that does not negate Mr Busby's title to the land and is not a factor that I can take into account in the present application.

[9] Second, at the hearing on 8 May 2008 Mr Burgoyne suggested that the whole of the Okokori area was an urupa. When I questioned Mr Burgoyne on his evidence for there being urupa on the area proposed for the Māori reservation, he said that he could produce the evidence. He did not subsequently do so. Mr Busby denied that his land contains urupa and said that there had previously been a chain by chain urupa on the Okokori block but that the bodies had been uplifted and taken to Parapara Marae in about 1896. No other objectors suggested that there was an urupā on Okokori B.

[10] I have reviewed the Court records for Okokori A and B and have not found any express reference to there being urupā or wāhi tapu on Okokori B. However, I do note that when the Court dealt with the partition of Okokori into Okokori A and B in the 1950s, there was express reference to a "tapu" being on Okokori A. In the minute of the meeting and site inspection that Judge Prichard conducted on the land with various owners on 19 November 1952, it refers to the proposed reservation to be partitioned (that would become Okokori A) as being for "...a camping and fishing reserve and to include the tapu".[2] Further, in the minutes of the sitting on 11 March 1954[3] when Okokori was partitioned into Okokori A and B, it was noted that Okokori A was intended as a reserve, "(Purpose of Reserve – beach camping, fishing and historical: also includes a tapu)".

[11] Therefore, I reject Mr Burgoyne's assertion that Okokori B contains urupā.

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2 80 Northern MB 361A (80 N 361A)
3 81 Northern MB 291 (81 N 291)

[12] Third, Mr Burgoyne quoted and relied on ss 231 and 232 of the Resource Management Act 1991. In fact, the sections Mr Burgoyne quoted were repealed and substituted by s 124 of the Resource Management Amendment Act 1993. In any event, Mr Burgoyne's point in referring to these sections appeared to be that he asserted some form of right to an esplanade reserve over Okokori B. This apparently relates to the access issue (which I address next). There is no basis to this ground of opposition. The creation of a Māori reservation over part of a block of land is not caught by the subdivision provisions of Part 10 of the Resource Management Act 1991 and does not trigger the esplanade reserve requirements under that Act. Even if it did trigger those provisions, I cannot see how the prospect of an esplanade reserve affects the creation of a Māori reservation or can properly be a concern for Mr Burgoyne. If anyone should have a concern, it is Mr Busby.

[13] Fourth, Mr Burgoyne raised the issue of access over Okokori B. His submission on this point waivered and contradicted itself during the hearing: he variously suggested that there *existed* a right of access over Okokori B to Okokori A; or that there *should be* a right of access over Okokori B to Okokori A; or that there might be problems with access over Okokori B to the Māori reservation created on Okokori B.

[14] Once again, I have reviewed the Court records in relation to Okokori A and B. The minutes of the meeting of 19 November 1952 and the hearing on 11 March 1954 confirm that the main part of Okokori A was the 32 acres in the south eastern corner of the block. The three chain wide extension of the block along the foreshore to the north western boundary of the block was intended to provide Okokori A with access to the Crown road reserve on the neighbouring OLC9 block. Furthermore, in recent years the Court appointed agents for the owners of Okokori A to investigate access issues. The question of access was discussed when the Court appointed agents on 24 August 1999 and at a hearing on 5 October 2001, following which the agents were updated on 27 November 2001.[4] It is unclear whether the agents resolved the access issues.

[4] 21 Kaitaia MB113 (21 KT 113); 22 Kaitaia MB 86 (22 KT 86); 93 Whangarei MB 54 (93 WH 54)

[15] Accordingly, the Court records confirm that it was first intended that access to Okokori A be along the three chain wide foreshore strip to the Crown road reserve. In more recent years the owners of Okokori A or their agents investigated alternative access. Mr Busby appeared at the hearing on 5 October 2001 and stated that informal access to Okokori A along the north western boundary of Okokori B had already been agreed upon. The short point is that the proposed Māori reservation, which is at the southern eastern end of Okokori B, does not interfere with these historical access routes. If the owners of Okokori A wish to formalise an alternative access over Okokori B, they will need to engage with Mr Busby as owner of Okokori B. But the possibility of the owners of Okokori A pursuing such access is not a valid ground to deny the Māori reservation.

[16] Fifth, Mr Burgoyne noted that it was unusual for a Māori reservation to be granted over general land. I agree, but that is not a reason to not create a Māori reservation. Section 338 is clear that a Māori reservation can be granted over general land.

[17] Sixth, Mr Burgoyne was concerned that the Māori reservation would exclude Ngāti Tara and weaken Ngāti Tara's ability to apply for funding for Parapara Marae. But the proposal does not seek to exclude Ngāti Tara. Furthermore, there is no evidence that the granting of the Māori reservation will adversely affect Parapara Marae's ability to apply for funding. Indeed, Mr Busby is not applying to set aside the land as a traditional marae in competition with Parapara Marae but as a whare wānanga, for which it has been used for almost three decades. I reject this ground of opposition.

[18] Seventh, Mr Piripi and Mrs Sykes raised concerns over the nature of consultation with Ngāti Tara. Mr Piripi said that the meeting on 26 March 2012 was a meeting of the marae committee only and not the marae trustees, and that it should have been the marae trustees who gave permission to Mr Busby to go ahead with the Māori reservation. He pointed out that only one of the people at that hui was a trustee, namely, Susan Peters, and that Chappy Harrison is the chairman of the marae committee only and not a trustee. Mrs Sykes also felt that the *take* had not been

discussed, that they needed a significant discussion and that issues still need to be tidied away.

[19] The issue for the Court is simply whether there has been a sufficient opportunity for Ngāti Tara and the people of Parapara Marae to express a view on the proposed Māori reservation. I am satisfied that there has been. The proposal was discussed and endorsed at a meeting on 14 July 2007 where many of those in attendance were of Ngāti Tara. The chairperson of the marae committee, Chappy Harrison, provided a letter in support of the proposal following a meeting with Mr Busby on 5 May 2008. Ms Yates attended Court on 8 May 2008 with a watching brief from the trustees of Parapara Marae to take information back to the marae, which, no doubt, she did. I then directed Mr Busby to convene a hui with the people of the Parapara Marae to discuss the proposal. I did not specify that it had to be a meeting of trustees or of the marae committee, but simply a meeting of the people of the Parapara Marae. According to the minutes of the Parapara Marae committee of 26 March 2012, Mr Busby's proposal was discussed. The minutes record:

> Tarawaka: Chappy:
>
> Hector Busby is building a Whare Wānanga & carving school down at Aurere and is prepared to gift it back to Ngāti Tara as a *Reserve*.
>
> This contentious item was debated, in the end the following was put to the floor & voted on.
>
> **MOVED:** Chappy:
>
> We support Hector Busby's proposal for a Māori Reserve on the whenua.
>
> **Seconded:** Susan: **Split Decision:** 4 voted for the motion:
>
> **Against:** 1 (in absence) (sic)

[20] I note that Mr Busby disputes that he ever suggested that the land was to be gifted back to Ngāti Tara as a reserve. Nevertheless, the significance of the minute is that the Māori reservation proposal was acknowledged as contentious, was debated and those who attended the hui voted four to one to support the proposal. Mrs Sykes expressed her grounds of objection at the hui and was the only person to oppose the Māori reservation.

[21] Mr Busby has carried out my directions to my satisfaction. Although the hui may have been of the marae committee, and the overall turnout was small, I am left in no doubt that Ngāti Tara has had sufficient notice of the proposal and a sufficient opportunity to discuss it. Those who oppose Mr Busby have attended two Court hearings to express their views. It is clear to me that there is a division within Ngāti Tara over whether or not to support the proposal. This seems to stem largely from individuals' attitudes to Mr Busby's ownership of Okokori B. As I have indicated, I do not consider that this sense of grievance over ownership of Okokori B is a valid reason to deny the Māori reservation.

[22] In any event, the support of Ngāti Tara and Parapara Marae is not a pre-requisite to the Court recommending the creation of a Māori reservation. Certainly, where a Māori reservation is proposed for the purpose of a marae or urupā, the Court will require an applicant to consult fully with the local hapū to ascertain whether the hapū endorse the new marae or urupā, and the extent to which it might conflict with any existing traditional institutions. But even in those situations, the Court must weigh up the level of support or opposition, the grounds of opposition and the purpose of the Māori reservation. Here, there is both support for and opposition to the Māori reservation. The critical issue is therefore, the merit of the opposition.

[23] At the second hearing I attempted to summarise the underlying basis for the objectors' opposition as being that they felt the whare wānanga should be under the *mana* of Ngāti Tara. Notwithstanding my attempt to frame the objectors' concerns in such cultural terms, Mr Piripi simply insisted that the whare wānanga "should belong to Ngāti Tara hapū" and Mr Burgoyne agreed. As I have already said, the claim to ownership of Mr Busby's land is not a basis to deny a Māori reservation. Certainly, the objectors cannot use this application to gain some sort of foothold into ownership of Okokori B.

[24] Nevertheless, even assuming that the substantive concern is that the Māori reservation might somehow undermine or contravene Ngāti Tara's mana, I do not accept that that is a valid basis to disallow the Māori reservation. First, based on the evidence before the Court, the majority of those of Ngāti Tara who have expressed a view support Mr Busby's proposal. Those in opposition are a minority. Second, Mr

Busby gave uncontradicted evidence that Ngāti Tara has not objected to the whare wānanga he has held on the land for almost 30 years. This fact further suggests that the real concern of the objectors is not the whare wānanga but ownership and control of the land. Third, Mr Busby's rationale for the Māori reservation has unquestionable merit. He wants the whare wānanga to continue following his death and sees the creation of a Māori reservation as the most appropriate way to ensure that occurs. In particular, he wants to ensure that those of his family who inherit Okokori B do not subsequently interfere with that kaupapa. Mr Busby's desire fits entirely with the kaupapa of Māori reservations, that is, to facilitate and preserve Māori institutions. Fourth, the Māori reservation cannot be said to contravene Ngāti Tara's mana as the whare wānanga has always been open to all people and the Māori reservation does not purport to assert the interests of any other hapū over the interests of Ngāti Tara. As Mr Busby says, he is also of Ngāti Tara.

[25] Accordingly, having considered the grounds of objection individually and collectively, I do not consider that there is any valid objection to the granting of the Māori reservation.

The scope of the Māori reservation

[26] Under s 338 the Court may recommend that the Chief Executive set apart land as a Māori reservation. The purpose of this Māori reservation is as a whare wānanga for kaupapa waka and is to be known as Te Awapoko Waka Wānanga Reserve. The proposed trustees are Mr Busby, Robert Gabel, Rawiri Henare, Alexander Busby, Brian Wiki, Michael Harding and James Watkinson (who was added since the hui on 14 July 2007).

[27] At the second hearing Mr Busby sought to vary the area of the Māori reservation to include his home as he wished to "secure" rights of occupation in favour of his step-daughter and her husband. As I explained in Court, I do not believe it would be appropriate to extend the Māori reservation in that way as it will likely complicate and confuse the kaupapa of the Māori reservation, and will not necessarily secure the protection Mr Busby seeks.

[28] The one matter that remains to be finalised is the beneficiaries of the Māori reservation.

[29] Section 338(3) provides:

> (3) Except as provided in section 340 of this Act, every Maori reservation under this section shall be held for the common use or benefit of the owners or of Maori of the class or classes specified in the notice.

[30] Section 340 in turn provides:

> **340 Maori reservation may be held for common use and benefit of people of New Zealand**
>
> (1) The notice constituting a Maori reservation **[**(that is not a wahi tapu)**]** under section 338 of this Act may, upon the express recommendation of the Court, specify that the reservation **[**(that is not a wahi tapu)**]** shall be held for the common use and benefit of the people of New Zealand, and the reservation **[**(that is not a wahi tapu)**]** shall accordingly be held in that fashion.
>
> (2) Before issuing a recommendation that a Maori reservation **[**(that is not a wahi tapu)**]** be held for the common use and benefit of the people of New Zealand, the Court shall be satisfied that this course is in accordance with the views of the owners, and that the local authority consents to it.
>
> (3) In appointing trustees for any Maori reservation **[**that is not a wahi tapu**]** that is held for the common use and benefit of the people of New Zealand, the Court may, on the nomination of the local authority, appoint a person or persons to represent the local authority.

[31] The application originally proposed that the Māori reservation be set aside for the use and benefit of the "Taitokerau Tarai Waka Charitable Trust". This is apparently an incorporated society known as Te Taitokerau Tarai Waka Incorporated. At the first hearing I explained to Mr Busby that the Māori reservation could not be set aside for the benefit of an incorporated society and that it needed to be set aside for Māori or a group of Māori or the people of New Zealand. He said that it was not for Māori exclusively as Pakeha and Pacific people attend the whare wānanga from time to time. I adjourned the application for Mr Busby to, among other things, clarify for whose benefit the Māori reservation would be set aside.

[32] In a subsequent letter of 12 May 2010 Mr Busby said that the land should be set aside for the people of New Zealand as the tauira come from far and wide and he does not wish to be restrictive. Under s 340(2), the local authority, being the Far North District Council, must consent to a Māori reservation being set aside for the people of New Zealand and, under s 340(3), the Council may be entitled to nominate a person to be appointed as trustee. Mr Busby has not sought the Council's consent and gave no indication that he agreed that the Council could have the right to nominate a trustee.

[33] Accordingly, at the second hearing Mr Busby confirmed that he was not in fact wanting the Māori reservation to be set aside for the people of New Zealand and proposed instead that it be set aside for the benefit of the trustees of the Hekenukumai Trust. The Trust is apparently the guardian of the whare wānanga. I have not been provided with a copy of the Trust's deed of trust and do not understand how it relates, if at all, to the incorporated society mentioned in the application. Before I can make a final decision I need to review a copy of the Trust's deed of trust.

Outcome

[34] The outcome of the application is that I conclude that there are not any valid objections to the Māori reservation but that Mr Busby has yet to finally satisfy me who should be the beneficiaries of the Māori reservation. I direct Mr Busby to file a copy of the deed of trust for the Hekenukumai Trust by 30 November 2012 so I can assess whether it satisfies s 338(3).

D J Ambler
JUDGE