SANSON & ASSOCIATES LTD

Submission #581

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To: District Plan Team – Attention: Greg Wilson
Strategic Planning & Policy
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RE: **Submission on the Proposed Far North District Plan 2022**

1. **Details of persons making submission**

Arawai Limited
C/- Sanson & Associates Limited
Attention: Steven Sanson
PO Box 318
PAIHIA 0247

2. **General Statement**

Arawai Ltd are directly affected by the Proposed Far North District Plan ('**PDP**'). They seek to remove the Site of Significance to Maori MS05-38 from the site legally described as Okokori B IX Rangaunu SD.

Arawai Ltd cannot gain an advantage in trade competition through this submission. They are directly impacted by the PDP. The effects are not related to trade competition.

3. **Background & Context**

Background

Arawai Ltd are in the process of seeking approvals for the Sir Hek Busby Waka Centre. Arawai have, and are, going through various consenting approvals to establish the Waka Centre as a world class cultural tourism centre in Aurere, Karikari Peninsula.

On background research into the site MS05-38, that this was applied in error to Okokori B IX Rangaunu SD. This is discussed further in section 6 below.

4. **The specific provisions of the Proposed Far North District Plan that this submission relates to are:**

- Proposed Planning / Zone Maps which relate to the site referred to in Section 3 of this submission and specifically MS05-38

5. **Arawai Ltd seek the following amendments/relief:**

This submission requests that the PDP: S581.001

- Removes MS05-38 from the site legally described as Okokori B IX Rangaunu SD.

6. **The reasons for making the submission on the Proposed District Plan are as follows:**

This rationale is based on the following:

- 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.

- 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 1 below. 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 2).

- In Busby MLC (50TTK 9) [2012] (See **Annexure 1**), 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 2). 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 is concluded 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.

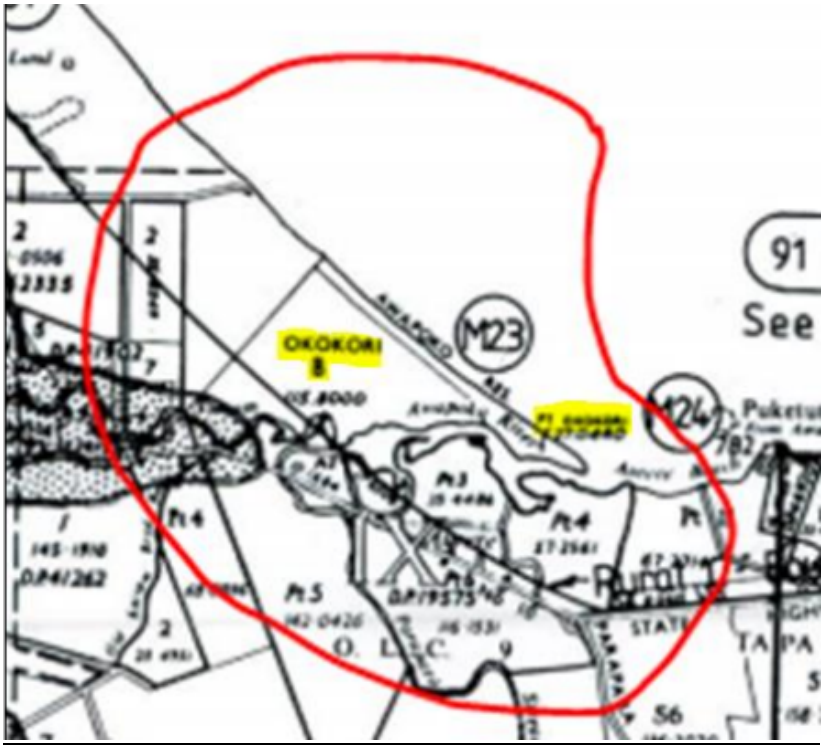

Figure 1 - Site of Significance Map (Mangonui County Scheme Maps)

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 2 - Excerpt Mangonui County Scheme Appendix F

It is accepted that this submission has been lodged after the final submission date set by FNDC. However, the submission is considered to remain in scope, as FNDC has not proposed any substantive changes to their Proposed District Plan in terms of Sites of Significance to Maori.

It is reasonable to accept such submission, on the basis that there appears to be a clear error in the application of the Site of Significance to the site under consideration. This administrative error should be alleviated through the submissions and hearings process.

7. **Arawai Ltd wish that the Far North District Council address the above matters by:**

    1. Removing the Site of Significance MS05-38 from the site legally described as Okokori B IX Rangaunu SD.

8. Our clients wish to be **heard** in relation this submission.

Yours sincerely,

Steven Sanson
Director | Consultant Planner

On behalf of the Landowners

Dated this 31st Day of March 2023

Annexure 1: Maori Land Court Decision

IN THE MAORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

(50 TTK9) 50
Taitokerau MB 9
A20070011627

UNDER	Section 338, Te Ture Whenua Maori 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 JUDGED J AMBLER

Introduction

[1] Hekenukumai Busby (more commonly known as Hee 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 wananga 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 Maori reservation for the purpose of whare wananga for kaupapa waka and encountered opposition from some of his whanaunga of Ngati Tara. After an initial hearing, I adjourned the application for Mr Busby to consult further with Ngati Tara. A second hearing has now taken place where members of Ngati Tara continue to oppose the application. In this decision I address the grounds of opposition and the scope of the proposed Maori reservation in terms of s 338 of Te Ture Whenua Maori 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 Maori freehold land. Mr Busby's whanau 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 Maori Trustee on 22 April 1966. Pursuant to s 2(2)(f) of the Maori 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 wananga mentioned earlier.

[3] In 2008 Mr Busby applied to the Court to set aside 2.5 hectares of the land as a Maori 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 Maori Council

3 Kaitaia MB 340 (3 KT 340).

and Taitokerau Maori 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 Maori 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, Ngati 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 Maori 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, Ngati 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 Ngati 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 Maori 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 urupa 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 urupa or wahi 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 urupa.

[2] 80 Northern MB 361A(80 N 361A)
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 bys 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 Maori 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 Maori 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 Maori 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 comer 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 Maori 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 Maori reservation.

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

[17] Sixth, Mr Burgoyne was concerned that the Maori reservation would exclude Ngati Tara and weaken Ngati Tara's ability to apply for funding for Parapara Marae. But the proposal does not seek to exclude Ngati Tara. Furthermore, there is no evidence that the granting of the Maori 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 wananga, 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 N gati 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 Maori 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 Ngati Tara and the people of Parapara Marae to express a view on the proposed Maori 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 Ngati 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 Wananga & carving school down at Aurere and is prepared to gift it back to Ngati 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 Maori 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 Ngati Tara as a reserve. Nevertheless, the significance of the minute is that the Maori 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 Maori 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 Ngati 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 Ngati 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 Maori reservation.

[22] In any event, the support of Ngati Tara and Parapara Marae is not a prerequisite to the Court recommending the creation of a Maori reservation. Certainly, where a Maori reservation is proposed for the purpose of a marae or urupa, the Court will require an applicant to consult fully with the local hapii to ascertain whether the hapii endorse the new marae or urupa, 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 Maori reservation. Here, there is both support for and opposition to the Maori 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 wananga should be under the *mana* of Ngati Tara. Notwithstanding my attempt to frame the objectors' concerns in such cultural terms, Mr Piripi simply insisted that the whare wananga "should belong to Ngati Tara hapu" 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 Maori 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 Maori reservation might somehow undermine or contravene Ngati Tara's mana, I do not accept that that is a valid basis to disallow the Maori reservation. First, based on the evidence before the Court, the majority of those of Ngati Tara who have expressed a view support Mr Busby's proposal. Those in opposition are a minority. Second, Mr

Busby gave uncontradicted evidence that Ngati Tara has not objected to the whare wananga 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 wananga but ownership and control of the land. Third, Mr Busby's rationale for the Maori reservation has unquestionable merit. He wants the whare wananga to continue following his death and sees the creation of a Maori 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 Maori reservations, that is, to facilitate and preserve Maori institutions. Fourth, the Maori reservation cannot be said to contravene Ngati Tara's mana as the whare wananga has always been open to all people and the Maori reservation does not purport to assert the interests of any other hapii over the interests of Ngati Tara. As Mr Busby says, he is also of Ngati 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 Maori reservation.

The scope of the Maori reservation

[26] Under s 338 the Court may recommend that the Chief Executive set apart land as a Maori reservation. The purpose of this Maori reservation is as a whare wananga for kaupapa waka and is to be known as Te Awapoko Waka Wananga 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 Maori 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 Maori reservation in that way as it will likely complicate and confuse the kaupapa of the Maori 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 Maori 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 3 3 8 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 Maori 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 Maori reservation could not be set aside for the benefit of an incorporated society and that it needed to be set aside for Maori or a group of Maori or the people of New Zealand. He said that it was not for Maori exclusively as Pakeha and Pacific people attend the whare wananga from time to time. I adjourned the application for Mr Busby to, among other things, clarify for whose benefit the Maori 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 Maori 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 Maori 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 wananga. 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 Maori reservation but that Mr Busby has yet to finally satisfy me who should be the beneficiaries of the Maori 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).

DJ Ambler
JUDGE