

MLC-0642-24
COMPLETED

543

POTTS & HODGSON
BARRISTERS & SOLICITORS

JAMES JAMES HODGSON
NORMAN FRANCIS SMITH, LL.B.

IF CALLING OR TELEPHONING WITH REFERENCE TO THIS LETTER PLEASE ASK FOR
Mr Smith

P.O. BOX 18
TELEPHONES 375 & 497

KING STREET,
OPOTIKI,
NEW ZEALAND

11th July 1972



The Registrar,
Maori Land Court,
Private Bag,
ROTORUA

Dear Sir,

re - Waiotahi Block - Opotiki Minute Book Vol.46
Folios 207-208

We enclose a copy of a letter we have sent to the Maori Trustee concerning his actions in offering the amalgamated Block for lease by tender. When this application was first lodged on behalf of Mr. Maxwell, it was for the purposes of obtaining amalgamation of the lands with a view to calling a meeting of owners to obtain a lease for our client. We were of the opinion that when the Court made this Section 438 order, following amalgamation and vesting the land in the Maori Trustee to lease, that the order was for the purposes of granting a lease to our client and provided the terms of the lease were not contrary to the interests of the owners, such lease should be granted.

It would be appreciated if you would advise us whether or not we have been mistaken in our interpretation of the order.

Yours faithfully,
POTTS & HODGSON
Per:

NFS:RE
Encl.



542

POITS & HODGSON
BARRISTERS & SOLICITORS

JAMES THOMAS HODGSON
NORMAN FRANCIS SMITH, LL.B.

IF CALLING OR TELEPHONING WITH REFERENCE TO THIS LETTER PLEASE ASK FOR
Mr Smith

P.O. BOX 18
TELEPHONES 375 & 497

KING STREET
OPOTIKI.
NEW ZEALAND

11th July 1972

The Maori Trustee,
Private Bag,
ROTORUA

Dear Sir,

re - Amokura Lease 12/828

Further to our previous correspondence, it has come to the writer's notice that you are at present calling tenders for lease of the amalgamated blocks at Amokura. We are concerned firstly at your failure to notify us of the proposed tender as previously requested, and secondly at the area involved.

Our client, Mr W. Maxwell who has been occupying part of these blocks and developing same for some time, lodged an application with the Maori Land Court for amalgamation of these lands with a view to calling a meeting of owners and taking a lease of the same. Our application came before the Court in February 1968 at which time the Court directed "it will be necessary for the applicant to establish economics and convenience - that encumbrances/charges consent, and values for amalgamation purposes; as well as having a positive formula for future user to the benefit of the owners". Following this our client then spent considerable time, effort and money in complying with the

Court's requirements to the intent that eventually on the 8th February 1972, an order for amalgamation was carried out. An order under Section 438 vesting the land in the Maori Trustee was also made, giving the Maori Trustee the right to alienate the land by way of lease as a single unit or by part of certain terms. It was anticipated at that stage that our client would be given the option of taking the lease, particularly in view of the fact that he had previously carried out some development work and more particularly had paid off substantial rate arrears in respect of the land.

We note that the area to be leased is some 150 acres 3roods 25 perches, but of this only 27 acres is capable of being used, the balance being steep undeveloped country, covered in scrub. In addition on the higher parts of the land there are a number of Maori Pa sites of relative historic interests and it was thought that this area was to have been retained as a reserve, and only the grassed area comprising the whole of the West severance of 393D1 and an area of the balance Block contained within the line drawn from approximately the eastern end of this western severance of 393D1 to the south western boundary of the amalgamated area.

We are instructed that practical access to this particular area can only be obtained through land already owned or leased by our client or through the Waloeka River. It was because of this, that our client felt that the land should best be amalgamated and occupied by him.

We note that the land is vested in the Maori Trustee to lease, and whilst we concede that it may be usual to arrange leases by tender, we would respectfully submit that in this instance, there is justification for a departure from the norm because of firstly the unavailability of access, secondly the uneconomic nature of the land unless farmed in conjunction with adjoining land and thirdly because of the fact that our client has brought about the amalgamation at considerable expense to himself on the understanding that he himself would be obtaining the lease. It would be appreciated if you would consider these matters urgently and let us have your comments as soon as possible.

Yours faithfully,
POTTS & HODGSON
Per:

NPS:KE

URGENT

To ROTORUA

From OPOTIKI

M.A. →

14 JUL 1972

Our file: 5/744	Your file:	Enclosures checked
Date: 12.7.72	Previous ref.: Ours	Yours
Subject: W. MAXWELL		

11573-53 W

FOR : Mr H. Martin - Court Section

1. I like to refer you to the above file and reports in regard amalgamation - utilisation etc of Waiotahi Blocks 393E - 393C1 - 393D2 - and 393C2, its consequent Court hearing etc and amalgamation of titles into one new title Waiotahi 393G.
2. This block of land Waiotahi 393G is now advertised for lease by tender by the Maori Trust Office, and I like to comment as follows:
The land has no access.
Your plan shows an unformed road, situated in steep undeveloped hill country access to the grassed area is by descending steeply to the Otakoi stream and rising again steeply to another ridge and down to the foothills, where the grassed area of some 34 acres is situated.

For your Information:

Present access, by arrangement, is from the end of Amokura Road along Section 391A over Mr. Maxwells lands, over Boris Blacks Estate land, Section 393F2 B1 - along the foothills over Sections 393F1 - 393B1 - 393B2A - 393B2B and 393D1 (Refer ours 22.10.71 - para.8). Please also refer to what my previous comments were in regard to Section 393D1 (ours 22.10.71 - para 2).
3. I would like you to refer to yours 6.7.71 - Field Supervisor Opotiki para 2, whereby it was pointed out that Mr. Maxwell was endeavouring to obtain leases of the farmable areas and the formation of a reserve of the of the undeveloped hilly part containing some historical Pa sites.
Please refer to our reply in regard this matter 21.9.71 para 2.
4. I do not know what took place at the Opotiki Court hearings, but I understand (rightly or wrongly - I think Mr. Maxwell informed me) that the Judge was in favour of a lease to Mr. Maxwell of the farmable areas and that the

Contd/.....

*NT has a copy
received direct from Opotiki*

balance would be set aside as a Maori reserve for conservation and historical purposes (this land is all undeveloped and in manuka fern and bush). No doubt your Court files will give a true picture of what actually transpired at the case hearing.

- 5. Mr. Maxwell has been using the grassed areas for some years and he has paid the County rates. He also has been endeavouring to get an amalgamation of the different titles, engaged at his own cost a solicitor to attend to all related and Court matters. Mr. Maxwell of course is prepared to pay rent, somewhere around 6% of the Capital Value, but by advertising the land by tender now a position could develop where someone else might offer in excess of Mr. Maxwell's offer, of course not realising that the land has no proper access. (only over Maxwell's and Blacks sections - and they both have indicated that they will not give access to an outsider). Mr. Maxwell is understandingly most distressed and perturbed about the whole matter. All and every effort should be made to see whether a lease can be granted to Mr. Maxwell of Waiotahi Section 393G.

*Ho Low
Tom plan*

W.H. Mestrom
W.H. Mestrom,
FIELD SUPERVISOR.

*Please let me have
a full report*
JH

HPM:ZA

5461

----- Waiotahi C.C.

14 July 1972

Messrs Potts & Hodgson,
Barristers & Solicitors,
P.O. Box 18,
OPOTIKI.

Attention: Mr Smith

Dear Sirs,

WAIOTAHU 393G - MR W. MAXWELL

In reply to your letter of 11 July, I suggest that you are mistaken in your interpretation of the Order.

The section 438(5) Trust Order was drawn in this office and follows precisely, the Court minute creating it. A copy of the minute was sent to you on or about 22 February 1972.

It may well be that the Order as pronounced was not in the form which you contemplated and you had the opportunity of querying it following receipt of the minute and before the time for re-hearing had run.

You must appreciate that the Maori Trustee had no knowledge of the application and the proceedings which led to the making of the Order, other than that he was asked to accept a trust to lease, and did so. Having received a Trust Order which required him to alienate the land by way of lease as a whole or in parts, he followed the usual procedure in his capacity as a trustee by calling tenders for the leasing of the land. There was no suggestion in the Order that he should give any priority or preference to your client.

On the question of costs, you are still free to lodge an application under section 57 of the Maori Affairs Act 1953. If your client is not prepared to take his chance by tendering for the lease, his only other alternative is to apply to the Court to vary the terms of the trust. Any move in this direction will have to be made promptly, because tenders close on 2 August.

Yours faithfully,



(J. E. Cater)
Registrar

548

Waiotahi C.C.

17 July 1972

Messrs Potts & Hodgson,
Barristers & Solicitors,
P.O. Box 18,
OPOTIKI.

Attention: Mr Smith

Dear Sirs,

WAIOTAHİ 393G - MR W. MAXWELL

In reply to your letter of 11 July, I suggest that you are mistaken in your interpretation of the Order.

The Section 438(5) Trust Order as signed and sealed follows precisely the Court minute creating it. A copy of the minute was sent to you on or about 22 February 1972.

It may well be that the Order as pronounced was not in the form which you contemplated and you had the opportunity of questioning it following receipt of the minute, and before the time for re-hearing had run.

On the question of costs, you are still free to lodge an application under Section 57 of the Maori Affairs Act, 1953. If your client is not prepared to take his chance by tendering for the lease, his only other alternative is to apply to the Court to vary the terms of the trust. Any move in this direction will have to be made promptly, because tenders close on 2 August.

Yours faithfully,

H
(H. P. Martin)
Deputy Registrar

Kille
Waiotahi Court
D

POTTS & HODGSON
BARRISTERS & SOLICITORS

JAMES THOMAS HODGSON
NORMAN FRANCIS SMITH, LL.B.

551
IF CALLING OR TELEPHONING WITH REFERENCE TO THIS LETTER PLEASE ASK FOR
Mr Smith
21 JUL 1972
CLERK
ROTORUA

P.O. BOX 18
TELEPHONES 375 & 497

KING STREET,
OPOTIKI,
NEW ZEALAND

20th July 1972

The Registrar,
Maori Land Court,
Private Bag,
ROTORUA

Dear Sir,

Attention : Mr. Martin

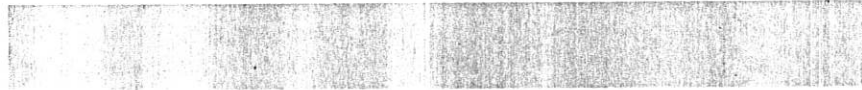
re - Waiotahi 393G - W. Maxwell - Waiotahi C.C.

We acknowledge receipt of your letter of the 17th July and note your comments as to the writer's misinterpretation of the Court order. From our records it would appear that the Court has made an order vesting the amalgamated blocks in the Maori Trustee with power to lease all or part of the land on certain specified term. It is our contention that as the order does not specify that the lease is to be arranged by tender, the Maori Trustee is competent under the terms of the order to deal privately with any interested party. It would be of assistance to us if you could advise whether or not the writer is mistaken in this interpretation.

*file - no action required
no further action
file to me, please*

Yours faithfully,
POTTS & HODGSON

Per: *[Signature]*



26 July 1972

Messrs Potts & Hodgson,
Barristers & Solicitors,
P.O. Box 18,
OPOTIKI.

Attention: Mr N. Smith


Dear Sirs,

WAIOTAHU 393G - MR W. MAXWELL

In reply to your letter of 20 July, it is true to say that the Trust Order did not specifically require the Maori Trustee to lease the land by public tender. I suggest however, that the Maori Trustee proceeded as any prudent trustee would do, by calling tenders for the lease in an endeavour to get the best possible deal for his beneficiaries.

You are no doubt by now aware, that the Court has varied the original order by issuing a new order which authorises the Maori Trustee to lease to Mr Maxwell providing a suitable offer is made by him.

Yours faithfully,


(H. P. Martin)
Deputy Registrar