

## APPENDIX A: LEGISLATIVE PROVISIONS

## Native Land Court Act 1886

*Roads: Private*

91. When upon an investigation of title to Native land, or upon partition, land is ordered to be divided into several parts or parcels, each of such parts or parcels shall be subject to such rights of private road for the purpose of access to other or others of such parts or parcels as may be ordered.

Such order may be made by the Court at the time when division or partition is ordered, or it may, on the application of any person interested therein, be made by the Court or a Judge at any time within five years from the date of such division or partition.

92. Each part or parcel into which land has heretofore been divided under any Act relating to Native land, shall be subject to like rights of private road, for the purpose of access to the other or others of such parts or parcels, as the Court or Judge may order, provided such order be applied for within two years from the passing of this Act.

The provisions as to private roads herein contained shall not affect the rights of Crown to reserve or take sites for roads, nor any reservation for roads provided for by law, or the right to take sites for and to construct and maintain roads by law, given to any person or corporate body.

*Roads: Public*

93. From and out of land which has or may be granted under the provisions of any Act hereby repealed or repealed by "The Native Land Act, 1873," or which shall be granted or become the subject of land transfer certificate under the provisions of this Act, or which is owned by Natives under Native Land Court certificate of title, or under memorial of ownership, it shall be lawful for the Governor, at any time hereafter, to take and layoff for public purposes one or more line or lines of road through the said lands, provided that the total quantity of land which may be taken, inclusive of any already taken, for such line or lines of road shall not exceed one-twentieth part of the whole.

The Governor may, at any time by indorsment [sic] on the Crown grant or on a subsequent or other instrument of title or by deed, release the land the subject of such right therefrom, or from any part thereof.

94. But there shall not be taken under the authority of the preceeding section any land occupied by any pa, village, cultivation, or any buildings, gardens, orchards, plantations, or any burial or ornamental grounds, except subject to the provisions of "The Public Works Act, 1882," and "The Public Works Act 1882 Amendment Act, 1884."

95. The powers hereby given as to public roads shall cease-  
(a.) As to land the subject of a grant certificate issued under this Act, at the end of fifteen years from the date of such grant or certificate;

RECEIVED

Waitangi Tribunal

1 Sep 2020

Ministry of Justice  
WELLINGTON

(b.) As to grants issued under any Act hereby repealed at the time when such power would have ceased under such repealed Act.

96. Whenever any lines of road are surveyed and laid off on or over any Native lands, under the direction of the Surveyor-General, the site of such road shall be deemed to be a road dedicated to the public, and shall vest in Her Majesty.

## **Native Land Court Act 1894**

### *Private Roads*

69. When upon an investigation of title of Native land, or upon partition, land has been or shall be ordered to be divided into several parcels under the Native Land Court Act, 1886," or under this Act, each of such parcels shall be subject to such rights of private road for the purpose of access to other or others of such parts or parcels as may be ordered.

Such order may be made by the Court at the time when partition is ordered, or it may, on the application of any person interested therein, be made by the Court at any time within five years from the date of such partition.

### *Public Roads*

70. It shall be lawful for the Governor, at any time within fifteen years after the first issue of a certificate of title, memorial of ownership, or other instrument conferring title under "The Native Land Court Act, 1886," or any Act thereby repealed, or under the provisions of this Act, whether heretofore issued or hereafter to be issued for any land, to take and layoff for public purposes one or more line or lines of road through such land, excepting in cases where such power shall, under any statute heretofore or hereby repealed, lapse before the expiration of such period of fifteen years or shall have already lapsed; and provided further that such line or lines of road shall be laid off within ten years of the date of the issue of the certificate of title, memorial of ownership, or other instrument of title: Provided that the total quantity of land which may be taken, inclusive of any already taken, for such line or lines of road shall not exceed one-twentieth part of the whole.

The Governor may at any time, by indorsement on the Crown grant or other instrument of title, or by deed, release the land the subject of such right therefrom, or from any part thereof.

The foregoing power may be exercised notwithstanding that such land shall have ceased to be owned by Natives or by Natives and Europeans jointly.

71. There shall not be taken under the authority of the last- preceding section any land occupied by any pa, village, Native cultivation, or burial-ground, except subject to the provisions of "The Public Works Act, 1882," and the several Acts amending the same.

72. Whenever any lines of road. are surveyed and laid off on or over any land or Native land under the direction of the Surveyor- General, the site of such road shall be deemed to be a road dedicated to the public, and shall vest in Her Majesty. When any road is laid off along the boundary between land owned by Natives and land

owned by Europeans, such road shall be taken equally from both such lands where practicable:

Provided that the Governor shall have the right to layoff or take roads on or from the lands of both owners.

### **Native Land Act 1909**

117. (1.) Upon any partition the Court shall layout upon the land partitioned such road-lines (if any) as the Court thinks necessary or expedient for the due settlement and use of the several parcels.

(2.) The Governor may by Proclamation proclaim any road-line so laid out as a public road, and the same shall thereupon vest in the Crown as a public road accordingly.

(3.) Unless and until such a Proclamation is made, the land so set apart as road-lines shall remain Native land held in common ownership as if no partition order had been made.

(4.) In lieu of or in addition to laying out road-lines under this section the Court may, if it thinks fit, in and by any partition orders made by it, create private rights of way over any parcels of the land partitioned and appurtenant to any other of those parcels; and in any such case every partition order made in respect of any such parcel shall set forth any right of way to which that parcel is so subject or which is so appurtenant thereto.

[Public Roding provisions: sections 387 – 394]

### **Native Land Amendment Act 1912**

[did not repeal NLA 1909 s117 above but added further considerations as below]

10. (1.) When any Native freehold land has been partitioned, Laying out of roads either before or after the commencement of this Act, in such manner that any subdivision thereof has no access to any public road, the Court may, if it thinks fit, on the application of any person interested, at any time thereafter, by order, layout any road-line over any portion of the land so partitioned which is necessary to afford to any such subdivision access to a public road.

(2.) The effect of any such order shall be to empower and authorize the Governor, by Proclamation, at any time thereafter to proclaim as a public road any road-line so laid out by the order; and on the making of any such Proclamation the road-line shall thereupon become a public highway accordingly.

(3.) No road-line shall be so laid out or public road so pro- claimed over any land which, at the date of the order or Proclamation, has already ceased to be Native freehold land, nor shall any such order or Proclamation authorize the laying-out of any road-line or the proclamation of any public road over any land the subject at the time of the commencement of this Act of an existing valid lease during the continuance of such lease without the consent in writing of the lessee.

(4.) Before any road-line is so laid out over any land the Court shall take into consideration any claim for compensation which may be made by any person having any estate or interest in that land, and may determine what compensation (if any) shall be paid to that person by the applicant or any other person; and the Court may, if it thinks fit, refuse to layout any road-line until and unless a contract for the payment of such compensation has been duly entered into and such security (if any) as the Court thinks necessary for the fulfilment of that contract has been duly given.

(5.) The exercise of the power vested in the Governor under this section shall in no way restrict or affect the power of the Governor to layout and take roads under Part XX of the principal Act.

### **Native Land Amendment Act 1913**

48. (1.) Upon any partition the Court may layout upon the land partitioned such road-lines (if any) as the Court thinks necessary or expedient for the use of the several parcels and for giving access or better access thereto.

(2.) In lieu of or in addition to laying out road-lines under this section, the Court may, if it thinks fit, in and by any partition orders made by it, create private rights of way over any parcels of the land partitioned and appurtenant to any other of those parcels; and in any such case every partition order made in respect of any such parcel shall set forth any right of way to which that parcel is so subject or which is so appurtenant thereto.

(3.) The Governor may, by Proclamation, proclaim any road- line laid out under subsection one hereof to be a public road, and the same shall thereupon vest in the Crown as a public road accordingly.

(4.) Unless and until such a Proclamation is made, the lands so set apart as road-lines shall remain Native land held in common ownership as if no partition order had been made, but subject to such rights of way thereover (if any) as shall be stated in the orders made on partition and specified in the manner provided by sub- section two hereof.

49. (1.) When any Native freehold land has been partitioned, either before or after the commencement of this Act, in such manner that any subdivision thereof is without reasonably practicable access to any public road, the Court may, if it thinks fit, on the application of any person interested, at any time thereafter, by order, layout any road-line over any portion of the land so partitioned which is necessary to afford to any such subdivision access to a public road, or may create private rights of way as provided by subsection two of section forty-eight hereof.

(2.) The Governor may, by Proclamation, at any time thereafter, proclaim as a public road any road-line so laid out by the order, and the same shall thereupon vest in the Crown and become a public road accordingly.

(3.) No road-line or private way shall be so laid out or public road so proclaimed over any land which at the date of the order or Proclamation has already ceased to be Native freehold land, nor shall any road-line or private way be laid out over any land the subject at the time of the commencement of this Act of an existing valid lease, during the continuance of such lease, without the consent in writing of the lessee.

(4.) Before any road-line or private way is laid out over any land under this section the Court shall take into consideration any claim for compensation which may be made by any person having any estate or interest in that land, and may determine what compensation (if any) shall be paid to that person by the applicant or any other person; and the Court may, if it thinks fit, refuse to layout any road-line or private way unless and until a contract for the payment of such compensation has been duly entered into and such security (if any) as the Court thinks necessary for the fulfilment of that contract has been duly given.

(5.) The Court may, if it thinks the circumstances of the case justify it in so doing, layout any road-line or private way as aforesaid unconditionally and without provision for payment of compensation therefor.

(6.) Section one hundred and seventeen of the principal Act and Repeal section ten of the Native Land Amendment Act, 1912, are hereby repealed.

50. (1.) The Court may, in order to give access or better access to any Native freehold land, layoff over any adjoining Native land (whether freehold land or not) such lines of roads or private ways as the Court thinks necessary or expedient; and subsections two, three, and four of section forty-eight of this Act shall apply to any roadline or private way so laid off.

(2.) No such road-line or private way shall be laid off over any land comprised, at the time of the commencement of this Act, in any existing valid lease during the continuance of such lease without the consent in writing of the lessee.

(3.) Before making an order laying off any such road-line or private way the Court shall, by notice in the *Gazette* and *Kabiti*, and by written notice posted addressed to the Native owners of such adjoining lands, fix a time and place for hearing objections; and shall hear all objections (if any) which shall be made; and shall thereafter make such orders as it shall think fit.

(4.) Such written notice shall be posted at least twenty-one days before the time fixed for the hearing of objections, and shall sufficiently specify the blocks or sections of land to and over which it is proposed to layoff such road-lines.

(5.) The Court may, in respect of any road-line or private way under this section, exercise the powers conferred by subsections four and five of section forty-nine of this Act in the same manner as if the said section forty-nine authorized the road-lines provided for by this section to be laid off.

(6.) The exercise of the power vested in the Governor under this section and sections forty-eight and forty-nine of this Act shall in no way restrict or affect the power of the Governor to layout and take roads under Part XX of the principal Act.

51. If in the opinion of the Court it is in the public interest that any road-line laid out by it under section forty-eight, forty-nine, or fifty of this Act should be proclaimed as a public road, it shall be the duty of the Court forthwith upon such road-line being laid off to notify the Minister of Lands accordingly; and such notification shall describe such road-line so as to enable the same and the boundaries thereof to be identified.

52. (1.) For any of the purposes of section forty-eight, forty-nine, or fifty of this Act the Court may, with the consent in writing of the owner of any freehold land and of every person having any estate or interest therein, and whether such owner or person

is a Native: or a European, layoff any road or way through the land of such owner or person; and such written consent shall operate as a disclaimer of all rights to compensation other than as shall be expressly set forth in such consent in writing, and shall operate as a dedication of the lands therein described as a public road unless such consent shall in terms expressly limit the right of user of such land as a road or way; and the Court may make an order accordingly.

(2.) Every order made as aforesaid shall set forth the terms of such consent, and on payment of all compensation payable to the person entitled thereto shall be registrable against the land affected thereby.

(3.) In order to obtain road access for any of the purposes aforesaid the Court may approve of any exchange of Native land for Native land, or of Native land for European land, and may issue an order or orders vesting any Native land to give effect to any such exchange.

(4.) In the case of an exchange of Native land for European land the Court shall only issue such order vesting the Native land with the consent of the Native Minister and upon a valid and effectual transfer or conveyance or dedication of the European land being made in such manner and to such person as the Court shall approve.

(5.) No stamp duty shall be payable on any such transfer, conveyance, or dedication.

53. (1.) Where roads are or have been surveyed by the Crown roads to give access to any subdivisions upon or after partition of any Native land, the cost of survey of such roads shall constitute a charge upon the lands they serve, give access to, or in any way benefit.

(2.) A certificate under the hand of the Chief Surveyor shall for all purposes be sufficient proof of the amount of these costs.

(3.) All the provisions of Part XXI of the principal Act shall apply and shall be deemed to have applied to the cost of surveying roads in the same manner and to the same extent as if the word "survey" wherever it occurs in the said Part XXI includes survey of roads as aforesaid; and every survey of roads as aforesaid shall be deemed to be a survey within the meaning of Part XXI, whether or not such survey shall be or has been executed in pursuance of a requisition by the (Native Land Court, or the Native Appellate Court, or- Maori Land Board.

## **Native Land Amendment and Native Land Claims Adjustment Act 1922**

Section 3:

The Native Land Amendment Act, 1913, is hereby amended as follows : - (c.) By repealing subsections three and four of section fifty:

Section 13:

(1.) The Court may, in order to give access or better access to any European land which has ceased to be Native land since the fifteenth day of December, nineteen hundred and thirteen, layoff over any adjoining Native land (whether freehold or not) such lines of roads or private way as the Court thinks necessary or expedient.

(2.) The Court may likewise, in order to give access or better access to any Native freehold land, layoff over any adjoining European land which has ceased to be Native land since the fifteenth day of December, nineteen hundred and thirteen, such lines of roads or private way as the Court thinks necessary or expedient.

(3.) In laying out any such line of road or private way the Court shall take into consideration what compensation (if any) ought to be paid to any person or persons having any claim or interest in the land affected, and determine by whom the same shall be paid, and, when it thinks expedient so to do, may make a charging-order charging it on the land benefited by such line of road or private way or such other lands as' the Court thinks fit.

(4.) The Court may, if the circumstances justify it, direct that no compensation is payable, or may lay down such conditions as it thinks necessary under which the line of road or private way shall be enjoyed by the parties.

(5.) An order made under this section may be registered against any title affected by it.

### **Native Land Act 1931**

476. Sections one hundred and twenty-five and one hundred and of Public Works Act, twenty-eight of the Public Works Act, 1928 (relating to roads), shall not apply to the sale or subdivision of Native land situated elsewhere than in a borough.

477. Upon any partition the Court may layout upon the land partitioned such road-lines (if any) as the Court thinks necessary or expedient for the use of the several parcels and for giving access or better access thereto.

478. When any Native freehold land has been partitioned, either before or after the commencement of this Act, in such manner that any subdivision thereof is without reasonably practicable access to any public road, the Court may, if it thinks fit, on the application of any person interested, at any time thereafter, by order, layout any road-line over any portion of the land so partitioned which is necessary to afford to any such subdivision access to a public road.

479. The Court may, in order to give access or better access to any Native freehold land, layoff over any adjoining Native land (whether Native freehold land or not) such road-line as the Court thinks necessary or expedient.

480. In lieu of or in addition to laying out road-lines under this Part of this Act, the Court may, if it thinks fit, in and by any orders made by it, create private rights of way over any area of land and appurtenant to any other area; and in any such case every order made in respect of any such area shall set forth any right of way to which that area is so subject or which is so appurtenant thereto.

481. (1) No such road-line or private way shall be so laid off under the last two preceding sections over any land comprised in any existing valid lease executed prior to the fifteenth day of December, nineteen hundred and thirteen, during the continuance of such lease without the consent in writing of the lessee.

(2) In laying out any such line of road or private way the Court shall take into consideration what compensation (if any) ought to be paid to any person or persons

having any claim or interest in the land affected, and determine by whom the same shall be paid, and, when it thinks expedient so to do, may make a charging-order charging it on the land benefited by such line of road or private way or such other lands as the Court thinks fit.

(3) The Court may, if the circumstances justify it, direct that no compensation is payable, or may lay down such conditions as it thinks necessary under which the line of road or private way shall be enjoyed by the parties

(4) An order made under this section may be registered against any title affected by it.

482. (1) The Court may, with the consent in writing of the owner of any freehold land and of every person having any estate or interest therein, and whether such owner or person is a Native or a European, layoff any road or way through the land of such owner or person; and such written consent shall operate as a disclaimer of all rights to compensation other than as shall be expressly set forth in such consent in writing, and shall operate as a dedication of the lands therein described as a public road unless such consent shall in terms expressly limit the right of user of such land as a road or way; and the Court may make an order accordingly.

(2) Every order made as aforesaid shall set forth the terms of such consent, and on payment of all compensation payable to the person entitled thereto shall be registrable against the land affected thereby.

(3) In order to obtain road access for any of the purposes aforesaid the Court may approve of any exchange of Native land for Native land, or of Native land for European land, and may issue an order or orders vesting any Native land to give effect to any such exchange.

(4) In the case of an exchange of Native land for European land the Court shall only issue such order vesting the Native land with the consent of the Native Minister and upon a valid and effectual transfer or conveyance or dedication of the European land being made in such manner and to such person as the Court shall approve.

(5) No stamp duty shall be payable on any such transfer, conveyance, or dedication.

483. (1) The Court may, in order to give access or better access to any European land which has ceased to be Native land since the adjoining lands. fifteenth day of December, nineteen hundred and thirteen, layoff over any adjoining Native land (whether freehold or not) such lines of roads or private way as the Court thinks necessary or expedient.

(2) The Court may likewise, in order to give access or better access to any Native freehold land, layoff over any adjoining European land which has ceased to be Native land since the fifteenth day of December, nineteen hundred and thirteen, such lines of roads or private way as the Court thinks necessary or expedient.

(3) In laying out any such line of road or private way the Court shall take into consideration what compensation (if any) ought to be paid to any person or persons having any claim or interest in the land affected, and determine by whom the same shall be paid, and, when it thinks expedient so to do, may make a charging-order charging it on the land benefited by such line of road or private way or such other lands as the Court thinks fit.



(4) The Court may, if the circumstances justify it, direct that no compensation is payable, or may lay down such conditions as it thinks necessary under which the line of road or private way shall be enjoyed by the parties.

(5) An order made under this section may be registered against any title affected by it.

485. (1) With the consent of the owner of any land, whether European or Native, situated elsewhere than in a borough the Court may layout over such land one or more rights-of-way to give access or additional access either to Native land over European land or to European land over Native land. Such order shall constitute without

further assurance a grant of the right-of-way therein included, and shall be registrable by the District Land Registrar against the titles of the lands affected.

(2) Where Native land affected is owned by more than two owners the Court may act upon the consent of the majority of the owners present in Court or may dispense with such consent if it is satisfied that the proposed right-of-way is not contrary or prejudicial to the interests of the owners of the Native land.

(3) The Court may in and by such order impose any terms or condition subject to which a right-of-way laid out under this section is granted. Where in any order made under this section a condition is imposed for the payment of a sum of money the Court may in or by such order or by separate charging-order constitute that money (together with interest thereon at the rate of five per centum per annum) a charge upon the land to which the right-of-way is appurtenant, and the money so charged shall be payable in accordance with the tenor of the order.