Tūhoe Claims Settlement Act 2014 registration guideline

LINZG20760

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Terms and definitions

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| General | 1. For the purposes of this guideline, the terms and definitions in the Tūhoe Claims Settlement Act 2014 (Act) apply, unless stated otherwise. Refer to ss 11,to 14, 22, 51, and 59 of the Act for interpretation. 2. Terms and abbreviations used in this guideline that are not defined in the Act are defined below. 3. Any reference to a section in this guideline is a reference to that section of the Act. |

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| Term/abbreviation | Definition |
| Act | Tūhoe Claims Settlement Act 2014 |
| authorised person | an authorised person as defined in ss 28(8)(a) and (b), 38(2), or 53(5), as the case may be |
| Chief Executive | Chief Executive of Land Information New Zealand |
| CNI forests properties | the CNI properties as defined in s 22 of the Act |
| cultural redress property | a property listed in s 22 and described in Schedule 2 of the Act |
| commercial redress property | a property defined as deferred selection property in s 51 of the Act |
| CFR | computer freehold register, as defined in s 2 of the Land Transfer Act 1952 |
| deed of settlement | the Tūhoe Deed of Settlement dated 4th June 2013, referred to in s 3 of the Act and as defined in s 12 of the Act |
| deferred selection property | a property defined as deferred selection property in s 51 of the Act |
| LINZ | Land Information New Zealand |
| RFR land | land defined as RFR land in s 59 (right of first refusal) |
| RGL | Registrar-General of Land appointed under s 4 of the Land Transfer Act 1952 |
| trustees | trustees acting in their capacity as trustees of Tūhoe Te Uru Taumatua as defined in s 12 of the Act |

Foreword

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| Introduction | 1. The Tūhoe Claims Settlement Act 2014 (Act) takes effect on the settlement date which is 20 days after the day the Act came into force (28 July) (see s 4). 2. The land concerned is in the South Auckland Land Registration District. |

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| Purpose | The Registrar-General of Land (RGL) has issued this guideline to ensure that applications received by Land Information New Zealand (LINZ) under the Act are dealt with correctly. |

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| Scope | 1. This document contains guidelines for compliance with the Act. It covers:    1. the requirements for certificates, applications, and other transactions to be lodged for registration with the RGL, and    2. registration requirements and memorial formats. 2. The guideline focuses primarily on the provisions of the Act that impact on the registration process. |

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| Intended use of guideline | The RGL has issued this guideline for employees of LINZ with delegated authority to exercise registration functions under the Land Transfer Act 1952. |

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| References | The following documents are necessary for the application of this guideline:   1. Tūhoe Deed of Settlement for dated 4th June 2013[[1]](#footnote-1), 2. Tūhoe Claims Settlement Act 2014, and 3. Customer Services Technical Circular 2013.T06 - Registration of Treaty Claims Settlement Dealings. |

# Noting statutory restrictions on registration

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| Statutory prohibitions restricting dealing with CFRs | Sections 33, 36, and 82 of the Act contain restrictions against dealing with land held in computer freehold registers (CFR). In each case a memorial of the statutory restrictions must be entered on the relevant CFRs. |

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| Follow up action for Landonline | When a CFR contains the following memorials:   1. 'subject to section 33 of the Tūhoe Claims Settlement Act 2014', 2. 'subject to section 36 of the Tūhoe Claims Settlement Act 2014 (which prohibits reserve land from being mortgaged or charged for security)', 3. '[certificate identifier] Certificated under section 82 of the Tūhoe Claims Settlement Act 2014 that the within land is RFR land as defined in section 59 and is subject to Subpart 2 of Part 3 of the Act (which restricts disposal, including leasing of the land) [*date and time]*'*.*   Ensure the 'prevents registration' flag has been set. |

# Removal of memorials

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| Trigger – receipt of s 18 certificate | Receipt of a certificate under s 18 for the removal of certain memorials from a CFR. |

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| Authorised person | 1. A statement in the certificate that the signatory is acting on delegation or authority of the Chief Executive shall be taken as evidence of the authority of the person to execute the certificate on behalf of the Chief Executive. 2. A template certificate has been approved by the RGL and is set out in Technical Circular 2013.T06. |

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| Legislation | 1. Section 17 provides that certain legislative provisions do not apply to land in the RFR area, or for the benefit of the settling group or a representative entity. 2. Section 17(2) lists the legislative provisions as:    1. sections 8A to 8HJ of the Treaty of Waitangi Act 1975,    2. sections 27A to 27C of the State Owned Enterprises Act 1986,    3. sections 211 to 213 of the Education Act 1989,    4. Part 3 of the Crown Forest Assets Act 1989, and    5. Part 3 of the New Zealand Railways Corporation Restructuring Act 1990.   **Note**: These legislative provisions, being statutory notations, do not fall within the definition of 'encumbrance' in treaty settlement legislation, so must be brought down onto the CFRs created for the relevant entity or trustees. They are only to be noted as 'cancelled' by the RGL, acting on the certificate issued as below. |

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Removal of memorials, continued

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| Certificate | Section 18(4) requires the RGL to register a certificate against the affected registers, cancelling any relevant memorial referred to in s 17(2). The certificate must:   1. be issued by the Chief Executive, as soon as reasonably practicable after the settlement date, or actual deferred settlement date (s 18(2)), 2. identify the relevant allotments, (s 18(1)), and 3. state that it is issued under s 18(3). |

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| Action - registration of certificate under s 18 | When a certificate under s 18 is presented for registration:   1. any memorial on the current view of the CFR which relates to an enactment referred to in s 17(2) should be removed, 2. the following memorial should be recorded on the historic view of that register:   '[*instrument number*] Certificate under section 18 of the Tūhoe Claims Settlement Act 2014 cancelling [*memorial identifier*] [*date and time*]',   1. the Landonline registration code is RRSM (see T06 2013 Technical Circular), and 2. the standard registration fee is payable.   **Note**: If the existing memorial on the title refers to an Act in general, such as 'subject to the Crown Forest Assets Act 1989', the original notation remains on the CFR, but it should be recorded on the CFR that 'Part 3 of the Crown Forest Assets Act 1989 (or any other relevant section mentioned in s 17(2)) does not apply'. |

# Cultural redress properties

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| Properties to vest under s 27 | The cultural redress properties set out in Schedule 2 of the Act vest in trustees. Schedule 2 also shows the legal descriptions and interests affecting the cultural redress land to vest in the trustees. |

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| Trigger – receipt of written application under s 28(3) | 1. Receipt of a written application under s 28(3) by an authorised person to register the trustees as proprietors of the fee simple estate. 2. An authorised person is an authorised person defined in s 28(8) of the Act as the:    1. Director - General of Conservation in respect of the land known as Onini and Te Tii.    2. Secretary of Justice in respect of all other properties |

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| Action – registration of trustees | When a s 28(3) certificate is presented for registration:   1. If a cultural redress property is all of the land contained in a CFR, the RGL must:    1. register the trustees as the proprietors of the fee simple, and    2. make any entry and do all things necessary to give effect to Part 2 subpart 1 of the Act and Part 4D of the Deed of Settlement (s 28(3)(b)).   **Note:** Part 4D of the deed of settlement relates to the vesting of cultural redress land and other related matters that are covered in the Act. There is nothing in Part 4D that requires the RGL to do anything more than is required under the Act   1. If the cultural redress property is not all of the land in a CFR, or there is no CFR for all or part of the property, the RGL must:    1. create a CFR in the name of the Trustees, and    2. enter any encumbrances or interests described in the application (s 28(5)).   continued on next page  Cultural redress properties, continued   1. The following must be recorded:    1. on the CFR for Te Tii:       1. 'subject to Part 4A of the Conservation Act 1987 but section 24 of that Act does not apply',       2. 'subject to section 11 of the Crown Minerals Act 1991',       3. 'subject to section 29(3) and 33 of the Tūhoe Claims Settlement Act 2014'.   **Note:** Section 33 prohibits registration except in accordance with ss 34 or 35 of the Act. A warning flag should be created in Landonline to prevent registration   * 1. for any other cultural redress property:      1. 'subject to Part 4A of the Conservation Act 1987'.      2. 'subject to section 11 of the Crown Minerals Act 1991' |
|  | 1. Creation of the above CFR is subject to completion of any necessary survey. 2. The standard registration fee is payable.   **Note:** Any resumptive memorials already noted on a CFR must be brought down onto the CFRs created for the relevant entity or trustees. They cannot be noted as 'cancelled' until a certificate by the Chief Executive authorising the removal of the memorials is lodged for registration. |

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| Statutory exemptions under s 31 | The vesting of cultural redress properties or creation of rights of way under the Act are not subject to:   1. the subdivision requirements of the Resource Management Act 1991, or 2. the Council’s requirements for consent under s 348 of the Local Government Act 1974. |

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Cultural redress properties, continued

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| Action – vestings subject to encumbrances under s 27 | 1. The cultural redress properties are vested subject to the encumbrances set out in the third column in Schedule 2 of the Act. The encumbrances may include unregistered instruments. 2. Only the encumbrances referred to in the application are required to be entered on the CFR. |

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| Action – revocation and reconferring of reserve status | The reserve status of the following sites is revoked and/or new reserve status or no reserve status conferred.   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | Property | Revoked status | Section | Estate | New status/purpose | Section | | Onini | Conservation area | 24(1) | Fee simple | No specified purpose | 24(2) | | Te Tii | Conservation area | 26(1) | Fee simple | Local purpose reserve for iwi community purposes and nature protection subject to s 23 of the Reserves Act 1977 | 26(3) | |

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| Action – statutory action | 1. When an application is made in respect of a reserve site, the statutory action revoking the reserve must be captured before the registration of the trustees as registered proprietors. 2. If the statutory action requires updating the cadastre survey system in any way, survey staff should be notified and requested to update the cadastre. 3. When the vesting in the trustees has been registered, the new reserve status, (if any) must, where applicable, be noted on the current view of the relevant CFR as per the above table. |

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| Trigger – receipt of an application under s 30(3)(a) | Receipt of an application from the Director-General of Conservation under s 30(3)(a) to cancel memorials recording that s 24 of the Conservation Act 1987 does not apply if the reservation of Te Tii is revoked in whole or in part.  **Note:** The application must be preceded by the relevant documentation revoking the reservation in terms of the Reserves Act 1977. |

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Cultural redress properties, continued

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| Action – memorial | The approved format for the memorial on the historic view of the CFR which must record the cancellation is:  '[application identifier] Application under section 30(3) of the Tūhoe Claims Settlement Act 2014 [*date and time*]'. |

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| Action – removal of memorials | The following notifications must be modified accordingly:   1. From the memorial 'subject to Part 4A of the Conservation Act 1987 (but section 24 of that Act does not apply)'delete the words '(but section 24 of that Act does not apply)'. 2. Delete the memorial 'subject to sections 29(3) and 33 of the Tūhoe Claims Settlement Act 2014'. |

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| Statutory prohibition against a mortgage under s 36 | The registered proprietors of the reserve land known as Te Tii are prohibited from registering a mortgage or any other security interest (charge) in any land or part of the land so long as it remains a reserve under the Reserves Act 1977. |

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| Action – memorials | The following memorial should be added to the CFR: for the reserve land known as Te Tii  'subject to section 36 of the Tūhoe Claims Settlement Act 2014 (which prohibits reserve land from being mortgaged or charged for security)'.  Ensure the 'prevents registration' flag has been set. |

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| Affect of revocation of reserve on prohibition under s 30(3) | 1. Although not provided for in the Act, if the reservation affecting the land known as Te Tii is revoked under s 30(3) the following notification should be modified as follows:   Delete the memorial 'subject to section 36 of the Tūhoe Claims Settlement Act 2014 (which prohibits mortgaging reserve land)'.   1. If a reserve is revoked as to part of the site, the memorial remains only on those CFRs or part CFRs that remain a reserve. |

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Cultural redress properties, continued

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| Trigger – receipt of a transfer instrument | Receipt of a transfer instrument transferring Te Tii reserve land. |

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| Restrictions on transfer of Te Tii reserve land under s 33 | 1. Despite the Reserves Act 1977 and RGL circular 2005/08, the fee simple estate in the Te Tii reserve land may only be transferred to any other person in accordance with ss 34 and 35. 2. If there is any doubt whether ss 34 and 35 apply the matter should be escalated to a senior officer (eg Titles Advisor) for resolution. |

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| Transfer of Te Tii reserve land to new owners for same reserve purpose under s 34(4)(a) | 1. The written consent of the Minister of Conservation must accompany the transfer instrument along with the notifications required by 34(4)(a). 2. On receipt of the transfer instrument and consent, the RGL must register the transfer. 3. The transfer memorial must contain a statement that the new owners hold the land for the same reserve purpose as the previous administering body held it. |

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| Transfer of Te Tii reserve land to new trustees under s 35 | 1. A transfer of Te Tii reserve land may be registered to give effect to a change of trustees (ie the transferees are new or continuing trustees of the same trust) 2. The transfer must be accompanied by a s 35(c) certificate given by the transferees (or their solicitor) verifying that paragraphs (a) & (b) of s 35 apply 3. If there is any doubt these matters should be escalated to a senior officer (eg Titles Advisor) for resolution. |

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Cultural redress properties, continued

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| Removal of Crown forestry licence memorial under s 37 | Upon receipt of a written application from the registered proprietor of CNI forest property under s 37 which complies with the requirements of that section, the RGL must remove the Crown forestry licence memorial from the CFR for the property.  **Note:** The written application must contain a statement from the relevant licensee under the Crown forestry licence confirming that all of the land in the CFR for the property was returned on the return date. [as defined in s 37(3)(1)] |

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| Trigger – removal of public access and easement notations under s 38 | A written application by the Secretary for Justice under s 38(2) to record matters provided for in s 38. |

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| Action – to be recorded on every relevant CFR | Upon lodgement of a s 38 application the following must be recorded on every relevant CFR:   1. 'Section 10 of the Central North Island Forests Land Collective Settlement Act 2008 ceases to apply'.   **Note:** This must be recorded whether or not there is an existing notation on the CFR referring to the Central North Island Forests Land Collective Settlement Act 2008.   1. The following public rights of way in gross granted under s 11 of the Central North Island Forests Land Collective Settlement Act 2008 are extinguished:    1. For Ngā Tī Whakaaweawe, (CFR 507548) easement instrument 8276156.1.    2. For all other CNI forests properties easement instrument 8276174.1. |

# Vesting of commercial redress properties

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| Crown may transfer deferred selection properties | Section 52 gives the Crown the authority to transfer the fee simple estate in a deferred selection property to the trustees and sign a transfer or other document to give effect to such a transfer. |

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| Trigger – written application under s 53(3) | A written application by an authorised person under s 53(3) to create a CFR.  Authorised person means a person authorised by the Chief Executive of the relevant land holding agency (s 53(5)). |

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| Action – create CFR | 1. The RGL must create one CFR in the name of the Crown:    1. subject to and together with any encumbrances that are registered or described in the application, but    2. without any statement of purpose. 2. Creation of the above CFR is subject to completion of any necessary survey. 3. Standard registration fees apply. |

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| Statutory exemption under s 55 | The creation of CFRs or registration of transfers or easements to give effect to the requirements of the Act in respect of commercial redress properties are not subject to:   1. the subdivision requirements of the Resource Management Act 1991, or 2. the Council’s requirements for consent under s 348 of the Local Government Act 1974. |

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| Trigger – receipt of a covenant under s 54(2) | Receipt of a covenant by an authorised person for the later creation of a CFR under s 54(2).  Authorised person is defined in s 53(5). |

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Vesting of commercial redress properties, continued

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| Statutory directive | Notwithstanding anything to the contrary in the Land Transfer Act 1952, the covenant must be registered and a computer interest register created. |

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| Trigger - transfer of deferred selection property under s 52 | A transfer under s 52 is a disposition for the purpose of Part 4A of the Conservation Act 1987 but sections 24(2A) 24A and 24AA do not apply to the disposition |

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| Memorials | To give effect to s 55 the following memorials should be recorded against a CFR of a deferred selection property transferred under s 52:   1. 'subject to Part 4A of the Conservation Act 1987 but section 24(2A) 24A and 24AA of that Act does not apply', 2. 'subject to section 11 of the Crown Minerals Act 1991', |

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| Statutory exemptions under s 55 | 1. The permission of a council under s348 of the Local Government Act 1974 is not required for a right of way required to fulfil the terms of the deed of settlement in relation to a transfer under s 52. 2. Section 11 and Part 10 of the Resource Management Act 1991 do not apply to a transfer under s 52. |

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| Trigger – transfer under s 56 | Transfer of Tāneatua School property to the trustees (s 56). |

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Vesting of commercial redress properties, continued

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| Action – Transfer of properties subject to lease | 1. Section 24 of the Conservation Act 1987 does not apply to the transfer. 2. The transfer must include a statement that the land is to become subject to s 57 upon registration of the transfer. 3. The transfer must be registered and the following memorials recorded:    1. 'subject to Part 4A of the Conservation Act 1987 (but section 24 of that Act does not apply)',    2. 'subject to section 57 of the Tūhoe Claims Settlement Act 2014', and    3. 'subject to section 11 of the Crown Minerals Act 1991'. 4. After registration of the transfer, the land is subject to a lease back to the Crown. This does not need to be recorded on the CFR. |

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| Termination or expiry of lease under s 57 | If the lease contemplated by s 56 terminates or expires, the transfer of the property is no longer exempt from s 24 (except subsection (2A) of the Conservation Act 1987 in relation to all or part of the property). |

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| Trigger – application by registered proprietors under s 57 | 1. Application by registered proprietors under s 57 to cancel memorials recording that s 24 of the Conservation Act 1987 does not apply if the exemption is revoked in whole or in part. 2. The application is free of charge (s57(4)). |

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Vesting of commercial redress properties, continued

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| Action memorial | The approved format for the memorial on the historic view of the CFR which must record the cancellation is:   1. '[application identifier] Application under section 57(3) of the Tūhoe Claims Settlement Act 2014 [*date and time*]'. |

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| Action – removal of memorials | 1. The following memorials must be removed:    1. From the memorial 'subject to Part 4A of the Conservation Act 1987 (but section 24 of that Act does not apply)'delete the words '(but section 24 of that Act does not apply)', and    2. 'subject to section 57 of the Tūhoe Claims Settlement Act 2014'. 2. If only part of the land remains subject to a lease, the memorials should be removed as to the relevant part only. |

# Right of first refusal

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| Trigger – receipt of a certificate under s 82(1) | Receipt of a certificate from the Chief Executive under s 82(1) that identifies one or more CFRs for RFR land. |

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| Action – memorials record for RFR land | 1. Add the following memorial to the current view of the CFR identified in the s 82 certificate:   '[certificate identifier] Certificate under section 82 of the Tūhoe Claims Settlement Act 2014 that the within land is RFR land as defined in section 59 and is subject to Subpart 2 of Part 3 of the Act (which restricts disposal, including leasing, of the land) [*date and time*].   1. The standard registration fee is payable. |

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| Trigger – certificate under s 83 | Receipt of a certificate from the Chief Executive under s 83 for the removal of s 82 memorials from a CFR on land ceasing to be RFR land upon transfer or vesting. |

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| Action – registration requirements | 1. Upon receipt of the s 83 certificate the RGL must record the following memorial on the historic view of the register:   '[certificate identifier] Certificate under section 83 of the Tūhoe Claims Settlement Act 2014 removing [memorial identifier] entered under section 82 [*date and time*]'.   1. The transfer or vesting must be registered. 2. The standard registration fee is payable. |

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| Trigger – certificate under s 84 | Receipt of a certificate from the Chief Executive under s 84 for the removal of s 82 memorials from a CFR at the end of the RFR period. |

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Right of first refusal, continued

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| Action – registration requirements | 1. Upon receipt of the s 84 certificate the RGL must record the following memorial on the historic view of the register:   '[certificate identifier] Certificate under section 84 of the Tūhoe Claims Settlement Act 2014 removing [memorial identifier] entered under section 82 [*date and time*]'.   1. The standard registration fee is payable. |

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| Action – ongoing monitoring of RFR land | A transfer or vesting of the fee simple estate, or grant of a lease for 50 years or more (including any rights of renewal or extensions), in a CFR that has a memorial recorded on it under s 82, cannot be registered unless:   1. the dealing is in favour of the Crown, or a Crown Body as defined in s 58 (s 66), or 2. a certificate from the Chief Executive has been received under s 83, or 3. at the end of the RFR period, a certificate from the Chief Executive has been received under s 84 for the removal of the memorial under s 82.   **Note:** Transfers of RFR land without a preceding s 83 or s 84 certificate should only be accepted if it is absolutely clear that the transferee is the Crown or a Crown Body. (as defined in s 58) If there is any doubt, these matters should be escalated to a senior officer (eg Titles Advisor) for resolution.  **Note:** Where land is disposed of to the Crown or a Crown Body in terms of s 66, the RFR will remain on the title and must continue to be monitored and enforced by LINZ until it is removed under ss 83 or 84. |

# Transitional arrangements for land held by Trust Board

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| Transition – registers | 1. The Tuhoe-Waikaremoana Trust Board (the Trust Board), as defined in s 88, is dissolved at the commencement of the Act (s 89). 2. Part 4 of the Act sets out the provisions relating to vesting of liabilities and assets (including land of which the Trust Board was registered proprietor) immediately before the commencement of the Act. Property held by the Trust Board vests in the trustees of Tūhoe Te Uru Taumatua as provided in s 91. 3. Where land is currently registered in the name of the Trust Board the RGL is not required to change the name of the Trust Board to the names of the trustees on any register solely because of the provisions of the Act (s 100). 4. When dealing with land registered in the name of the Trust Board the trustees may evidence their ownership by providing a certificate in terms of s 100(3)(c). |

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| Trigger – instrument affecting Trust Board land. s 100 | Any registrable instrument presented in terms of s 100 may be accepted provided it:   1. is executed or purports to be executed by the trustees, and 2. relates to land or an interest in land held, managed, or controlled by the Trust Board (or any entity wholly or partly owned or controlled by the Trust Board) immediately before the commencement of the Act, and 3. is accompanied by a certificate given by the trustees or their solicitor that the property was vested in the trustees by or under Part 4 of the Act, as provided in s 100(3)(c). |

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| Action – RGL to give effect to instrument | The instrument containing the s 100(3)(c) certificate serves as sufficient proof that the property is vested in thee trustees, in the absence of proof to the contrary. |

1. Refer to the Office of Treaty Settlements website for a copy of the deed of settlement and its amendments [↑](#footnote-ref-1)