

Ngāti Whātua o Kaipara claims settlement right of first refusal

Learn about the key aspects of the Ngāti Whātua o Kaipara claims settlement right of first refusal (RFR). Note: this is a guide only and agencies must comply with the requirements of the deed of settlement, legislation and any relevant LINZ standards.

Publication Date: 20 October 2020

The following has been developed in collaboration with Te Arawhiti.

Te Arawhiti website: <https://www.tearawhiti.govt.nz/>

The RFR under this settlement includes properties that are also subject to other settlements. This page must be read in conjunction with the page for the Te Kawerau ā Maki RFR and any information for the Marutūāhu collective settlement, once that is concluded.

Te Kawerau ā Maki claims settlement right of first refusal:

<https://www.linz.govt.nz/crown-property/acquisition-and-disposal-land/crown-property-disposal-process/right-first-refusal-rfr/right-first-refusal-guides/te-kawerau-%C4%81-maki-claims-settlement-right-first-refusal>

In addition to the RFR under this settlement, Ngāti Whātua o Kaipara are part of the Ngā Mana Whenua o Tāmaki Makaurau Collective, which has an RFR over most of the metropolitan Auckland area. For more information, please see the Ngā Mana Whenua o Tāmaki Makaurau RFR page:

<https://www.linz.govt.nz/crown-property/acquisition-and-disposal-land/crown-property-disposal-process/right-first-refusal-rfr/right-first-refusal-guides/ng%C4%81-mana-whenua-o-t%C4%81maki-makaurau-collective-redress-right>

The Ngāti Whātua o Kaipara area of interest

Ngāti Whātua o Kaipara is a name chosen by the hapū and whānau of the five marae of south Kaipara (Reweti, Haranui, Kākānui, Araparera and Puatahi).

The name Ngāti Whātua o Kaipara is not traditional but has been adopted to avoid confusion between Ngāti Whātua in Ōrākei and Ngāti Whātua in south Kaipara. Within this context, Ngāti Whātua o Kaipara means not only Ngāti Whātua but also Ngāti Whātua Tūturu, Te Tao Ū, Ngāti Rango (sometimes referred to as Ngāti Rongo), Ngāti Hine and Te Uri o Hau.

The map below provides an indication of the area of interest for Ngāti Whātua o Kaipara, but is not a depiction of any RFR area.



Settlement Summary

Ngāti Whātua o Kaipara received redress through its Treaty settlement with the Crown.

Iwi	Ngāti Whātua, Ngāti Whātua Tūturu, Te Tao Ū, Ngāti Rango (sometimes referred to as Ngāti Rongo), Ngāti Hine and Te Uri o Hau who exercised customary rights predominantly within the Ngāti Whātua o Kaipara area of interest.
Deed of Settlement signed	9 September 2011 The Deed was amended during the settlement process. Ngāti Whātua o Kaipara Deed of Settlement: https://www.govt.nz/treaty-settlement-documents/ngati-whatua-o-kaipara/
Settlement date	11 July 2013
Legislation	Ngāti Whātua o Kaipara Claims Settlement Act 2013 ("the Act")
RFR provisions	The RFR provisions are covered by sections 95-127 and Schedule 4 of the Act. Sections 95-127 of the Act: http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653369.html Schedule 4 of the Act: http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653497.html
Offer made to	The RFR offer is in favour of the trustees of one or more of the PSGEs ("governance entities"), depending on the category of RFR land that applies to particular land and who is eligible to receive an RFR offer.
Categories of RFR land	Exclusive, non-exclusive, and Auckland Prison
RFR period	Exclusive RFR land: 169 years from the settlement date (expires in 2182) Non-exclusive RFR land: 169 years from 12 July 2016 (expires in 2185) Auckland Prison: 170 from 11 November 2015 (expires in 2185) The dates that the RFRs for the non-exclusive RFR land and Auckland Prison take effect vary, due to the linkages with other settlements. These dates are known as "RFR dates."
RFR memorials	Yes

Definition of RFR land

Section 96 of the Act defines RFR land included in the settlement. There are three categories of RFR land in this settlement.

Section 96 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653423.html>

Section 97 of the Act defines **exclusive RFR land**. This is:

- land in the exclusive RFR area (shown on SO 438209 in Part 4 of the Attachments to the Deed of Settlement) that, on settlement date, was vested in, or held in fee simple by, the Crown
- land in the area marked "A" in the exclusive RFR area that, on settlement date, was a Crown-derived reserve vested in an administering body that would revert to the Crown
- land obtained in exchange for a disposal of exclusive RFR land
- land described in Part 7 of the Attachments to the Deed of Settlement (located in the Deed to Amend dated 20 August 2012)

Exclusive RFR land does not include certain land that is a State Highway (unless otherwise provided for), or land transferred to the iwi.

Section 97 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653425.html>

Deed of Settlements – Attachments: <https://www.govt.nz/assets/Documents/OTS/Ngati-Whatua-o-Kaipara/Ngati-Whatua-o-Kaipara-Deed-of-Settlement-Attachments-9-Sep-2011.pdf>

Section 97 of the Act defines **non-exclusive RFR land**. This is land listed in Part 6 of the Attachments to the Deed of Settlement that, on the RFR date (as defined in section 95 of the Act), it was vested in, or held in fee simple by, the Crown. It also includes land obtained in exchange for a disposal of non-exclusive RFR land under specified sections.

Section 97 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653425.html>

The Marutūāhu collective settlement is still in negotiation with the Crown. However, it is intended that if settled, the Marutūāhu collective will share in any RFR offers that are made for non-exclusive RFR land, from the date of settlement.

Until then, any offers of non-exclusive RFR land are to be made to the Ngāti Whātua o Kaipara and Te Kawerau ā Maki governance entities.

Auckland Prison is also RFR land. This is the land described as Paremōremo Prison in Part 5 of the Attachments to the Deed of Settlement if, on the RFR date (as defined in section

95 of the Act), was vested in, or held in fee simple by, the Crown. This includes land obtained in exchange for a disposal of Auckland Prison under specified sections.

Section 95 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653371.html>

Disposals

The RFR obligation arises for any disposal that:

- transfers or vests the fee simple estate in the land, or
- grants a lease of the land for a term that is, or will be (if any rights of renewal or extension are exercised under the lease), 50 years or longer.

Preliminary notice

There is a preliminary requirement for **non-exclusive RFR land** and **Auckland Prison**. An RFR landowner is required to notify the relevant governance entities that the potential disposal of such land is being considered where they may ultimately be required to make an RFR offer. This is set out in section 119 of the Act.

Section 119 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653461.html>

Offering the land

The RFR offer to the relevant governance entities needs to include the terms of the offer, including:

- the expiry date
- the legal description and street address of the land
- contact details for the governance entities to respond to.

Section 100 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653435.html>

Expiry date of offer

The RFR offer expires on or after 40 working days after the day the relevant governance entity receives the offer. However, a shorter expiry date of on or after 20 working days after the day on which an offer is received applies for any subsequent offers where the expiry date of the earlier offer was not more than 6 months before the expiry date of the later offer.

Section 101 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653436.html>

Shared RFR offers

In the case of **non-exclusive RFR land** or **Auckland Prison**, an RFR landowner may have to offer the land to the trustees of more than one governance entity. Shared RFR offers are made simultaneously to each relevant governance entity. A contract for disposal can only be entered into with one of the governance entities.

If more than one governance entity seeks to accept an RFR offer, the RFR landowner has 10 working days to notify those entities. This notice must identify the governance entities which have sought to accept the offer and state that the offer may be accepted by only one of those entities before the end of the 20th working day after the day on which the RFR landowner's notice is received.

Section 103 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653438.html>

Subsequent disposal process

If the governance entities do not seek to accept an offer, or the offer period expires, the RFR landowner can dispose of the property provided that:

- the subsequent disposal is not on more favourable terms than those offered to the relevant governance entities,
- the property is being disposed of within 2 years after expiry of the RFR offer and
- the governance entities that were offered the land are notified of the proposed disposal at least 20 working days before the disposal occurs.

This notification must provide details of the disposal, including the name of the person to whom the land is being disposed of and an explanation of how the disposal complies with section 99 of the Act, and a copy of the written contract to demonstrate that the subsequent disposal is not on more favourable terms than the RFR offer.

Section 99 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653432.html>

Section 118 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653460.html>

Exempted disposals

Certain disposals can occur without making an RFR offer to the governance entities. These exempted disposals are set out in sections 105-115 of the Act.

Sections 105–115 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653442.html>

The relevant governance entities must be notified of the proposed exempted disposal at least 20 working days before the disposal occurs, including an explanation of why the disposal is exempted under the settlement.

Section 119 of the Act:

http://www.legislation.govt.nz/act/public/2012/0031/latest/DLM3549111.html?search=ts_act%40bill%40regulation%40deemedreg_porou_resel_25_a&p=1

Section 115 of the Act provides that specific exemptions apply to disposals of certain RFR land by Housing New Zealand Corporation or any of its subsidiaries. However, section 20 of the Kāinga Ora-Homes and Communities Act 2019 provides that Kāinga Ora-Homes and Communities may not exercise the powers conferred upon Housing New Zealand Corporation or any of its subsidiaries by section 115 of the Act.

Section 115 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653454.html>

Section 20 of the Kāinga Ora-Homes and Communities Act 2019:

<http://legislation.govt.nz/act/public/2019/0050/latest/LMS196222.html>

RFR Memorials

All records of title for RFR land must be noted with a memorial protecting the governance entity's interest.

If an RFR landowner creates a new record of title for an RFR property, the landowner must advise LINZ as soon as possible so LINZ can place a memorial noting the RFR on the title.

Section 117 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653459.html>

In certain cases, the RFR landowner must seek a certificate from LINZ requesting the removal of the RFR memorial, before a transfer can occur.

Section 120 of the Act:

<http://www.legislation.govt.nz/act/public/2013/0037/latest/DLM4653462.html>

Contact details

For more information about the Ngāti Whātua o Kaipara claims settlement contact:

Ngā Maunga Whakahii o Kaipara Development Trust

PO Box 41, Helensville

AUCKLAND 0840

Ngāti Whātua o Kaipara Trust website: <http://www.kaiparamoana.com/>

Toitū Te Whenua Land Information New Zealand

PO Box 5501

WELLINGTON 6145

Toitū Te Whenua Land Information New Zealand website: <https://www.linz.govt.nz/>

Te Arawhiti – The Office for Māori Crown Relations

SX10111

WELLINGTON 6011

Te Arawhiti website: <http://tearawhiti.govt.nz/>

Email: postsettlement@tearawhiti.govt.nz