

# Te Kawerau ā Maki claims settlement right of first refusal

Learn about the key aspects of the Te Kawerau ā Maki 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.

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The following has been developed in collaboration with Te Arawhiti.

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

This settlement involves properties that are also subject to other settlements. This page must be read in conjunction with the page for the Ngāti Whātua o Kaipara RFR as well as any information for the Marutūāhu Iwi collective settlement and the Ngāti Whātua settlement (as defined in section 109 of the Te Kawerau ā Maki Claims Settlement Act 2015) once those settlements are concluded.

Ngāti Whātua o Kaipara 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%81ti-wh%C4%81tua-o-kaipara-claims-settlement-right-first-refusal>

In addition to the RFR under this settlement, Te Kawerau ā Maki 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 Te Kawerau ā Maki area of interest

Te Kawerau ā Maki is based in and north of Auckland. Their area of interest extends from the Tāmaki isthmus, northwards through Hikurangi and lands around the upper Waitematā Harbour and North Shore, and into the south Kaipara and Mahurangi.

The map below provides an indication of the area of interest for Te Kawerau ā Maki, but is **not** a depiction of any RFR area.



## Settlement Summary

Te Kawerau ā Maki received redress through its Treaty settlement with the Crown.

<b>Iwi</b>	Te Kawerau ā Maki
<b>Deed of Settlement signed</b>	<p>22 February 2014</p> <p>The Deed was amended during the settlement process.</p> <p>Te Kawerau ā Maki Deed of Settlement: <a href="https://www.govt.nz/treaty-settlement-documents/te-kawerau-a-maki/">https://www.govt.nz/treaty-settlement-documents/te-kawerau-a-maki/</a></p>
<b>Settlement date</b>	11 November 2015
<b>Legislation</b>	Te Kawerau ā Maki Claims Settlement Act 2015 ("the Act")
<b>RFR provisions</b>	<p>The RFR provisions are covered by sections 109-144 and Schedule 4 of the Act.</p> <p>Sections 109-144 of the Act: <a href="http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055567.html">http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055567.html</a></p> <p>Schedule 4 of the Act: <a href="http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055705.html">http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055705.html</a></p>
<b>Offer made to</b>	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.
<b>Categories of RFR land</b>	Exclusive RFR land, Auckland Prison, and non-exclusive RFR land
<b>RFR period</b>	<p>Exclusive RFR land: 172 years from the settlement date (expires 2187)</p> <p>Auckland Prison: 170 years from the settlement date (expires 2185)</p> <p>Non-exclusive RFR land: 173 years (expires 2191, refer to paragraph (c) of the definition of "RFR period" in section 109 of the Act)</p> <p>Section 109 of the Act: <a href="http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055567.html">http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055567.html</a></p>
<b>RFR memorials</b>	Yes

## Definition of RFR land

Under the settlement there are three categories of RFR land applicable to Te Kawerau ā Maki.

Section 111 of the Act defines **exclusive RFR land** as that was vested in, or held in fee simple by, the Crown or Auckland Council on settlement date and is:

- Clark House and Te Onekiritea Point land (defined in Part 3A of the Attachments)
- any land that ceased to be deferred selection property under clause 6.6B of the Deed of Settlement on or before settlement date, if on settlement date it was not subject to a contract under the Tamaki Collective RFR,
- any land that ceased to be deferred selection property under clause 6.6B of the Deed of Settlement after settlement date, and
- any land obtained in exchange for disposal of exclusive RFR land under specified sections.

Section 111 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055632.html>

Deed of Settlement – Attachments: <https://www.govt.nz/assets/Documents/OTS/Te-Kawerau-a-Maki/Te-Kawerau-a-Maki-Deed-of-Settlement-Attachments-22-Feb-2014.pdf>

Section 109 of the Act defines **Auckland Prison RFR** as land described as Paremoremo Prison in Part 3A of the Attachments if, on settlement date, it was vested in or held in fee simple by the Crown. This includes land obtained in exchange for a disposal of Auckland Prison land under specified sections. Section 109 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055567.html>

Deed of Settlement – Attachments: <https://www.govt.nz/assets/Documents/OTS/Te-Kawerau-a-Maki/Te-Kawerau-a-Maki-Deed-of-Settlement-Attachments-22-Feb-2014.pdf>

Section 109 of the Act defines **non-exclusive RFR land**. This includes land within the RFR area (as shown on SO 459993 in Part 3 of the Attachments) that, on the RFR date (as defined in section 109 of the Act), was vested in or held in fee simple by the Crown, or was a Crown-derived reserve vested in an administering body that would revert to the Crown. It also includes land obtained in exchange for a disposal of RFR land under specified sections.

Section 109 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055567.html>

Section 112 of the Act provides that the Minister for Treaty of Waitangi Negotiations may give advice to the governance entities and RFR landowners that non-exclusive RFR land is required for another Treaty settlement. If this occurs, the land ceases to be subject to this RFR.

Section 112 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055635.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 notice 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.

Section 135 of the Act sets out the requirements in regard to non-exclusive RFR land:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055672.html>

Section 136 of the Act sets out the requirements in regard to Auckland Prison:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6461319.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
- any interests affecting the land
- contact details for the governance entities to respond to
- which category of RFR land applies.

Section 115 of the Act: [http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055646.html?search=sw\\_096be8ed81657bd9\\_auckland+prison\\_25\\_se&p=1](http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055646.html?search=sw_096be8ed81657bd9_auckland+prison_25_se&p=1)

## 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 116 of the Act: [http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055647.html?path=act%2fpublic%2f2015%2f0075%2flatest&col=act&fid=DLM6055647&search=sw\\_096be8ed81657bd9\\_auckland+prison\\_25\\_se&p=1](http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055647.html?path=act%2fpublic%2f2015%2f0075%2flatest&col=act&fid=DLM6055647&search=sw_096be8ed81657bd9_auckland+prison_25_se&p=1)

## 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.

Section 116(3) of the Act: [http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055647.html?search=sw\\_096be8ed81657bd9\\_auckland+prison\\_25\\_se&p=1](http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055647.html?search=sw_096be8ed81657bd9_auckland+prison_25_se&p=1)

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 118 of the Act: [http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055649.html?path=act%2fpublic%2f2015%2f0075%2flatest&col=act&fid=DLM6055649&search=sw\\_096be8ed81657bd9\\_auckland+prison\\_25\\_se&p=1](http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055649.html?path=act%2fpublic%2f2015%2f0075%2flatest&col=act&fid=DLM6055649&search=sw_096be8ed81657bd9_auckland+prison_25_se&p=1)

The onus is on the governance entities to resolve which of them will accept the offer before the additional 20 working day period expires.

If the governance entities are unable to agree which of them is to provide a notice of acceptance, then the process set out in sections 118(6)-(8) of the Act will apply. This involves a solicitor or Justice of the Peace conducting a ballot to determine which entity may provide a notice of acceptance of the offer. This must occur before the further 20 working day period expires.

Sections 118(6)-(8) of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055649.html>

## Subsequent disposal process

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

- the subsequent disposal is not on more favourable terms than those offered to the relevant governance entities
- the land 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 114 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 114 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055642.html>

Section 133 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055670.html>

## Exempted disposals

Certain disposals can occur without making an RFR offer to the governance entities. These exempted disposals are set out in sections 120-130 of the Act.

Sections 120-130 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055654.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 133 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055670.html>

Section 130 of the Act provides that specific exemptions apply to disposal of the Te Onekiritēa Point 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 130 of the Act.

Section 130 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055665.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 after the RFR date (as defined in section 109 of the Act), the landowner must advise LINZ as soon as possible so LINZ can place a memorial noting the RFR on the title.

Section 109 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055567.html>

Section 132 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055668.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 139 of the Act:

<http://www.legislation.govt.nz/act/public/2015/0075/latest/DLM6055676.html>

## Contact details

For more information about the Te Kawerau ā Maki claims settlement contact:

### **Te Kawerau Iwi Settlement Trust**

PO Box 59-243

Mangere Bridge

AUCKLAND 2151

Te Kawerau ā Maki Trust website: <http://www.tekawerau.iwi.nz/>

### **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/>

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