



NGĀTI WHĀTUA ŌRĀKEI
WHAI RAWA

A guide for potential purchasers

Buying a Kāinga Tuatahi home



Ka tū pari tokatoka,
ka horo pari oneone

A pa built from stone will stand strong,
that made of earth will crumble

Our aim is for whānau to be living in
dry, healthy and safe homes on our
papakāinga, immersed in our culture,
keeping our home fires burning

Kāinga Tuatahi, was an innovative residential development completed in 2016, designed, developed and financed by Ngāti Whātua Ōrākei for whānau from Ngāti Whātua Ōrākei.

The 30-home development comprising of 18 4-bedroom, nine 3-bedroom and three 2-bedroom homes was designed to sit comfortably on the whenua, reflect the landscape of Tāmaki Makaurau and the culture of Ngāti Whātua Ōrākei.



Steps for buying a home in Kāinga Tuatahi:

Follow these steps to purchase a home if a current owner in Kāinga Tuatahi or Whai Rawa is selling.



* Be sure to read through the key documents required to complete the purchase.

01



Do I qualify?

Only members of Ngāti Whātua Ōrākei, or their spouses, can purchase a Kāinga Tuatahi home. The Lease further requires that any purchaser of a Kāinga Tuatahi home must use the home as their principal place of residence, be of good character and demonstrate they can afford to purchase the home.

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Can I afford it?

Whai Rawa will provide mortgage funding to approved borrowers. If you would like to apply for a mortgage from Whai Rawa, please contact us and we will arrange for you to meet with a financial advisor, free of charge. The advisor will ensure you have access to appropriate advice and resources so that you understand how much you are likely to be able to borrow from Whai Rawa to purchase a Kāinga Tuatahi home and continue to meet your commitments.

To assist the advisor, you should fill in the Whai Rawa loan application form and take it with you when you meet.

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Engage a Lawyer

Once you have found a willing seller, both you and the vendor must obtain independent legal advice prior to completing a sale and purchase transaction. If you do not have your own lawyer, we can provide a list of lawyers for you to contact and choose from.



Agree a price

In agreeing the purchase price, you may wish to consider the following factors:

- **Put Option** - the owner of a Kāinga Tuatahi home has the right to require Whai Rawa to purchase her/his home at the Indexed Building Cost¹. This is the original cost of the home, plus any improvements consented to by Whai Rawa, indexed by the increase in the residential building cost index since the time the home was first completed. You should request the Indexed Building Cost from the vendor;
- **Kāinga mortgage funding** - Whai Rawa will lend approved borrowers up to 95% of the Indexed Building Cost to purchase a Kāinga Tuatahi home. Please note that the level of lending will be “means-tested” – borrowers who can afford to borrow less than 95% will be expected to do so. Buyers will need to be able to fund the remainder of the purchase price with an appropriate deposit; and
- **Other sales** – Whai Rawa will maintain a list of the sale prices of Kāinga Tuatahi units and will make these available to potential purchasers upon request.

¹ This right is set out in the Put Option deed. The put option must be exercised no later than the 15th anniversary of the date construction was completed.

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Execute a Sale & Purchase Agreement

Once you have agreed the sale price and other key terms with the seller, your lawyers will assist you and the seller to agree and execute a sale and purchase agreement.

The sale and purchase agreement will need to be conditional upon: (i) you being approved as a suitable new owner in accordance with the conditions set out in the Lease; and (ii) Whai Rawa agreeing to provide you with mortgage funding.

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Apply to Whai Rawa

You will need to complete an application form, and provide supporting information, to enable Whai Rawa to determine whether you are a suitable owner under the terms of the Lease and whether you qualify for mortgage finance from Whai Rawa. A copy of the application form is attached to this information pack.

If you qualify for mortgage funding, we will notify you of the deposit required and the ongoing repayment levels. Before approving the mortgage Whai Rawa wants to ensure that you understand everything about your loan and this may involve independent financial advice. If you do not have a financial advisor, we can provide a list of financial advisors for you to contact and choose from.



Completion

Provided you are approved as suitable under the terms of the Lease and you are approved for mortgage finance from Whai Rawa, the sale will complete in accordance with the Sale and Purchase Agreement.

Kāinga Tuatahi key documents



When you purchase a Kāinga Tuatahi home, you will own the building. The land on which the home is built is owned by Ngāti Whātua Ōrākei. You will own a “leasehold interest” in the land – this means you will have the legal right to occupy the land in accordance with the terms of a registered lease (the “**Lease**”) between you and Ngāti Whātua Ōrākei Housing Trustee Limited. The term of the leasehold interest is 150 years from when the home was first completed.

A new owner will be required to enter into the **Deed of Covenant**, so that the Lease can be transferred to you as a part of the sale. In signing the Deed of Covenant you are agreeing to be bound by the terms of the Lease.

A new owner will also have the benefit of a **Put Option Deed**. This gives you the right to require Whai Rawa to purchase your home at the Indexed Building Cost at any time within the first 15 years after the home was first built.

Finally, if you require mortgage finance from Whai Rawa, you will be required to enter into a **Loan Agreement**, which includes standard terms and conditions for the lending and mortgage.

These documents, and the associated attachments to them, will form the basis of the legal obligations between you, as a homeowner and lessee, and the Ngāti Whātua Ōrākei Group as lessor. A more detailed explanation of each of the documents is set out on the following pages. Where terms start with capital letters, they are defined in the relevant document.

Deed of Covenant

The land on which the Home is situated, along with “curtilage²”, has been leased to the current owner from Ngāti Whātua Ōrākei Housing Trustee Limited (the “Lessor”) by way of a Registered Lease. You are required to enter into a Deed of Covenant so that this Lease can be transferred to you as a part of the sale. By signing the Deed of Covenant, it means that you become the “Lessee” and agree to be bound to the terms of the Lease, which are summarised below.

Lease

The Lease is the document that governs your on-going relationship with the landowner and, in some respects, your neighbours.

Rent

The Annual Rent is stated to be \$1.00 per annum. A token rent is required for the lease to be effective. There is no intention to actually collect this amount.

Lease Term

The total Term of the Lease is 150 years less one day from its original Commencement Date. The Lease is registered against the title to the Land.

Review of Lease provisions

Due to the very long term of the Lease, we have included a mechanism to allow the Lessor to initiate a review of the terms of the Lease at approximately 25-year intervals. This is because, over time, both laws and the way we live changes. Any changes would be discussed with you in good faith, and cannot be adopted if they make the terms of the Lease more onerous for you.

² Curtilage is, in the case of the Homes in Blocks 3 - 9, the back and side yards, and any private areas in front of the houses

Lessee's Outgoings

You are required to pay:

1. your proportion of Council rates as they relate to the Precinct (the entire Kāinga Site);
2. all costs associated with the utilities and services that you consume (i.e. electricity, water, gas, and telephone). Some of these costs for utilities may be charged to you directly by the utility provider, and others where you are not separately metered will be on-charged by the Lessor; and
3. your proportion of the costs associated with the utilities and services used in relation to the common areas within the Precinct (i.e. electricity for lighting, water for maintaining the grounds);
4. into the Maintenance Fund your proportion of the annual costs that the Lessor estimates will be incurred in maintaining the Improvements within the Precinct;
5. your proportion of the Lessor's costs of insuring the Improvements on the Common Property (i.e. the land that is not subject to a 150-year lease); and
6. your share of a rental payment to Vector for the solar panels.

You be required to make weekly payments to cover the outgoings above (other than in relation to bullet point 2 above) and the payments due under the Loan Agreement.

Whai Rawa will provide potential buyers with more information about the expected level of outgoings upon request. Otherwise, these outgoings will be clearly explained to you when you apply for mortgage finance from Whai Rawa.

Maintenance and Repair

You are required to maintain the Land and the Home in good, clean and tidy order, repair and condition taking into account the age of the property. You are also required to keep your backyard and front yard (where appropriate) tidy and free from noxious weeds and hazardous substances, and you must not do anything that disturbs or interferes with any drains, cables, pipes etc. that may run through your property.

Provided you pay your weekly contribution into the Maintenance Fund, the Lessor will be responsible for ensuring that the infrastructure within the Precinct such as driveways, the open spaces, and the key building elements (structure, roof, decks, cladding etc.) are maintained. You will still need to look after your own lawn and garden, and generally keep your house and property tidy at your own cost.

If your actions (or inactions) result in damage to the Precinct, the Land or your Home then you may be liable to pay for any costs associated with the repair of that damage. This liability will be over and above your obligation to make your regular contribution to the Maintenance Fund.

The Lessor will be entitled to carry out an inspection inside your Home once every 12 months, and from the outside once every 3 months. At the moment these inspections are not being undertaken as frequently as this, but we retain the ability to carry out inspections if the Lessor feels that it is necessary in the future.

If you don't carry out the maintenance work that you are required to under this Lease, the Lessor has the option to do the work and recover the cost of doing this work from you. The cost of this can be added to your existing debt if the Lessor (and the Lender) agree.

At the end of the Term of the Lease (or if the Lease is terminated prior to that date), the ownership of the Home and any other Improvements will pass to the Lessor. At that time, the Lessor has to compensate you for the market value of the Home and the Improvements.

At the end of the Term of the Lease (i.e., 150 years), you are required to return the Home, and any Improvements, and the Land to the Lessor in the same condition as it was in 1 year prior to that date.

Any works that the Lessee undertakes on the Land or the Home must be done in accordance with all regulatory requirements i.e. if a building consent is required, it must be obtained and complied with.

The Lessor is required to establish a long-term maintenance plan in respect of the Homes and the wider Precinct. This will provide on-going guidance to the Lessor to assist it in making Maintenance decisions.

Improvements

You must not construct any improvements on the land without the written consent of Whai Rawa. This means you must seek our prior written consent if you wish to build, for example, a deck. Whai Rawa will not unreasonably deny consent for any improvements, provided they are completed to a good and proper workman standard and in accordance with any building or council regulations and requirements.

Maintenance Fund

The Lessor is required to establish and maintain a separate account for the purposes of the Maintenance Fund. The purpose of this fund is to ensure that the costs incurred in carrying out the maintenance that the Lessor is undertaking on your behalf is funded.

Each year the Lessor will give you written notice of its estimate of your annual contribution to the Maintenance Fund. At the end of the year, the Lessor is then required to provide you with an audited report of what funds have been paid into the Maintenance Fund, and how they have been spent. If you have paid more money into the Maintenance Fund than was required in any particular year, you will receive a credit against your obligation to contribute in the following year. If you have paid an insufficient amount, you will be advised and have the option to make a top up payment in cash or have this amount added to the outstanding debt under your loan.

Insurance

The Lessor will procure insurance for the Land and the Home, and other Improvements within the Precinct, at the Lessee's cost. You will be required to pay for your proportion of the insurance costs.

Assignment

There are significant restrictions on who you can assign your interest in the Lease to. The Lessor has absolute discretion in approving or rejecting an assignment, although there is a “deemed consent” where assignment is to:

- the surviving Spouse of a Lessee who has died; or
- the personal representative of a Lessee who has died (for the purposes of holding the Lease as trustee and executor), in which case it must be on-assigned to a Member within 3 years; or
- the transfer to a trustee or guardian of a child or grandchild of the Lessee who is a minor, provided that the Lease must then be assigned to the child or grandchild once they turn 18 if they live in the home or, if the grandchild or child no longer lives in the home, it must immediately be assigned to another Member.

The Lessor will have a right of first refusal in the case of any other assignment, in which case the Lessor would have to pay you for the Home (at the price you specify). If the Lessor does not exercise this right, you will be free to assign to another Member on terms that are “no more favourable” than those offered to the Lessor, provided the other assignment conditions are met.

You will be required to show that the assignee:

- is a Member or the Spouse of a Member;
- be of good character and can afford to purchase the home; and
- intends to use the Home for her or his primary place of residence.

At the time, you must also bring up to date all of your financial obligations under the Lease, including any costs associated with the maintenance of the Land and Home and bringing it up to the standard required by the Lease.

There will be no refund of any unspent contribution to the Maintenance Fund.

Sub-letting

You can only sub-let the Home and Land with the consent of the Lessor. Anyone taking a sub-lease in the Land and the Home must also be a Member.

You are only entitled to sub-lease the Land and the Home for 1 year in every 5 years.

Permitted Use

You must use the Land for the permitted use (i.e. as a principal place of residence for you and your family at any time).

Community Rules

You must comply with the Community Rules in place from time to time. These Rules will be prepared by the Lessor (with input from the Lessees) and govern things like parking, noise, garbage bins etc.

You are expected to make a positive contribution to the activities, well-being and welfare of the Ngāti Whātua Ōrākei community.

Redevelopment of the Land

If, after the first 50 years of the Term of the lease, the Lessor is of the reasonable opinion that any of the Improvements on the Land require renovation, remediation, rebuilding, alterations or removal, the Lessor has the right to require you to surrender your Lease. In such circumstances you would be compensated for the market value of your Home at that time.

Default

Usual default provisions are included in the Lease. The most extreme scenario would be for the Lessor to cancel the Lease but you would have plenty of notice, and opportunity to remedy the default, before those steps were taken.

Disputes

All disputes between you and the Lessor will initially be referred to the Chair of Ngāti Whātua Ōrākei Trust for resolution. The Chair can either resolve the issue himself or herself or, alternatively, refer the issue to arbitration.

Loan Agreement

The Loan Agreement provides that Whai Rawa will lend you the funds required to complete the purchase of your Home. This loan will be secured by a mortgage (on standard Auckland District Law Society terms, a copy of which will be provided to you with your Loan Agreement) which will be registered against your leasehold title.

Term of Loan

The Term of the Loan could be up to 40 years, depending on your ability to pay the loan off and the size of the cash contribution you make. The faster you can repay the loan the better, as it will mean that you pay less interest costs over the life of the loan.

Weekly payments

You will be required to make weekly payments of interest and principal on your outstanding loan balance. These loan payments will be combined with the required weekly contribution towards outgoings and maintenance.

The amount of the weekly payment will be adjusted annually in accordance with movements in the Adjusted Labour Cost Index published by Statistics New Zealand. The proportion of that payment that will be applied towards principal and interest will depend on the interest rate in any particular year, and the required contribution towards outgoings and maintenance.

Interest Rate

The Interest Rate that you will pay will be adjusted annually. It will be equal to Whai Rawa's cost of funds plus 0.25%.

Outstanding amounts owing under the Lease

If you have outstanding amounts owing under the Lease, the Lessor is able to require the Lender to pay the outstanding amounts. The amount of any advance will be added to your debt under the Loan Agreement.

Repayment/ Early Repayment

The loan is to be repaid on the Repayment Date (which will be the final day of the loan term). However, you are able to make early repayments regularly or irregularly without penalty.

Default

If you do not comply with your obligation to make your regular weekly payments, or otherwise default under the terms of the Loan Agreement or the Mortgage, the Lender will be entitled to exercise its rights which can include taking possession of the Land and the Home and selling them. If you have any concerns about your ability to pay the weekly payments, either now or in the future you must raise them as soon as possible so that we can try and work with you to resolve the issues. A default scenario is not in anyone's interest.

Assignment

You are not entitled to assign your interest in the Loan Agreement.

Put Option Deed

The Put Option Deed is the document that gives you the right to require the Lessor (under the Agreement to Lease and the Lease) to buy the Home back from you within the first 15 years of the Home being built. When your Put Option expires will depend on when your Home was first built. It is important to take note of this expiry date for your future reference.

To exercise your rights, you will have to advise Whai Rawa in writing that you are exercising the Put option before the expiry date. The effect of delivering this notice is to create a binding agreement for sale and purchase between you and Whai Rawa. The essential terms of the agreement are that:

- Whai Rawa (or someone else that Whai Rawa nominates) will purchase your Home and your interest in the Lease;
- the purchase price will be calculated by taking the original price that you paid for your Home and multiplying it by the increase in the Residential Building Costs Index³ from the date that the Home is completed to the date that you give notice to Whai Rawa; and
- settlement will take place within 120 working days after you give notice to Whai Rawa.

The other terms will follow the standard Auckland District Law Society/ Real Estate Institute of New Zealand Agreement for Sale and Purchase. The Put Option Deed includes the current version of the sale and purchase terms that will be used.

Any purchase price paid will first be applied to repay any outstanding debt owed under the Loan Agreement or the Lease at the settlement date (including returning the Home to the condition it is required to be kept in under the Lease), so you will get the “net” amount.

If you assign or sell your Home to someone else during the first 15 years of ownership, Whai Rawa will execute a Put Option Deed with the new owner.

³ As measured by Statistics New Zealand as part of the Business Prices Index

Application & Approval Process



The Lease requires that any purchaser of a Kāinga Tuatahi home must:

- Be a member of Ngāti Whātua Ōrākei, or the spouse of a member;
- Use the home as their principal place of residence; and
- Be of good character and demonstrate they can afford to purchase the home.

Potential buyers will need to complete a loan application form, and provide supporting information, to enable Whai Rawa to determine whether you are a suitable owner under the terms of the Lease and whether you qualify for mortgage finance from Whai Rawa.

The form requests details of your employment status and history and your financial position. The form also requests your consent for Whai Rawa to undertake a tenancy, police and credit check.

What are my risks?

Purchasing a Kāinga Tuatahi home is more complicated than purchasing a standard freehold home. You should be aware that:

- **It may be difficult to sell your home privately** because it can only be purchased by Ngāti Whātua Ōrākei members (or their spouses) for use as their principal place of residence. Any buyer must first be approved by Ngāti Whātua Housing Trustee Limited as “respectable, responsible, solvent and suitable”.
- **It may be difficult to sell your home privately** because buyers may not be able to access mortgage funding. Whai Rawa is currently the only provider of mortgage finance for Kāinga Tuatahi homes - ordinary Banks will not lend to you with a usual mortgage as security given the structure of ownership and the type of interest you are buying. Whai Rawa cannot guarantee that mortgage finance will be available in the future.
- **You may not earn the equity in your home** as you may expect from another Auckland property. Any capital gain is likely to be limited due to the limited buyer audience and because Whai Rawa will lend a maximum of 95% of the Indexed Building Cost,
- **The put option to Whai Rawa expires 15 years after construction was completed.** Once your home is more than 15 years old, you will no longer have the right to require Whai Rawa to repurchase your home at the Indexed Building Cost. It may be more difficult to sell the house once the put option nears expiry or has expired.
- **There are extra costs associated with owning a leasehold property** including your share of Council rates for the entire site, your share of utilities and insurance costs in relation to the common areas and an annual contribution to the maintenance fund.

Please note that the above does not constitute legal advice and is not a complete list of matters which are important for you to consider.

The documents described in this information pack are complex - they create legally binding obligations and **should not be entered into without obtaining independent legal advice to fully understand what the effects and implications are** as a result of you entering into the documents. Whai Rawa requires that both vendors and purchasers of a Kāinga Tuatahi home obtain independent legal advice prior to completing a sale and purchase transaction. We recommend seeking this advice as early in the process as possible.



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