

BUYING OR BUILDING A NEW HOME WITH A

Kāinga Whenua Loan

A guide to lending for housing on
multiple-owned Māori land.





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Kāinga Whenua Loan for individuals

Nōku te whenua, nō ōku tīpuna.
The land is mine, inherited from
my ancestors.

Kāinga Ora is working with Kiwibank to help Māori achieve home ownership on their multiple-owned land.

Kāinga Ora recognises there are barriers that make it difficult for Māori to own a home on multiple-owned Māori land. The special nature of multiple-owned Māori land means that banks cannot easily meet their standard security needs for loans for houses on that land.

The Kāinga Whenua loan for individuals is delivered through a partnership between selected lenders and Kāinga Ora. It provides a home ownership opportunity for Māori to build, purchase or relocate a house on multiple-owned Māori land. The name Kāinga Whenua combines the concepts of home/homestead (kāinga) and attachment to the land (whenua).

Definitions to read

Throughout this booklet, there are “What is...?” boxes providing definitions of important aspects of multiple-owned Māori land and a Kāinga Whenua loan. We recommend you read these definitions to better understand what is involved with applying for a Kāinga Whenua loan to build, purchase or relocate a house on multiple-owned Māori land.

The details of the current ownership of Māori land blocks can be sourced from your local Māori Land Court office. The Court may also be able to answer questions about trusts, Māori incorporations and locating and dealing with other owners.

For more information, contact your local Māori Land Court, visit their website at justice.govt.nz/maorilandcourt or check the Māori Land Online website at maorilandonline.govt.nz.

Kāinga Whenua Loan for individuals – how does it work?



If you have an existing right to reside on multiple-owned Māori land or the owners of the multiple-owned Māori land are prepared to grant such a right to you, a Kāinga Whenua loan allows you to build, purchase or relocate a house on multiple-owned Māori land. The loan can also be used for repairs and maintenance for an existing house on multiple-owned Māori land.

Kiwibank will only provide the Kāinga Whenua loan if Kāinga Ora insures that loan for Kiwibank's benefit. For Kāinga Ora to provide that insurance to Kiwibank, Kāinga Ora requires a contract called a Kāinga Whenua agreement to be entered into between the borrower, the owners of the land and Kāinga Ora. The contract recognises the borrower as the owner of the house, grants the borrower a licence to occupy a site on the multiple-owned Māori land (if there is not already an acceptable land tenure) and gives Kāinga Ora a security interest in the house and the right to remove the house if the borrower defaults on the loan from the bank.

A Kāinga Whenua loan is secured only against the house, not against the house and land as with most home loans.

With a Kāinga Whenua loan, the bank can lend up to \$500,000 to cover house building or renovating costs or the purchase price of the house, subject to certain conditions. This includes your right to occupy the land, a valuation from a registered valuer and a satisfactory building contract. No deposit is required for a loan below \$200,000, but a deposit requirement of 15% for every dollar borrowed above \$200,000 will apply. For example, a \$400,000 loan would require a deposit of \$30,000.

A Kāinga Whenua loan for individuals can be used for many non-construction costs such as connecting power and telecommunication services to the property. It cannot be used to establish or change road access to the block or to pay for surveying, legal fees or council contributions.

The amount available to you will depend on your current financial position and your proposal to build, purchase or relocate a house on multiple-owned Māori land.

Only one borrower needs to live in the house, which allows other whānau to contribute to the loan repayment.

Kāinga Whenua application for a borrower's own occupation of a house built with a Kāinga Whenua loan is required to be in the borrower's own name and cannot be in the name of a whānau trust.

What is...?

Māori freehold land*

Land that has been determined by the Māori Land Court as having the status of Māori freehold land is referred to as Māori land in this booklet and is governed by the provisions of Te Ture Whenua Maori Act 1993.

Māori land can be multiple-owned or individually owned. Multiple ownership in Māori land can include multiple individual owners, trustees holding the Māori land as its legal owner for the benefit of one or more people called beneficiaries or a Māori incorporation holding the Māori land for the benefit of its shareholders.

The Māori Land Court maintains a register of the beneficial owners or shareholders and their interests in each Māori land block. There are approximately 1.47 million hectares of Māori land in New Zealand today.

The status of Māori land can only change from Māori freehold land to general land or from general land to Māori freehold land by order of the Māori Land Court.

Multiple-owned Māori land

Multiple-owned Māori land is land in which the beneficial owners or shareholders share the beneficial ownership of the land together, with the level of ownership determined by their individual shares recorded for that land by the Māori Land Court. Shares may not necessarily be equally distributed.

Lease of Māori reservation and Māori freehold land

A Māori reservation and Māori freehold land that has been leased may be eligible for Kāinga Whenua lending under the following conditions:

- The term of the lease (including any right of renewal) is longer than the term of the loan.
- The date upon which the rent is reviewed is at least 5 years after the date of approval of the loan.
- The Māori Land Court has confirmed, noted or consented to the lease.

General land

General land is land that is not Māori land or Crown land and can be bought, sold, mortgaged or otherwise alienated, without needing to comply with the provisions of Te Ture Whenua Maori Act 1993. General land includes land owned by Māori.

General land is not eligible for Kāinga Whenua lending.

Multiple-owned Māori land ownership structure

While Te Ture Whenua Maori Act 1993 identifies five types of Māori landowner trusts, usually only a whānau trust, ahu whenua trust or whenua tōpū trust will be the relevant trust ownership of Māori land in connection with Kāinga Whenua lending.

Māori land vested in a Māori incorporation may also be used in connection with Kāinga Whenua lending. If one of these types of trust or a Māori incorporation isn't the owner of the multiple-owned Māori land, the applicant will need to obtain the agreement of all the individual owners of the Māori land in connection with Kāinga Whenua lending. For a block of land, there could be hundreds – even thousands – of individual owners, so obtaining approval is likely to be time-consuming or not possible.

In this circumstance, if you are not able to obtain the consent of all the individual owners, you can go to the Māori Land Court, which may be able to assist you to resolve the situation by convening a meeting of assembled owners or by considering alternative ownership structures for the Māori land (for example, by vesting the land in an ahu whenua trust).

Land tenure

Before you can use a Kāinga Whenua loan to build, purchase or relocate a house on multiple-owned Māori land, you need the owners of the Māori land to grant an acceptable land tenure for you and your whānau to live on that Māori land.

Usually, the land tenure will be a licence to occupy. Sometimes, it will be a lease. In any event, it must be a formal grant of the right to occupy that part of the Māori land on which your house will be located that is acceptable to Kāinga Ora.

The Māori Land Court will need to confirm or note, that land tenure. If there is not an already existing land tenure of the Māori land, the form of the licence to occupy in the Kāinga Whenua agreement can be used by you and the owners of the Māori land to create an acceptable land tenure.

While an occupation order granted by the Māori Land Court may be able to be an acceptable land tenure for the purposes of a Kāinga Whenua agreement, the owners of the Māori land will still need to sign the Kāinga Whenua agreement.

Kāinga Whenua agreement

Kāinga Whenua loan to build, purchase or relocate a house on multiple-owned Māori land requires a Kāinga Whenua agreement (in addition to the loan agreement with Kiwibank). This is a contract between the owners of the Māori land, the borrower (you) and Kāinga Ora.

The Kāinga Whenua agreement records the following:

- Lending – that, through the loan agreement, Kiwibank has agreed to lend funds to the borrower to build, purchase, or relocate a house on the Māori land.
- Security over the house – the borrower grants a security interest over the house to Kāinga Ora so that Kāinga Ora can insure (for Kiwibank's benefit) the Kāinga Whenua loan.

- Licence to occupy – if the owners of the Māori land have not otherwise already granted an acceptable land tenure to the borrower, the owners of the Māori land grant a licence to occupy to the borrower to live on the Māori land.
- Ownership of house – the owners of the Māori land acknowledge that the house is owned by the borrower as their personal property (and is not a part of the Māori land) subject to the security interest granted to Kāinga Ora.
- Entering the Māori land – the owners of the Māori land agree that Kāinga Ora has the right to enter the Māori land to exercise its security interest in the house in the event of default under the Kāinga Whenua loan.

Even if you already have an acceptable land tenure to occupy the Māori land, the owners of that Māori land will still need to sign the Kāinga Whenua agreement.



If you want to discuss this with someone from Kāinga Ora, please call **0508 935 266**.

Property eligibility criteria

Under a Kāinga Whenua loan, there are stipulations on the house you are planning to build, purchase or relocate to the land.

The requirements of a Kāinga Whenua loan are that the house needs to:

- be built on piles
- be one storey of at least 50 square metres
- be located on the mainland North or South Islands
- have reasonable road access.

These design requirements ensure the house is separate from the land (and is treated as the borrower's personal property) and can be removed from the land if/when required. Many borrowers build on multiple-owned Māori land using kitset or transportable homes.

Borrower eligibility criteria

To be eligible for a Kāinga Whenua loan, you need to meet all of the following requirements:

- You have an income that allows you to repay the loan, according to the lender's serviceability criteria.
- For employed applicants, you need to have been employed with your current employer for at least 12 months or, if not, have been employed in the same industry for at least 24 months. Self-employment, contract and seasonal income may also be eligible, although some additional rules apply.
- You need to provide satisfactory proof of income to the bank.
- At least one borrower must live full-time in the house.
- You need to be able to have or obtain a right to occupy the land (usually, a licence to occupy) that you wish to build on (see the borrower application process for more detail about licence to occupy).
- The land needs to be multiple-owned Māori land owned by trustees of a trust or a Māori incorporation under Te Ture Whenua Maori Act 1993 or otherwise owned by multiple individual owners (see the borrower application process for more details about owners and trusts).*
- You have a good credit history that is acceptable to the bank.

What is...?

Beneficial owners of multiple-owned Māori land

Beneficial owners are the beneficiaries of the trust or the shareholders of a Māori incorporation owning the Māori land. Where land is invested in trustees or a Māori incorporation, they are the legal proprietors who hold and manage that land for the beneficiaries or the shareholders.

Borrower application process

If you can meet all of the eligibility criteria, you will need to go through 11 steps.

Please note, this may end up being a long process due to the complexities involved in obtaining a right to occupy multiple-owned Māori land.

1. Decide if living on your multiple-owned Māori land is right for you

Use the information in this booklet and obtain independent advice to decide if a Kāinga Whenua loan is right for you.

Consider the benefits, risks, costs and obligations of home ownership in a multiple-owned Māori land situation. These include:

- the long-term commitment required to go through the process for a Kāinga Whenua loan and then living on multiple-owned Māori land
- the remoteness of some multiple-owned Māori land and the reduced employment opportunities and income that may result

- the limited opportunities for resale of the house should you wish to leave the multiple-owned Māori land.

Home ownership is a long-term commitment, so you need to be certain this is what you want to do and that you will be able to sustain it (i.e. that you will be able to continue to pay back your loan for the entire term of the loan). The consequences of defaulting on loan repayments are severe and could result in you losing your home – your house can be sold, and you will be responsible for paying any shortfall.



If you want to talk to someone from Kāinga Ora about step 1, please call **0508 935 266**.

2. Apply for a bank loan pre-approval

Kāinga Whenua loans are provided by Kiwibank. You will need to apply directly to Kiwibank to have your eligibility assessed.

- Kiwibank Home Loans – Customer Service Line 0800 272 278

If you are eligible for a Kāinga Whenua loan and can borrow enough to build or buy a house, the bank will contact you to go through their pre-approval process.

This involves completing a home loan application form, submitting that to the bank and then receiving a conditional pre-approval confirmation letter from the bank.

Getting a conditional pre-approval will confirm that you meet the borrower eligibility criteria for Kāinga Whenua and the bank's lending criteria. It will also let you know how much money the bank would be prepared to lend you to build or relocate on your multiple-owned Māori land.

The bank will provide details of who to contact once you have gained a conditional pre-approval and completed your house plans and budget.

The loan conditional pre-approval will be valid for 6 months. If you haven't been given final loan approval during that time, you will need to ask the bank to extend the pre-approval for another 6 months. To do this, the bank will need you to reconfirm your circumstances have not changed since your original application.



3. Seek support for your plan from the other owners of the land

To live on (occupy) your multiple-owned Māori land, you will need the agreement of the owners of the land.

Ultimately, this agreement will need to be documented by the owners signing the Kāinga Whenua agreement that Kāinga Ora produces after the bank approves the loan (step 6). In the meantime, it is worthwhile talking to the trustees, the Māori incorporation or the individual owners to determine if they support your plan and will be willing to sign the Kāinga Whenua agreement when the time comes.

For this step, you do not need a signed document from the trustees, the Māori incorporation or the individual owners, but you may choose to do so if you feel that may help.

Remember, without their agreement, you will not be able to secure a Kāinga Whenua loan.

This can be a lengthy process (especially when there are numerous trustees or individual owners). The steps are as follows:

Step A

You will need to identify who owns the Māori land you wish to live on (for example, if there is a trust or Māori incorporation established under Te Ture Whenua Maori Act 1993 that manages the land on behalf of the beneficial owners. If there is a trust or a Māori incorporation, go to step B. If there is no trust or Māori incorporation, go to step C.

Step B

Where a trust or a Māori incorporation exists, you will need to obtain the agreement of the trustees or the Māori incorporation's committee of management to obtain a right to occupy the land (usually a licence to occupy). The land owners can be identified by an enquiry at the local Māori Land Court. Kāinga Ora has produced a template licence to occupy that occupiers and land owners can use as part 3 of the Kāinga Whenua agreement – available on the Kāinga Ora website.

Step C

Where there is no trust or Māori incorporation owning the land, ownership of the land sits with the multiple individual owners in their respective shareholdings, and you will need to obtain the agreement of all owners to grant the licence to occupy. The ownership records that identify individual owners of the land are held at the local Māori Land Court.

If you cannot obtain the agreement of all the individual owners, a meeting of assembled owners (or the vesting of the land in another ownership structure like an ahu whenua trust) may be appropriate. You should obtain legal advice about this.



4. Home requirements

Once you are comfortable that you will be granted a right to occupy the Māori land, you will now need to ensure that your home will meet your needs as well as the requirements of a Kāinga Whenua loan. The home must:

- be built on piles
- be a single storey
- be located on the mainland North or South Islands
- have road access to allow a truck to reach the site
- (if to be built) have a reasonable construction cost, up to a maximum of \$500,000.

Speak to a quantity surveyor or building company to get an indication of cost per square metre to build. Many people prefer the convenience and economy of a kitset-type house. Alternatively, you could have a house designed for you or find a suitable house that you could relocate to the site.

The house purchase price or design and building costs also need to fit within the pre-approval amount that has been provided by the bank in Step 2.

A market valuation of the proposal from a registered valuer is required in determining the loan available for a particular proposal. The loan amount available will be the lower of the cost to build/relocate or the valuation.

Valuation before construction/relocation will be on an in situ basis – the value will be determined by comparison with a similar property on general land in that area, and then the value of that land is deducted.

A replacement valuation approach can be considered where an in situ valuation is unavailable. Valuations will be on a cost-to-complete basis – there must always be sufficient loan funds available to complete the construction/relocation.



If you want to discuss these issues further, contact your local Māori Land Court for assistance, visit their website at www.justice.govt.nz/maorilandcourt or check Māori Land Online at www.maorilandonline.govt.nz.



If you want to talk to someone from Kāinga Ora about step 4, please call **0508 935 266**.

5. Find a builder and produce a budget and plan, including obtaining council consents

If you have decided to build a house and have a design, you need to find a builder who is a licensed building practitioner. The builder will need to provide you with an itemised budget that meets the bank's lending criteria.

As part of the plan, have your architect or draughtsperson, builder or building company identify all the council consents required and then apply for these consents to ensure your house will comply with the local council's building bylaws. These consents are required before the final loan approval is given.

Often a housing development on Māori land requires significant infrastructure development. A Kāinga Whenua loan can be used to meet many of these costs such as:

- installing stormwater, drainage, water supply or a water tank
- connecting power and telecommunications from the block to the house
- installing a septic tank and associated engineer's report
- a geotech report
- laying a driveway within the block
- resource consent, building consent or design costs
- valuations (up to a total of \$750).

The Kāinga Whenua Loan cannot be used for:

- council development levies
- establishing a road (or part of a road) to the block
- surveying of the block and legal costs.

Contingency requirement

Construction loans require that a contingency sum is built in to the loan amount approved to ensure funds are available if there are any cost overruns. This contingency (5% if a Master Build Guarantee is provided, otherwise 10%) is added to the quote provided by the builder. This higher amount is the amount the bank will use in their approval assessment. A Kāinga Whenua loan also requires the use of a head contractor who manages all subcontractors.

6. Loan approval from the bank

If your application fits the Kāinga Whenua eligibility criteria and the bank's lending criteria, the bank will issue a loan approval. One of the conditions is that the Kāinga Whenua agreement is signed by all parties. You will also need to submit your budget and construction or relocation plan to the bank.

Where a deposit is required, this must be a cash contribution from you. It cannot be borrowed, and this deposit must be used before you are able to draw down loan funds.

7. Sign the Kāinga Whenua agreement

The Kāinga Whenua agreement includes two components. First, the right to occupy the land (usually a licence to occupy) where the landowners grant you the legal right to live on a defined site on the block for the duration of the loan. Second, the Kāinga Whenua agreement includes a series of agreements that establish that the house will be your individual property, that you are granting Kāinga Ora a security interest over that house and that the landowners grant Kāinga Ora certain access rights in the event of borrower default. The Kāinga Whenua agreement also includes a site plan – a map of the block of land that details exactly where you have been given permission to build.

As the Kāinga Whenua agreement will usually record your right to occupy the land (licence to occupy), it will need to be noted or confirmed by the Registrar of the Māori Land Court once all three parties to the agreement have signed it (the borrower/occupier, the landowners and Kāinga Ora).

Kāinga Ora will provide the Kāinga Whenua agreement to your solicitor. You will need to sign the agreement, and you are responsible for having it signed by the landowners. Once this is completed, Kāinga Ora will also sign the Kāinga Whenua agreement and then return the document to your solicitor. Your solicitor will also be required to confirm the signature list on the agreement is complete.



If you want to discuss the requirements of the Māori Land Court, contact your local Māori Land Court for assistance or visit their website at www.justice.govt.nz/maorilandcourt.

8. Register with the Māori Land Court

Noting and confirming your licence to occupy

The Māori Land Court becomes involved in this process by noting or confirming your licence to occupy along with the Kāinga Whenua agreement.

Once the Māori Land Court Registrar has noted or confirmed the licence to occupy in the Kāinga Whenua agreement, your solicitor issues Kāinga Ora with a certificate confirming this has been completed. Kāinga Ora will then authorise the bank to make the funds available for you.

9. Building starts or house purchased

With these legal steps completed, you can now start construction (or relocation) of your home according to the design, plan and budget you submitted as part of your application, or, if you are buying an existing house on Māori land, you can then complete the purchase of that house.

Your loan agreement requires that you establish and maintain full replacement insurance for the house, which the bank can help you with.

10. Progressive draw-downs

If you are building or relocating a house, your agreed plan with the builder will have a clause that details when the funds to pay for the building or relocating will be required (as detailed in step 5). It should also detail what work needs to be completed before the next draw-down of funds from the loan can occur. Fund draw-downs will be on the basis of cost to complete. This means there must always be sufficient money retained by the bank to complete the building of the home according to the agreed plan and to obtain a final code compliance certificate from the council.

Funds will be provided to your solicitor or your building contractor.

Timings and finer details for progressive draw-downs will be unique to every Kāinga Whenua loan.

Before the final draw-down, your builder will provide a certificate of practical completion. Within 3 months of completion, your solicitor will provide a final code compliance certificate from the local council to confirm that your home complies with all local bylaws and the New Zealand Building Code.

11. Building complete

Once the building is complete, you can move in. Congratulations, you now have your own share on your multiple-owned Māori land.

What happens if you don't repay the loan?

The bank will work with you to avoid this. However, if you do fail to repay your home loan or otherwise remedy any defaults, the house will need to be:

- sold to the landowners or to another person with a right to occupy that site on Māori land or
- moved off the land and then sold to recover the money that remains owing on the loan.

You will still need to repay any outstanding amounts that could not be repaid from the sale of the house.



Who is involved with Kāinga Whenua?

Kāinga Ora

Kāinga Ora will insure (for Kiwibank's benefit) the Kāinga Whenua loan made by the bank. Kāinga Ora does not make any decisions around lending and who receives a Kāinga Whenua loan – these decisions are made by the bank.

Providing you with support

Building on multiple-owned Māori land can be long and complicated, but Kāinga Ora is here to support you through the process. To find out about the assistance it can offer, call **0508 935 266**.

Kiwibank

All Kāinga Whenua loans are made through Kiwibank. It is responsible for making the lending decision and providing the finance for a Kāinga Whenua loan.

Your main relationship will be with Kiwibank.

- To contact Kiwibank, please call their Home Loans Customer Service line on **0800 272 278**.

Local councils

Local councils provide all the required building consents. If the required building standards have been met, they will issue a code compliance certificate. Local councils also collect rates from multiple-owned Māori land in the same way as for general land.

Role of the Māori Land Court

The Māori Land Court has exclusive jurisdiction through Te Ture Whenua Maori Act 1993 to deal with all matters relating to Māori land. The Māori Land Court is a Court of Record, holding and maintaining current and historical information (as far back as 1862 in some cases) in respect of Māori land.

The Court deals with such issues as recording ownership and interests in Māori land succession to land interests, trusts and Māori incorporations, leases and licences to occupy the land.

Any sale, lease, licence, forestry right or mortgage of Māori land can only be by way of noting or confirmation by the Court or, in the case of transfer of shares by succession or gift, by vesting order. The Court can also hear applications that deal with the subdivision of Māori land, roadways, easements, reservations and surveys over the land.

The Māori Land Court is responsible for noting or confirming a licence to occupy, forming a part of the Kāinga Whenua agreement.

This needs to occur before funds are released to allow the building to get under way.

The Court can also become involved if it is not possible to get all the owners to agree to grant a licence to occupy or another land tenure.

Where required, the Court may become involved in settling disputes about ownership of land and granting of licences to occupy through Court-facilitated assembled owners meetings.

The Court holds ownership records of Māori land, which you can search at one of their offices or online at **maorilandonline.govt.nz**.

There are seven main Māori Land Court offices and two information offices located around New Zealand – Whangārei, Auckland, Hamilton, Rotorua, Gisborne, Whanganui, Hastings, Wellington and Christchurch.

Contact details are available through the phone book under the Ministry of Justice or through their website at **justice.govt.nz/maorilandcourt**.



Key contacts

Kāinga Ora

Call free: **0508 935 266** any time or visit **www.kaingaora.govt.nz**.

Kiwibank

Call free: **0800 272 278**

Local councils

Contact details for local councils are listed in the Blue Pages of the phone book.

Māori Land Court

Contact details are available through the phone book under the Ministry of Justice or online.

Court Māori land ownership records: **maorilandonline.govt.nz**.

Contact details for main offices nationwide: **justice.govt.nz/maorilandcourt**.

Disclaimer

The information contained in this brochure is intended to help you understand the Kāinga Whenua loan and explains what you need to do to find out about building, relocating or buying a house on Māori land. It is not intended to address the specific circumstances of any particular individual or entity. All reasonable steps have been taken to ensure the quality and accuracy of the information. Kāinga Ora makes no warranty, express or implied, nor assumes any legal liability or responsibility for the accuracy, correctness or completeness or use of any information contained in this brochure. The eligibility criteria or other policies applicable to the Kāinga Whenua loan may be changed, deleted, added to or otherwise amended without notice. The information contained in this brochure should not be construed as legal or professional advice, and you should take advice from qualified professional people.

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