

Property Speaking

Arawa Street, PO Box 62
Matamata 3440
T 07 888 8137 | F 07 888 8134
lawyers@emlaw.co.nz | www.emlaw.co.nz



Edmonds Marshall
LAWYERS

ISSUE 43 | Winter 2023

Welcome to the Winter 2023 edition of *Property Speaking*.

We hope you enjoy reading this e-newsletter, and that you find the articles to be both interesting and useful.

To talk further about any of these topics, or indeed any property law matter, please don't hesitate to contact us – our details are on the top right of this page.



Kāinga Ora First Home Partner scheme

A co-ownership option

In the Winter 2022 edition we discussed what to consider when co-owning a property with friends or family. Another co-ownership option to consider is the Kāinga Ora First Home Partner scheme.

The scheme supports first home buyers, who do not have a sufficient deposit, or who may struggle to service a low-equity mortgage, to buy a property partnering alongside the government. Kāinga Ora can contribute up to the lesser of \$200,000 or 25% of the purchase price.

PAGE 2 ▶



Owning a heritage building

A burden or a boon?

Owning a piece of New Zealand's history may be a dream come true for some property owners, but it could be a nightmare for others.

Whether ownership of a heritage building is a boon or a burden to you will depend on how your plans fit within the rules and whether you make the most of incentives available to heritage building owners.

In this article, we outline some things you need to think about when owning (or considering buying) a heritage building.

PAGE 3 ▶



Property briefs

Unit titles legislative updates

The latest amendments to the Unit Titles Act 2010 came into force on 9 May 2023.

First Home Grants thresholds increase

On 15 May 2023, the price cap thresholds across the country for Kāinga Ora's First Home Grants (FHG) saw a number of increases. The rises were not limited to main centres; 37 areas had their price caps for new builds increased including Southland and Central Hawke's Bay.

Loan to value restrictions eased

The Reserve Bank has eased the previous restrictions on bank lending to lower equity borrowers and investors. The easing measures took effect from 1 June 2023.

PAGE 4 ▶

Kāinga Ora First Home Partner scheme

A co-ownership option

In the Winter 2022 edition of *Property Speaking* we discussed what to consider when co-owning a property with friends or family. Another co-ownership option to consider is the Kāinga Ora First Home Partner scheme (FHP).

The scheme supports first home buyers, who do not have a sufficient deposit, or who may struggle to service a low-equity mortgage, to buy a property partnering alongside the government. Kāinga Ora (KO) can contribute up to the lesser of \$200,000 or 25% of the purchase price.

How does it work?

It's easiest to explain by using an example. You want to buy a property costing \$800,000. You have a 10% deposit (\$80,000) but your lender will only offer a mortgage of \$600,000. This leaves a 15% shortfall of \$120,000. KO will help you buy the property by contributing the additional \$120,000 in exchange for being the registered owner of that 15% share.

You must live in the property and will be responsible for meeting all the mortgage payments and outgoings. You must gain KO's consent before making any improvements, alterations or renovations to the property. KO requires you to live in the property for a minimum of three years and you must gain KO's consent before you sell the property.

You agree with KO to use your best endeavours to buy out their share within 15 years from settlement (it can be

extended up to 25 years). You will meet annually with KO to review your financial circumstances and make sure you will meet the goal. KO owns a share of the property and the price you need to pay for their share will change as the value of the property changes.

To secure both your and KO's interests:

- + You both enter into a shared ownership agreement that incorporates the points in the paragraphs above. In addition, the agreement includes enforcement and dispute resolution procedures
- + A covenant is registered against the property title in favour of KO; a second covenant is registered against the property title in your favour, and
- + Under the covenants you each agree to comply with the terms of the shared ownership agreement. The covenant also serves as notice to the public. For example, a prospective buyer would look at the title to your property, note KO's covenant, and would know that you need KO's consent to the sale.

Eligibility criteria

KO has criteria you must meet to be eligible for the FHP scheme. These include:

- + Being over 18 and eligible to buy residential land in New Zealand
- + Having a total household income of \$130,000 or less with a good credit rating
- + Being a first home buyer. If you have previously owned a property but no longer do so, you may still be eligible



- + Not having previously received shared ownership support from KO
- + Having a minimum deposit of 5% of the purchase price, and
- + The home you want to buy must be:
 - **A new build:** a completed home with a code of compliance certificate issued within the previous 12 months that has not previously been lived in, or
 - **An off-the-plan purchase:** a home still to be built, the sale and purchase agreement must cover both the land purchase and the build.

In each of the above cases, the home must be habitable from the settlement date/the date that title and code of compliance issue, and

- + You must also meet the lending criteria of a participating bank. At the time of writing the participating banks are Westpac, BNZ, Kiwibank and SBS.

Where to start

Check your eligibility and apply for the FHP [here](#). Gather these documents before applying: photo ID, proof of income and evidence of your deposit.

Once confirmation of eligibility has been received, you need pre-approval from one of the participating banks. A mortgage broker can be an asset in navigating this.

It is important to note that you cannot enter into a sale and purchase agreement for a property under the FHP scheme until both requirements above have been satisfied.

The FHP scheme can be a great way for first home buyers to get on the property ladder. It is essential, however, that you understand how this ownership structure will affect you, and you are aware of your rights and obligations.

If you are considering applying for the FHP scheme, we can guide you through the process. +

Owning a heritage building

A burden or a boon?

Owning a piece of New Zealand's history may be a dream come true for some property owners, but it could be a nightmare for others. Whether ownership of a heritage building is a boon or a burden to you will depend on how your plans fit within the rules and whether you make the most of incentives available to heritage building owners.

In this article, we outline some things you need to think about when owning or buying a heritage building.

Defining a heritage building

The term 'heritage building' usually refers to a property on the New Zealand Heritage List/Rārangi Kōrero.

Anyone can apply to list a building, but Heritage New Zealand Pouhere Taonga makes the final decision on whether that building is significant enough to be included. All heritage buildings are categorised according to their heritage values. 'Category 1 Historic Places', for example, are places of special or outstanding historical or cultural significance, while places categorised as 'Wāhi Tapu' are places sacred to Māori. The full list of existing heritage buildings and places can be found [here](#).

Listed buildings, however, are not the only ones that may be subject to special protections. Councils can recognise the heritage values of any building in their district plans. Property owners (or potential owners) should take care when checking whether a building is protected by a district plan as the rules may not necessarily use the words 'heritage building.' A building described as 'a site of interest', as being of

'special character' or in similar words may also be protected.

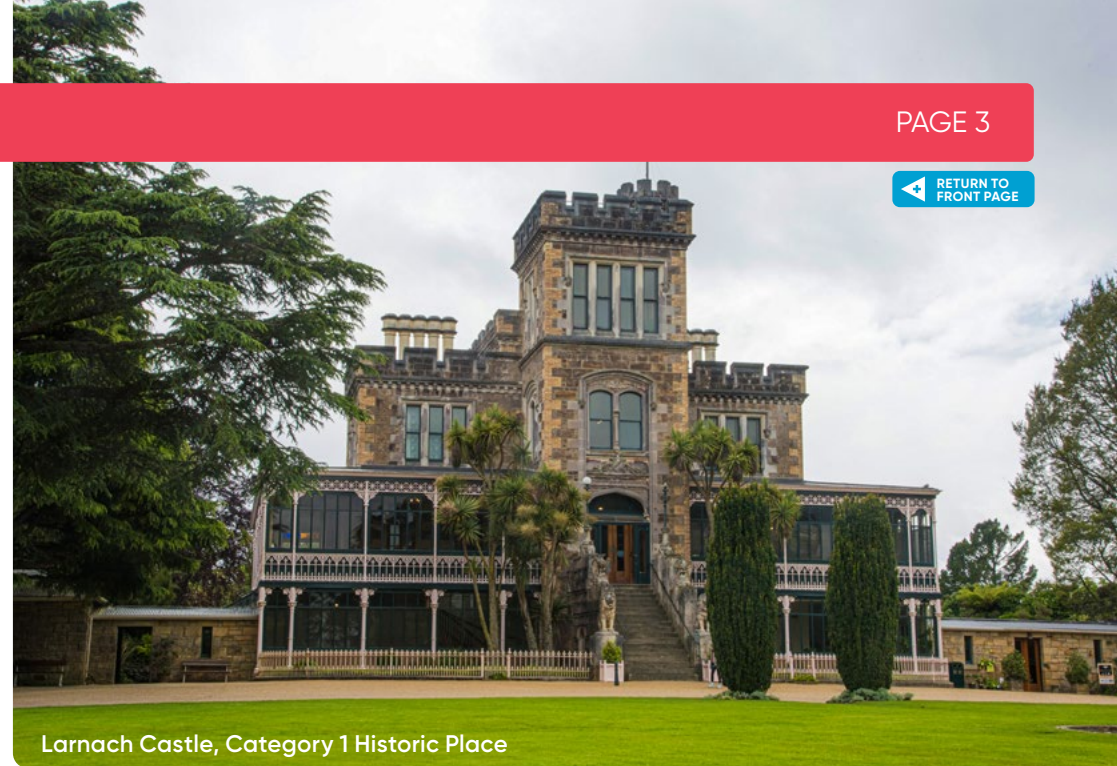
The status of a heritage building is not affected by its condition. Even buildings in need of serious repair could have heritage status. Also, there is no rule that a building must be of a certain age to be considered heritage; do not rely on age as the sole indicator of a building's status. The best way is always to check the list and the district plan.

Effect of heritage status

If you own a heritage building, you must be cautious when dealing with your property. These buildings come with greater restrictions aimed at preserving their historic values. For example:

+ You must operate within district plan rules and seek council consent where necessary: Being on the New Zealand Heritage List/Rārangi Kōrero does not automatically protect a building. Instead, some relevant restrictions can be found in the local district plan. The scope of these restrictions could range from the removal of interior fixtures, to exterior design changes and/or to demolition.

Related bare land of potential archaeological interest or notable trees may also be protected in this way. Even where your proposed work is approved, the council may impose conditions requiring that the work be carried out in a manner in keeping with the building's heritage or overseen by experts. Obtaining a consent and meeting such conditions can significantly increase your project's cost and timeframe.



Larnach Castle, Category 1 Historic Place

- + You must seek special authorisation from Heritage New Zealand Pouhere Taonga where work on or use of a heritage building may affect a pre-1900 archaeological site or land subject to a heritage order:** Importantly, this authorisation is in addition to any council consents. While heritage orders can be found in the district plan, authorisation for disturbing pre-1900 archaeological sites is required regardless of whether that site is recorded. Again, the authorisation may come with conditions.
- + Overseas buyers may need Overseas Investment Office consent before buying a heritage property:** Property with a listed heritage building or subject to a heritage order is likely to be 'sensitive land' under the Overseas Investment Act 2005.

On the bright side, owning a listed heritage building also comes with benefits designed to encourage history preservation and enhance the character of the area. For

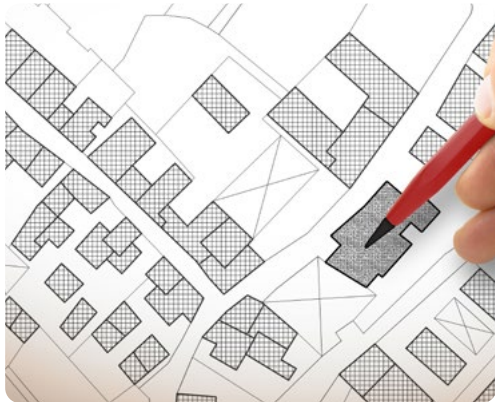
example, you may be entitled to:

- + Funding or other assistance:** There are grants available to assist with the costs of preserving heritage buildings, such as the **National Heritage Preservation Incentive Fund**. Heritage New Zealand Pouhere Taonga also offers wider support services to heritage building owners, including advice on alterations and consent processes, and
- + Fee waivers:** Some councils are willing to waive consent fees for work involving heritage buildings.

As changing the status of a heritage building can be difficult and failing to work within the rules can result in criminal prosecution, it is essential that you have all information upfront before buying or working on a heritage building.

Please contact us if you need help checking whether a property has heritage building status and/or navigating the relevant rules and consent processes. **+**

Property briefs



Unit titles legislative updates

Unit titles are most commonly used for apartments or townhouses that share amenities such as lobbies, lifts or driveways with other owners in the same building or on the same property.

The latest amendments to the Unit Titles Act 2010 came into force on 9 May 2023. These include broadening the scope of information that sellers must provide to prospective buyers, and bolstering the governance structures for body corporates that manage unit title buildings or developments.

These changes have prompted amendments in the unit title provisions in the standard ADLS Sale and Purchase Agreement. The amendments reflect the increased disclosure obligations: the

wording in respect of the warranties has been updated to expressly refer to any pre-contract disclosures made by the seller.

The ADLS form has also been updated in respect of courses of action available to buyers where they don't receive a pre-settlement disclosure statement at least five working days prior to settlement. The options available to buyers haven't changed in themselves. Rather, the agreement clarifies where the buyer elects for settlement to take place without delay that this constitutes a waiver of any right for that buyer to delay or cancel the settlement.

The purchase process of unit title properties is different from buying other sorts of properties. If you are considering buying or selling a unit title property, these changes may impact on your rights or obligations.

First Home Grants thresholds increase

On 15 May 2023, the price cap thresholds across the country for Kāinga Ora's First Home Grants (FHG) saw a number of increases. The rises were not limited to main centres; 37 areas had their price caps for new builds increased including Southland and Central Hawke's Bay.

Similarly, the KiwiBuild caps were also raised. Notably Queenstown's threshold increased to \$845,000 and Hamilton's rose to \$860,000.

These increases reflect the rapid rise in house prices and land in the last few

years which meant that in certain areas the caps were so low that they became almost inaccessible for prospective FHG applicants.

With interest rates still rising, the latest round of price threshold increases should help a wider group of first-home buyers into new or existing homes.

To find the price thresholds for existing homes or new builds in your region, click [here](#). The Kāinga Ora [website](#) also has information on eligibility and where the territorial boundaries lie to determine which regions the thresholds apply to. We can help you in determining both your eligibility and how to access the FHG.

Loan to value restrictions eased

In November 2021, the Reserve Bank imposed more restrictions on banks in respect of their lending in order to help curb the rapid rise in house prices in the previous few years. This caused difficulty for potential borrowers (both owner occupiers and investors) to obtain finance.

Eighteen months on, the Reserve Bank has eased the previous restrictions on bank lending to lower equity borrowers and investors. The easing measures took effect from 1 June 2023.

Previously, banks could only allocate up to 10% of their total lending towards owner occupiers with a loan to value (LVR) ratio of less than 80%. The 1 June changes saw this increase from 10% to up to 15%. This means that banks now have more funds available for borrowers with smaller deposits.

With national house prices falling around 17% since the November 2021 LVR restrictions took effect, the Reserve Bank believes that the risks that prompted the tightening on bank lending to low equity buyers have reduced.

This is good news for first home buyers who may not be able to save a 20% deposit despite being in a position to service the loans required to enter the property market.

The increase in availability of loan funds for low equity borrowers, the increases to FHG price caps and a general easing of the property market could be signalling a turning of the tide for buyers.

To see how you may be able to take advantage of these market factors and get onto the property ladder, you could contact us or a lender to understand what assistance or options could work for you. +

