

# Memorandum of Understanding Kaipara Moana Remediation Programme

between

The Ministry for the Environment on behalf of the Crown

and

Ngā Maunga Whakahī o Kaipara

and

Ngāti Whātua Ōrākei

and

Te Roroa

and

Te Rūnanga o Ngāti Whātua

and

Te Uri o Hau

and

Northland Regional Council

and

Auckland Council

## KAI TOHU (PARTIES)

1. Ngā Maunga Whakahī o Kaipara, Ngāti Whātua Ōrākei, Te Roroa, Te Rūnanga o Ngāti Whātua, and Te Uri o Hau (together **Kaipara Uri**);
  2. Northland Regional Council; and
  3. Auckland Council;
- (together the **Member Parties**); and
4. The Sovereign in right of New Zealand, acting by and through the Minister for the Environment (**Crown**).

## KUPU TAKI (BACKGROUND)

### *The Kaipara Moana Remediation Programme*

- A. The Kaipara Harbour (**Kaipara Moana**) (shown in Annexure 1 with its associated catchments) is New Zealand's largest harbour, with an approximate 6,020 km<sup>2</sup> catchment, and is suffering from degraded water quality.
- B. Kaipara Moana is of great traditional, cultural, historical and spiritual importance to Kaipara Uri.
- C. Kaipara Moana and its catchment contains some of the rarest ecosystems in New Zealand, namely sand dune, seagrass, freshwater and estuarine wetland ecosystems.
- D. Kaipara Moana also provides significant economic and recreational opportunities to the many communities and marae and hapū who reside on or near to its shores.
- E. Historical land clearance and land use change in the catchment of Kaipara Moana has led to elevated levels of sediment entering waterways, and ultimately, depositing on the bed of Kaipara Moana. If left unchecked, Kaipara Moana is at risk of degrading beyond repair.
- F. The Kaipara Moana Remediation Programme (as set out in Annexure 2) will be delivered, with funding from the Crown, Northland Regional Council and Auckland Council, together with Kaipara Uri, with the aim of promoting a healthy and productive harbour.

### 1. **Acknowledgements**

The parties, on entering into this Memorandum of Understanding (**Memorandum**), acknowledge the following:

- (a) that restoring and enhancing Kaipara Moana and its water quality will take a great deal of time, effort and financial resources to accomplish;
- (b) that there are significant financial commitments that will need to be made over time by the parties;
- (c) that the restoration of Kaipara Moana will require an adaptive management approach, where actions may change based on progress against outcomes, and our understanding of Kaipara Moana as it changes with future research;
- (d) that the timeframe to implement actions to address the restoration of Kaipara Moana is likely to be ten (10) years, and that recovery of the Kaipara Moana will take longer;

- (e) that to promote the sustainable management of Kaipara Moana it is necessary to look at catchment management and the effects of human activity across a wide range of land-uses;
- (f) that the key area of concern is the high level of sediment flowing into Kaipara Moana and how it can be significantly reduced;
- (g) that the main aim of the Kaipara Moana Remediation Programme is to reduce the annual average sedimentation rate to the 'ecological effects threshold' (limited to 2mm/year, greater than what would be expected under natural land conditions), to reduce further degradation to the harbour, and deliver a range of environmental benefits;
- (h) that the environmental outcomes need to be accompanied by social outcomes, and that the success of the Kaipara Moana Remediation Programme will depend also on how whānau, marae, hapū/iwi, local communities, land-care groups, agricultural industry associations, Crown agencies and others communicate and work together;
- (i) that the agreement between the parties provides the ability for Kaipara Uri as Ahi Kā and Kaitiaki for Kaipara Moana, alongside hapū and marae throughout the catchment, to develop capability and employment associated with the remediation of Kaipara Moana; and
- (j) that the parties wish to expedite remediation work by timely approval of projects consistent with the Investment Objectives (as defined in clause 6) of this document, including to generate employment outcomes.

## **2. Vision**

The Parties have entered into this Memorandum to formally engage with each other to determine mutually acceptable arrangements for the future of Kaipara Moana, its remediation and associated funding. This engagement will help provide a healthy and productive Kaipara Moana for Kaipara Uri and all New Zealanders of present and future generations (**Vision**).

## **3. Key Principles**

The key principles and considerations to underpin the relationship between the parties will be:

- (a) Rangapu (partnership): a working relationship based upon the following:
  - (i) mutual trust and equal treatment;
  - (ii) *kia tika*: to operate in right and appropriate ways and with a shared intention to achieve (by constructive and harmonious working together) a maximising of the outcomes sort under this Memorandum;
  - (iii) *kia mārama*: to operate with openness to ensure clarity and transparency and consistency and fairness in all dealings and communications between the parties and their representatives;
  - (iv) *kia pono*: to operate with integrity and correct representation and processes that build relationships and ensure non-adversarial dealings between the parties and constructive mutual steps both to avoid differences and to identify solutions where required; and
  - (v) open, prompt and fair notification and resolution between the parties of any differences or disputes which may arise; and

- (b) Kaitiakitanga (guardianship): the role and responsibility of Kaipara Uri to exercise their tikanga to remediate, restore and protect the mauri of Kaipara Moana, (the **Key Principles**).

#### 4. **Purpose**

- 4.1 The purpose of this Memorandum is to record the parties' commitment to the Vision and Key Principles, and a long-term working relationship between the parties to assist in:
  - (a) addressing the future of Kaipara Moana;
  - (b) achieving the Investment Objectives;
  - (c) initially establishing the Joint Committee to provide project stewardship and governance for the Kaipara Moana Remediation Programme;
  - (d) implementing the Kaipara Moana Remediation Programme and agreeing, in principle, upon funding structures to support this; and
  - (e) then handing over the stewardship and governance role of the Joint Committee to the Future Kaipara Moana Body, when that body is created or established,(the **Purpose**).
- 4.2 The following provisions of this Memorandum set out the key objectives and steps to achieve the Purpose.
- 4.3 This Memorandum is a voluntary agreement and nothing in this Memorandum is legally binding on any of the parties.

#### 5. **Investment Objectives**

The parties acknowledge that there are numerous direct and indirect investment opportunities from the Kaipara Moana Remediation Programme for Kaipara Moana, the surrounding land and communities including:

- (a) Tiaki taiao (Natural Capital): Primary objective is to restore mauri to Kaipara Moana and enable it to be healthy, self-sustaining and naturally productive through:
  - (i) material reduction in erosion from land and streams;
  - (ii) water quality improvement of streams/waterways; and
  - (iii) reduction in sediment in harbour to below ecological effects threshold.
- (b) Ōhanga (Physical & Financial Capital): Create sustainable, resilient and optimised primary production in the Kaipara catchment and harbour through:
  - (i) improved land management guided by improved advice and evidence; and
  - (ii) recognised intergenerational equity and support a just transition to better environment outcomes;
- (c) Manaaki Tangata (Human Capital): Improve local skills and capability to support innovation, effective land management, and community resilience through:
  - (i) material lift of capability and capacity to address environmental challenges;
  - (ii) providing exemplar benefits to other catchments and nationally; and
  - (iii) developing and utilising local skills and local enterprise to lead to sustainable outcomes; and

- (d) Tātai Hononga (Social Capital): Enable kotahitanga by empowering Kaipara Uri and local community participation, including hapū and marae, in local solutions, leveraging opportunities through:
  - (i) mobilising local participation and delivery;
  - (ii) line of sight between local initiatives and governance - so that local activities are aligned with wider needs; and
  - (iii) customary practice is prioritised with focus on taonga species and mātauranga Māori perspectives,

(together the **Investment Objectives**).

## 6. **Joint Committee**

- 6.1 Within forty (40) business days of entering into this Memorandum, the Member Parties will form, and call for the inaugural meeting of, a joint committee pursuant to clause 30(1)(b) and 30A of Schedule 7 of the Local Government Act 2002, consisting of twelve (12) members:
  - (a) six (6) appointed by the Kaipara Uri;
  - (b) three (3) appointed by Auckland Council; and
  - (c) three (3) appointed by Northland Regional Council,**(Joint Committee)**.
- 6.2 The Joint Committee will adhere to the Key Principles and operate in accordance with the Local Government Act 2002 and the terms of reference agreed between the Member Parties. Otherwise, the Joint Committee will be entitled to formulate and put in place its own rules and procedures.
- 6.3 A Member Party appointing its representatives to the Joint Committee may, on written notice to the other Member Parties, appoint a person to replace its appointee permanently or temporarily. The Member Parties are free to appoint their own representatives, but they will ensure that they have authority and expertise to fulfil the role.
- 6.4 The members of the Joint Committee shall appoint:
  - (a) a Chair, from one (1) of the representatives appointed by Kaipara Uri; and
  - (b) a Deputy Chair, from one (1) of the representatives appointed by either Northland Regional Council or Auckland Council.
- 6.5 The Joint Committee will provide the stewardship and governance and actively work towards achieving the Purpose, until handover of its role to the Future Kaipara Moana Body (as defined at clause 6.12) once established or created.
- 6.6 Until the establishment of the Future Kaipara Moana Body and the handing over of its stewardship and governance role, the Joint Committee will:
  - (a) provide stewardship and governance in respect of the relationship between the parties and their goal of achieving the Purpose;
  - (b) commission and approve a Year 1 remediation budget and work-plan for the Kaipara Moana Remediation Programme, and future budgets and work-plans as required;
  - (c) assist in any review and consideration of any recommended funding arrangements;
  - (d) assist and work with the Member Parties on any audit and reporting obligations; and

- (e) formulate the purpose, functions and structure of a vehicle or other arrangement to undertake operational activities required for the Kaipara Moana Remediation Programme and recommend to Member Parties any decisions or actions required to establish it.
- 6.7 The Joint Committee shall be entitled to invite guests or experts to:
- (a) attend any meeting; and
  - (b) at the request of the Joint Committee, participate in discussions on, and assist the Joint Committee in its consideration of, matters that are on the agenda.
- 6.8 The Joint Committee will record and minute all meetings and decisions and the parties agree to adhere to the same.
- 6.9 The Member Parties, through the Joint Committee, will seek and consider the views of other parties and other stakeholders, as part of the process to achieve the Purpose and outcomes.
- 6.10 All new intellectual property created through the work of the Joint Committee will be jointly owned by the Member Parties. Such intellectual property rights (if any) will be transferred, or licenced (at no cost), to the Future Kaipara Moana Body upon its establishment or creation. Intellectual property rights in this clause means all intellectual property rights whether conferred by statute, at common law or in equity, including all copyright, and know-how and rights in relation to designs and trademarks (whether registered or unregistered).
- 6.11 All intellectual property brought by each party to the relationship under this Memorandum remains in the ownership of that party.
- 6.12 The Crown and Kaipara Uri note it is their intention that:
- (a) a co-governance body for Kaipara Moana will be established through legislation (**Future Kaipara Moana Body**);
  - (b) if established, the Future Kaipara Moana Body will be constituted as a joint committee under the Local Government Act 2002; and
  - (c) Parliament will need to consider and pass legislation to constitute the Future Kaipara Moana Body.
- 6.13 If the Future Kaipara Moana Body is established by legislation (but subject to such legislation):
- (a) the Joint Committee will hand over its stewardship and governance role of the Kaipara Moana Remediation Programme to the Future Kaipara Moana Body and will dissolve;
  - (b) decisions made on the Kaipara Moana Remediation Programme will have particular regard to any strategy (setting out the issues, vision, objectives and desired outcomes) for the Kaipara Moana catchment required by legislation and approved by the Future Kaipara Moana Body; and
  - (c) consistent with the membership of the Joint Committee, and reflecting Auckland Council's and Northland Regional Council's contribution of funds to the Kaipara Moana Remediation Programme and their statutory function to manage water quality and soil conservation:

- (i) only the Kaipara Uri, Auckland Council and Northland Regional Council members of the Future Kaipara Moana Body will have voting rights on the Kaipara Moana Remediation Programme; and
- (ii) voting rights will be apportioned between the members as follows: 50% between Kaipara Uri members and 25% Auckland Council members and 25% Northland Regional Council members (if all are present and voting).

## 7. Funding

7.1 Notwithstanding the following in this clause 8, or any other clause, this Memorandum does not guarantee or commit any of the parties to any financial commitments or funding until the agreed funding agreement is entered into.

7.2 The parties on entering into this Memorandum further acknowledge that:

- (a) the cost of remediating Kaipara Moana in accordance with the Kaipara Moana Remediation Programme is estimated to cost up to \$300 million over ten (10) years;
- (b) to contribute to the funding of the Kaipara Moana Remediation Programme the Crown will, subject to agreeing the terms and conditions of the funding, contribute an initial \$12 million for the first financial year of the Kaipara Moana Remediation Programme (**Initial Funding**) and the balance of up to \$88 million over the remaining five (5) years (**Balance Funding**) subject to conditions being met;
- (c) the Crown's funding will be structured as a grant(s) and is subject to the terms and conditions contained in the relevant deed of grant;
- (d) the Balance Funding will be conditional on:
  - (i) Auckland Council and Northland Regional Council committing to co-fund the Kaipara Moana Remediation Programme through their respective Long-Term Plans; and
  - (ii) confirmation of the total contribution from Auckland Council and Northland Regional Council and other contributions (i.e., landowner, industry association, philanthropic), will match the Crown's funding (being the Initial Funding and Balance Funding);
- (e) the Auckland Council and Northland Regional Council's co-funding of the Kaipara Moana Remediation Programme will be equal proportions and may be through cash and 'in-kind' contributions (such as staff time and expertise and/or the use of council facilities);
- (f) for the first financial year of the Joint Committee, the co-funding towards the Kaipara Moana Remediation Programme from Auckland Council will be up to \$1.0 million, and the co-funding from Northland Regional will be up to \$0.5 million. Any commitment from Auckland Council or Northland Regional Council to funding the remaining five (5) years is contingent on their respective Long Term Plans; and
- (g) the parties will continue to engage with each other and through the Future Kaipara Moana Body to span the funding and period gap to fully achieve the ultimate goals of the Kaipara Moana Remediation Programme (a further \$100 million for the remaining four (4) years).

- 7.3 The Joint Committee will assist Member Parties in decisions required to finalise a grant funding with the Crown.

**8. Other councils**

- 8.1 Parties record that the Kaipara District Council and Whangarei District Council support the outcomes of the Kaipara Moana Remediation Programme. While this programme does not directly align with their statutory function and they will not therefore be direct funders of remediation, and so are not signatories to this Memorandum or part of the Joint Committee, they will continue to support, assist and provide expertise to strategic direction setting and will work alongside iwi, hapū and the community within each district.

- 8.2 The Northland Regional Council will liaise with the Kaipara District Council and Whangarei District Council, both during the Joint Committee phase and once the Future Kaipara Moana Body has been established and the Joint Committee dissolved, to seek input on direction setting of the Kaipara Moana Remediation Programme (until the strategy for the Kaipara Moana catchment required by legislation is approved by the Future Kaipara Moana Body) and provide implementation progress updates.

**9. Term of Memorandum**

- 9.1 This Memorandum commences on the date that the parties' duly authorised representatives sign it, and continues in force until all obligations under this Memorandum are fulfilled, or earlier in the event:

- (a) this Memorandum is terminated by mutual agreement of the parties;
- (b) of a dispute or difference between the parties that cannot be resolved through the process specified in clause 10.2 within twenty (20) business days of referral to the Chief Executives or executive leaders (or such longer time agreed between the parties); or
- (c) of material default by one of the parties that is not remedied within a reasonable period after the default is notified,

**(Term).**

- 9.2 Upon the expiry of the Term, this Memorandum will be deemed automatically terminated as between the parties.

**10. Dispute Resolution**

- 10.1 If a dispute or difference arises out of or in connection with this Memorandum or the Joint Committee, any party may give written notice to the other parties specifying the nature of the dispute and brief details of the dispute. The parties must endeavour in good faith to resolve the dispute.
- 10.2 If the parties are unable to resolve the dispute within ten (10) business days of the date of the relevant dispute notice under clause 11.1 (or such longer time agreed between the parties), any party may refer the matter to the Chief Executives or other executive leaders for resolution.
- 10.3 In considering any dispute or difference pursuant to this clause, the parties will have regard to the Vision and the Key Principles.



10.4 No party shall commence any legal proceedings in relation to any dispute, difference or question arising out or in connection with this Memorandum or the Joint Committee, unless urgent court action is necessary to preserve a party's rights.

10.5 All parties shall continue to perform their obligations under this Memorandum and the Joint Committee as far as possible, acting reasonably, as if no dispute or difference had arisen pending the final resolution.

#### 11. **Changes to Memorandum**

Any changes to this Memorandum shall be made in writing, agreed by the parties and signed by persons authorised to do so on behalf of each of the parties and such changes shall be attached to and form part of this Memorandum.

#### 12. **Primary Contacts**

The parties will throughout the Term appoint a suitably qualified and experienced primary contact (**Primary Contact**) for the other parties to liaise and contact in respect of the relationship formed between them pursuant to the Memorandum. On entering into this Memorandum the parties respective Primary Contacts are as listed at Annexure 3.

#### 13. **Confidentiality**

Unless otherwise mutually agreed between the parties, the parties must keep all information and data (in any form) disclosed by one party to the other in connection with this Memorandum confidential, except to the extent that disclosure is required:

- (a) by law (including obligations under the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987 and the Privacy Act 1993) provided that the disclosing party advises the other parties of the requirement as soon as practicable before such disclosure is made;
- (b) to allow each of the parties to comply with their obligations to its respective leadership and internal governance obligations;
- (c) as the Crown may be required by a Select Committee or a Minister of the Crown, parliamentary convention or by procedures in relation to the appropriation of public money;
- (d) to its directors, employees or contractors who need to know such information for the purpose of this Memorandum; and to its professional advisers or auditors for a proper purpose, provided that the disclosing party ensures that each such person to whom it discloses confidential information complies with the restrictions in this clause as if such person were a party to this Memorandum; and
- (e) if and to the extent the information:
  - (i) was known to the receiving person before the information was disclosed to it; or
  - (ii) is disclosed to the receiving person on a non-confidential basis by a third party who has the right to make such disclosure; or
  - (iii) is generally available to the public through no fault of the receiving person; or
  - (iv) is developed by the receiving person independently of the information disclosed by the disclosing party.

**Signed on behalf of**

**Her Majesty the Queen acting by and through the Minister for the Environment**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Hon David Parker

**Northland Regional Council**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Penny Smart - Chair

**Auckland Council**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Phil Goff – Mayor of Auckland

**Ngā Maunga Whakahī o Kaipara**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
[ ]

**Te Roroa**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
[ ]

**Te Uri o Hau**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
[ ]

**Ngāti Whātua Ōrākei**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
[ ]

**Te Runanga o Ngāti Whātua**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
[ ]

## **Annexure 1.**

Kaipara Harbour with its associated catchments

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## **Annexure 2.**

### **Kaipara Moana Remediation Indicative Business Case**

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### Annexure 3.

#### Primary Contacts:

- (a) The Primary Contact for the Ministry for the Environment on behalf of the Crown is:  
Name:  
Address: 23 Kate Sheppard Place, Wellington  
Telephone:  
Email:
- (b) The Primary Contact for Northland Regional Council is:  
Name:  
Address:  
Telephone:  
Email:
- (c) The Primary Contact for Auckland Council is:  
Name:  
Address:  
Telephone:  
Email:
- (d) The Primary Contact for the respective Kaipara Uri bodies are as follows:
  - (i) The Primary Contact for Ngā Maunga Whakahī o Kaipara is:  
Name:  
Address:  
Telephone:  
Email:
  - (ii) The Primary Contact for Te Roroa is:  
Name:  
Address:  
Telephone:  
Email:
  - (iii) The Primary Contact for Te Uri o Hau is:  
Name:  
Address:  
Telephone:  
Email:
  - (iv) The Primary Contact for Ngāti Whātua Ōrākei is:  
Name:  
Address:

Telephone:

Email:

(v) The Primary Contact for Te Rūnanga o Ngāti Whātua is:

Name:

Address:

Telephone:

Email:

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