

# **AGENDA**

## **SUPPLEMENTARY**

**Extraordinary Council Meeting**  
**Wednesday 29 July 2020 at 10.00am**

## Northland Regional Extraordinary Council Meeting Supplementary Agenda

Meeting to be held in the Council Chamber  
on Wednesday 29 July 2020, commencing at 10.00am

**Recommendations contained in the council agenda are NOT council decisions. Please refer to council minutes for resolutions.**

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### **SUPPLEMENTARY PAPERS (presented at the meeting)**

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|--------------|--|---|
| <b>3.1</b>   | Updated Memorandum of Understanding and Terms of Reference - Kaipara Moana |   |
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## **Kaipara Moana Remediation Joint Committee**

### **Terms of Reference**

#### **Background**

The Kaipara Harbour (Kaipara Moana) is New Zealand's largest harbour and is suffering from decreased and degraded water quality issues. In July 2020 the New Zealand government confirmed funds would be allocated to address freshwater management matters, particularly sediment runoff, with the aim of achieving environmental and associated outcomes for Kaipara Moana and its catchment.

The Kaipara Moana Remediation Joint Committee is set up as a joint committee by the Governing Body of Auckland Council and the Northland Regional Council, and Kaipara Uri, to coordinate decisions relating to funding allocated to provide environmental and associated outcomes for Kaipara Moana.

The key principles by which the Joint Committee must conduct itself are set out in the Memorandum of Understanding dated xx 2020.

'Kaipara Uri' is the term taken by Ngā Maunga Whakahī o Kaipara, Te Roroa, Te Uri o Hau Settlement Trust, Ngāti Whātua Ōrākei and Te Rūnanga o Ngāti Whātua, when engaging collectively on matters relating to Kaipara Moana and its catchment. Together with Auckland Council and the Northland Regional Council, these are the member parties to the Joint Committee.

#### **Purpose and Responsibilities**

The purpose of the Joint Committee is to carry out the decision-making responsibility in relation to the allocation of funds for the Kaipara Moana Remediation programme, including funding from the Crown and councils, and contributions (e.g. from landowners or others) needed to access funding from Crown and councils for remediation works. This includes (but is not necessarily limited) to:

- (a) providing stewardship and governance over the expenditure of the Crown Grant and council funding, as well as contributions from land-owners;
- (b) commissioning and approving remediation budgets and work-plans for the Kaipara Moana Remediation programme;
- (c) assisting councils and Kaipara Uri in any consideration of funding arrangements with the Crown and other parties as may be required;
- (d) formulating and recommending to councils and Kaipara Uri the preferred Kaipara Moana Remediation operations vehicle to undertake operational works as directed by an approved long-term annual remediation budget and work-plan;
- (e) **guiding** the work of councils and Kaipara Uri on any **monitoring** and reporting obligations;
- (f) assisting councils and Kaipara Uri in its review and consideration of the Funding Agreement; and
- (g) assisting and supporting signatory entities to the Funding Agreement with any audit and reporting obligations required in respect of the Crown Grant and council contributions.

**For the avoidance of doubt the Joint Committee:**

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- (i) is not authorised to exercise any regulatory or enforcement function of either council under the Local Government Act 2002, the Resource Management Act 1991, or any other Act;
- (ii) must not act contrary to the current long-term plan or annual plan of either council, or any NPS or other document binding on or adopted by either Council under the Local Government Act 2002, the Resource Management Act 1991, or other Act; and
- (iii) is not authorised to commit funds or resources of either council beyond the funding and resources already agreed to by them.

#### **Powers (Delegations)**

The Joint Committee has all powers of the Governing Body of the Auckland Council and the Northland Regional Council necessary to perform the Joint Committee's responsibilities.

Except the powers that neither Auckland Council nor the Northland Regional Council can lawfully delegate, including those under schedule 7, clause 32(1) of the Local Government Act 2002, being the power to:

- (a) make a rate; or
- (b) make a bylaw; or
- (c) borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan; or
- (d) adopt a long-term plan, annual plan, or annual report; or
- (e) appoint a chief executive; or
- (f) adopt policies required to be adopted and consulted on under this Act in association with the long-term plan or developed for the purpose of the local governance statement; or
- (g) adopt a remuneration and employment policy.

**Frequency of meetings:** Quarterly or as determined by the Joint Committee.

**Membership:** The membership of the Joint Committee will be as follows:

- (a) six (6) appointed by Kaipara Uri entities;
- (b) three (3) elected members appointed by Auckland Council; and
- (c) three (3) elected members appointed by Northland Regional Council.

The members of the Joint Committee shall appoint, by majority decision of the members:

- (a) A Chair (from one (1) of the representatives appointed by Kaipara Uri entities); and
- (b) A Deputy Chair (from one (1) of the representatives appointed by either Auckland Council or Northland Regional Council).

Members can be reappointed.

Resignation is by written notice to the relevant appointer. As a matter of courtesy, each appointer will then inform the Joint Committee of discharges, resignations and reappointments.

Ex officio: Whereas the Mayor of Auckland is a member of all committees by virtue of section 9(6) of the Local Government (Auckland Council) Act 2009, the Mayor has agreed not to exercise this right of membership.

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### **Joint Committee discharged on establishment of new entity**

This Joint Committee is deemed to be discharged on the establishment of a future Kaipara Moana Body, anticipated to be created by statute with representation from Kaipara Uri, Auckland Council, Northland Regional Council, Kaipara District Council and Whangarei District Council.

### **Joint Committee not discharged at triennial elections**

Pursuant to the Local Government Act 2002, schedule 7, clause 30(7) the councils have resolved that this Joint Committee is not discharged at the triennial elections (if not already discharged due to the establishment of a future Kaipara Moana Body). However, on coming into office following an election, a council may choose to review its appointments to the Joint Committee.

**Quorum:** The quorum for a meeting of a Joint Committee is:

- (a) half of the members if the number of members of the Joint Committee (including vacancies) are even
- (b) a majority if the number of members of the Joint Committee (including vacancies) are odd

and provided that at least one (1) Joint Committee member is present from each of Auckland Council and Northland Regional Council, and two (2) members from the Kaipara Uri.

**Voting rights:** Decisions will be made by majority. However, the Joint Committee will seek to operate on the principle of consensus decision-making. When decisions are required and put to a vote, the chair or other person presiding at a meeting:

- (a) has a deliberative vote; and
- (b) does not have a casting vote (and therefore in the case of an equality of votes, the act or question is defeated and the status quo is preserved).

**Support and attendance:** The Joint Committee shall be entitled to invite guests or experts to attend any meeting and, at the request of the Joint Committee, participate in discussions on, and assist the Joint Committee in its considerations.

Any Chair or other member of any of the governing bodies of Kaipara Uri, and any member of the Auckland Council and the Northland Regional Council or of a committee of the Auckland Council and the Northland Regional Council, has, unless lawfully excluded, the right to attend any meeting of the Joint Committee.

Every meeting of the Joint Committee is open to the public, except as otherwise provided by Part 7 of the Local Government Official Information and Meetings Act 1987.

Senior staff of member entities may attend Joint Committee meetings to provide administrative and other associated support to the appointed members.

**Review of these Terms of Reference:** These terms of reference are to be reviewed at least annually by the Joint Committee. The Terms of Reference may be amended by agreement between the Joint Committee members subject to any other necessary approvals from the member parties.

**Standing orders:** The Joint Committee will refer to and apply the standing orders of the Council members providing administrative assistance to the Joint Committee. In the event of

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any inconsistencies between the standing orders and these terms of reference, the terms of reference will prevail.

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# 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



**Memorandum of Understanding** made this                      day of                      2020

**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**), including its waters, associated catchments, and ecosystems (generally as shown in Annexure 1) 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) intends to address this degradation and 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.
- G. The parties' delivery of the Kaipara Moana Remediation programme will initially be via a co-governance body known as the Joint Committee which will be made up of representative members from each of the parties. Once the Future Kaipara Moana Body is created and empowered by the relevant legislation, the Joint Committee will be disestablished and its function will be taken over by the Future Kaipara Moana Body.

**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 and other 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 Kaipara Moana Remediation Programme is planned to run for ten (10) years, and that recovery of 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 as at the date of this Memorandum the key area of concern is the high level of sediment and accompanying contaminants flowing into Kaipara Moana and how it can be significantly reduced;
- (g) that as at the date of this Memorandum 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 Kaipara Moana, and deliver a range of environmental benefits;
- (h) 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 this Memorandum 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 intend to expedite remediation work by timely approval of projects consistent with the Investment Objectives (as defined in clause 6) of this Memorandum.

## 2. Vision

The Parties have entered into this Memorandum to formally engage with each other to protect, restore, and enhance the mauri of the Kaipara Moana through contributing to its environmental restoration and to recognise the fundamental significance of Kaipara Moana to the social and cultural well-being of the Kaipara Uri and all New Zealanders for 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 equality;
  - (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 sought under this Memorandum;
  - (iii) kia mārama: to operate with openness to ensure clarity, transparency, 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, responsibility and mandate of Kaipara Uri to exercise their tikanga to enhance, 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 develop a long-term working relationship based on the Key Principles to achieve the Vision by:
  - (a) ensuring the future of a restored Kaipara Moana is central to all decision making;
  - (b) achieving the Investment Objectives;
  - (c) initially establishing the Joint Committee (as described in clause 6) 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) handing over the stewardship and governance role of the Joint Committee to the Future Kaipara Moana Body (as described in clause 6.12), once 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**

- 5.1 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, **including a reduction of associated contaminants;**
    - (ii) improvement in water quality **and biodiversity** of streams/waterways; and
    - (iii) reduction in sediment in Kaipara Moana 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 Kaipara Uri and 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**).

5.2 The parties through their relationship formed by this Memorandum (including the Investment Objectives), the Joint Committee and the Future Kaipara Moana Body (once established) will work together in an open and collaborative manner to fully realise the Vision to protect, restore, and enhance the mauri of the Kaipara Moana, actively seeking out and unlocking all opportunities for the parties, Kaipara Moana, the surrounding land and communities.

5.3 [OR The parties acknowledge that, whilst the Crown and Council funding which is the subject matter of the funding agreement must be invested in accordance with the Investment Objectives, the parties may procure third party funding to invest in other projects that contribute to achieving the Vision. For the avoidance of doubt, such projects do not need to be limited to the kaupapa of reducing or managing sediment in the Kaipara Moana.]

#### 6. **Joint Committee and Future Kaipara Moana Body**

- 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, relevant Post Settlement Governance Entity legislation, 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, by majority decision, 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 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) **guide** and work with the Member Parties on any **monitoring** and reporting obligations;
  - (e) assist and support Member Parties with any audit and reporting obligations required in respect of the Crown Grant and council contributions; and
  - (f) 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 new 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, 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; and
  - (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.
  - (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) the Crown will contribute to the funding of the Kaipara Moana Remediation Programme, subject to agreeing the terms and conditions of the funding, 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 subsequent five (5) years (**Balance Funding**) in accordance with and subject to the funding agreement to be entered into between the parties;
  - (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 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 in 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 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 over the subsequent five years of the Crown's Balance Funding is contingent on their respective Long Term Plans; and
- (g) the parties will continue to engage with each other in a spirit of good will and cooperation, including through the Future Kaipara Moana Body, to make up the shortfall in funding (which, as at the date of this Memorandum, is \$100 million for the remaining four (4) years) to fully achieve the ultimate goals of the Kaipara Moana Remediation Programme.

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

#### 8. Other councils

8.1 The 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 it is terminated by agreement of all of the parties.

##### (Term).

9.2 A breach of this Memorandum by one or more of the parties does not entitle any of the other parties to terminate this Memorandum.

9.3 Any party may, on three months' written notice to the other parties, terminate their participation in this Memorandum. If one or more party terminates their participation, the Memorandum will

continue on foot between the remaining parties with the intent that they continue to perform their obligations under the Memorandum.

- 9.4 If a party materially breaches, or fails to perform, any of its material obligations under this Memorandum (the Breaching Party) and fails to remedy the breach or perform the obligation within 10 days after receiving written notice to do so from another party, the other parties may, by unanimous agreement between them and by written notice, terminate the Breaching Party's participation in the Memorandum. If a party's participation in the Memorandum is terminated, the Memorandum will continue on foot between the remaining parties with the intent that they continue to perform their obligations under the Memorandum.
- 9.5 In the event of the termination of one or more of the parties' participation in this Memorandum, the remaining parties will promptly meet to review the terms of the Memorandum and determine whether any amendments are appropriate or whether to terminate the Memorandum by agreement pursuant to clause 9.1.
- 9.6 The Parties agree to review the terms of this Memorandum (and amend if appropriate) on the second anniversary of the Memorandum, and every third anniversary after that.

#### **10. Dispute Resolution**

- 10.1 If a dispute or difference arises out of or in connection with this Memorandum between any of the parties (Disputing Parties), the parties will be guided by, and behave and act in accordance with, the Vision and Key Principles, Kaipara Uri tikanga, and in a spirit of goodwill and cooperation to try to resolve the dispute.
- 10.2 The Party that has the dispute will promptly give full written particulars of the dispute, including the name of the other Disputing Party or Parties, to all of the other parties to the Memorandum (Dispute Notice). The Disputing Parties will hui at a marae chosen by the Party that issued the Dispute Notice, on a day and time to be agreed by the Disputing Parties, all acting reasonably and promptly. If the dispute is not resolved at the first hui, a second hui will take place at a marae chosen by the other Disputing Parties, on a day and time to be agreed by the Disputing Parties, all acting reasonably and promptly.
- 10.3 Any other party to the Memorandum who is not a Disputing Party may attend the hui as an observer or, if agreed by the Disputing Parties, as a participant.
- 10.4 If the dispute is not resolved within 30 days of the Dispute Notice being given (or any longer period agreed to by the Disputing Parties) the dispute will be referred to mediation by any of the Disputing Parties giving written notice of referral to mediation to the other Disputing Parties and to all the other parties to this Memorandum (Mediation Notice).
- 10.5 The mediation will be conducted:
- (a) in accordance with the Vision and Principles of this Memorandum and with Kaipara Uri tikanga; and
  - (b) by a mediator appointed by agreement of the Disputing Parties.
- 10.6 If within 20 days of the Mediation Notice being issued the Disputing Parties fail to agree on the mediator, the mediator will be appointed by the President of the Arbitrators and Mediators Institute of New Zealand and must be an experienced practitioner of tikanga Māori, who is independent from each of the Disputing Parties.

**10.7 The mediation will:**

- (a) commence within 5 days of the mediator being appointed (or on such later date as agreed between the Disputing Parties and the mediator); and
- (b) take place at a location that the mediator considers is appropriately neutral.

**10.8** The mediator will conduct the mediation in the manner determined by the mediator, provided that the mediation will be conducted on a without prejudice basis and will seek to resolve the dispute by agreement between the Disputing Parties.

**10.9** If the dispute is not resolved within 30 days of the Mediation Notice being given (or any longer period as agreed to by the Disputing Parties and the mediator), either, both or all (as the case may be) of the Disputing Parties may terminate their participation in the Memorandum with immediate effect. Subject to clause 9.5, if one or more party terminates their participation, the Memorandum will continue on foot between the remaining parties with the intent that they continue to perform their obligations under the Memorandum.

**10.10** Any other party to the Memorandum who is not a Disputing Party may attend the mediation as an observer or, if agreed by the Disputing Parties, as a participant.

**10.11** Unless the Disputing Parties agree otherwise or disclosure is required by law or for the purposes of enforcing the decision of the Disputing Parties, information:

- (a) disclosed during the hui or mediation processes; or
- (b) contained in the decision of the mediation,

will not be disclosed to any person not present at the mediation;

**10.12** Subject to the parties' own costs lying where they fall, the reasonable costs of the mediation will be borne equally by the Disputing Parties, unless the mediator determines otherwise.

**10.13** The parties must continue to comply with their obligations under this Memorandum during the dispute resolution process.

**10.14** Nothing in this clause precludes any party from taking action to obtain urgent interlocutory relief.

**11. Notices**

**11.1** All notices under this Memorandum shall be in writing and will be considered to have been properly given or sent only if personally delivered or sent by pre-paid post or email to the addresses of the other parties.

**11.2** Notices shall be deemed to have been delivered (i) on the third day after posting in the case of notices sent by post, (ii) on the date of transmission in the case of email, or (iii) on the date of delivery in the case of personal service.

**12. Counterparts**

This Memorandum may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**13. Changes to Memorandum**

Any changes to this Memorandum shall only be effective if they are 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.



14. **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.

15. **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) (with the exception of matters which fit the criteria to be withheld pursuant to Part 7 of the Local Government Official Information and Meetings Act 1987) to enable each of the Kaipara Uri Member Parties to report back to their members and whānau on the activities undertaken pursuant to this Memorandum and on any other matter or aspect touching or concerning this Memorandum;
- (d) 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;
- (e) 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
- (f) 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**

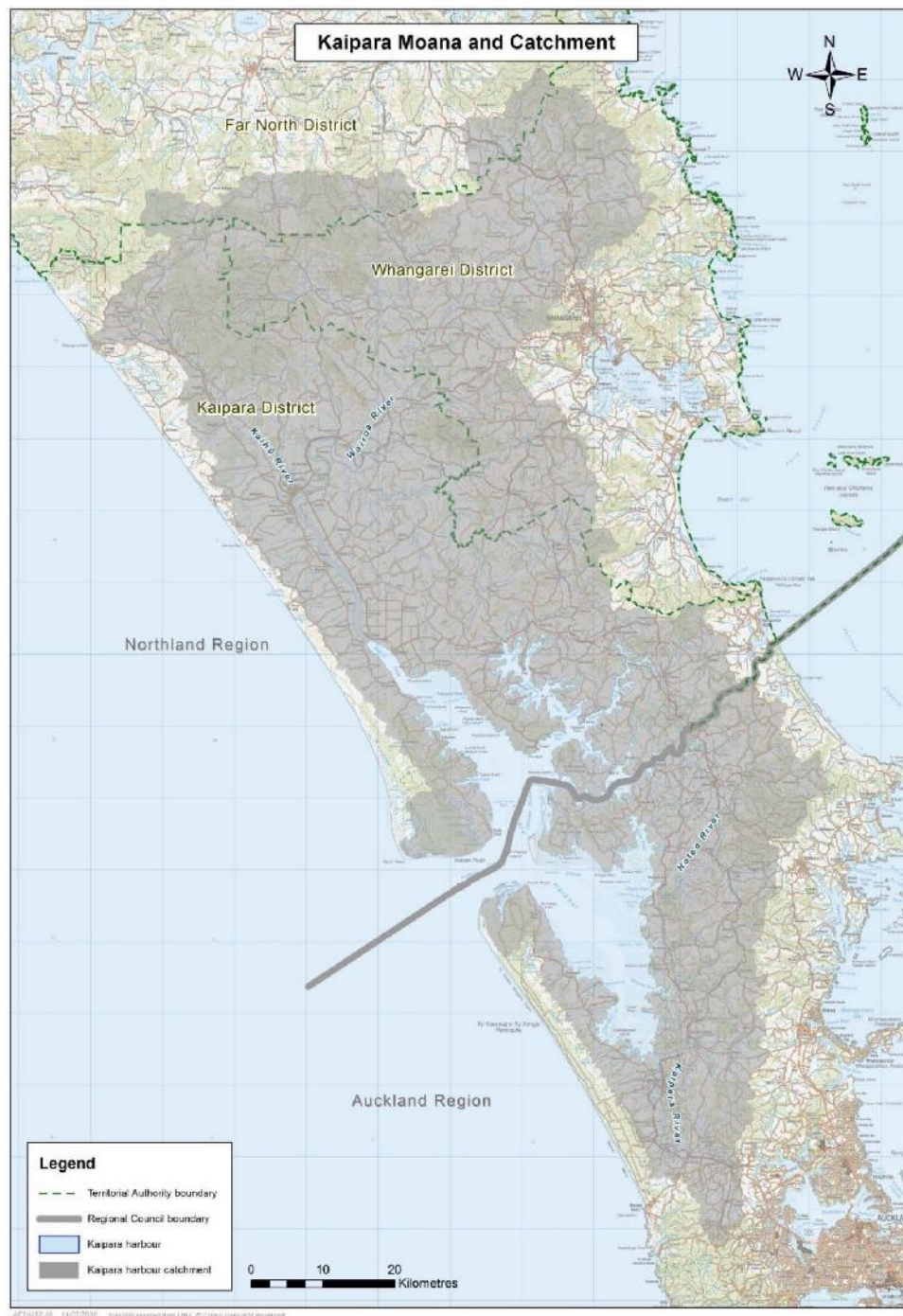
Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
[     ]

**Te Runanga o Ngāti Whātua**

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

## Annexure 1.

Kaipara Harbour with its associated catchments



DRAFT

**Annexure 2.**

Kaipara Moana Remediation Programme

DRAFT

**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 Whakahi 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:

DRAFT