



Kaikōmihana Terms of Reference



KAIPARA

TABLE OF CONTENTS

03 A Mātou | Vision
Tou Tātou Kaupapa |
Mission
Ngā Uara Ahurea |
Values
Background

05 Purpose
Governance
Objectives
Roles & Responsibilities

08 Appointment Process
Meetings

09 Location
Working with Kaimahi
Administrative & Specialist
Advisory Support
Final Report

10 Intellectual Property
Confidential Information
Working with Kaimahi

Appendix

Ngāti Whātua o Āpōpō |
Tomorrow's Ngāti Whātua
Transformation Road Map

Kaikōmihana Terms of Reference

The strategic vision and mission of Ngāti Whātua o Kaipara for the transformation process called 'Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua' is:

01 A Mātou – Vision

Whaia te Kotahitanga o Ngāti Whātua o Kaipara.

Whaia te Mana Motuhake o Ngā Marae e Rima o te Kaipara

02 Tou Tātou Kaupapa - Mission

Our place. Our people. Our environment. Our way.

- Nō mātou ngā Whenua
- Kō mātou ngā Tāngata
- Nō mātou Te Taiao
- Kō mātou te Kaipara ko te Kaipara mātou

03 Ngā Uara Ahurea - Values

Manaakitanga | Kaitiakitanga | Whanaungatanga

- Kaipara Moana Kaipara Tāngata
- Ngāti Whātua Mana Motuhake

04 Background

Ngā Maunga Whakahii o Kaipara Development Trust (NMWK) is the post-settlement governance entity for Ngāti Whātua o Kaipara. Its beneficiaries are those who descend from the ancestor Haumoewaarangi and affiliate to one of Ngā Marae e Rima: ko Puatahi, ko Haranui, ko Araparera, ko Kākānui, ko Reweti rānei.

The purpose of the Trust is to receive, administer, manage, protect and govern the Trust's assets to ensure the cultural, environmental, commercial and social development of Ngāti Whātua o Kaipara for the benefit of its members.

The Trust is responsible for managing 22.1 million dollars and the land which made up the settlement, including the five marae and just under 3,000 hāpu members.

There are currently eight (8) elected and active Trustees of NMWK, including Marae representatives and independent trustees.

The elected Trustees of NMWK are:

- Dame Naida Glavish – Trustee, Puatahi Marae Representative
- Debra Brewer – Trustee, Kākānui Marae Representative
- Tracy Davis – Trustee, Reweti Marae Representative
- Trisya Hemana – Trustee, Haranui Marae Representative
- Haahi Walker – Trustee, Kaumātua Representative
- Jane Sherard – General Trustee,
- Tamaki Mercer – General Trustee
- Cherie Povey – General Trustee
- Margaret Tokerangi - Trustee, Araparera Marae Representative (inactive)

On 12 July 2022, an announcement was made by NMWK that:

“Change is on the horizon for Ngāti Whātua o Kaipara with a project underway to strengthen representation and governance of its hapū structures”.

The impetus for this change has been the dysfunction within the governance of NMWK. As a result the Trustees have collectively committed to the transformational journey of ‘Ngāti Whātua o Āpōpō | Tomorrow’s Ngāti Whātua”.

On 3 May 2022 the Trustees of NMWK approved the following recommendations:

4.1 Recommendation One

That the board supports seeking the guidance and assistance of a Commissioner/Convenor (Kaikōmihana) to assist the Ngā Maunga Whakahii o Kaipara Development Trust Board toward transformational change. This intention includes a Strategic Organisational Reset of the following:

- Constitutional Trust Deed Reform
- Governance Re-organisation
- Operational Re-shape

4.2 Recommendation Two

That a staged approach toward transformational change be adapted including the restructure of the Ngā Maunga Whakahii o Kaipara Development Trust Board subsidiaries.

05 Purpose

This document sets out the terms of reference to action the approved recommendations from NMWK, as outlined in 4.1 and 4.2 above. In addition, it outlines the scope, delegated authority and role/responsibilities for the appointment of the Kaikōmihana.

06 Governance

The NMWK Constitutional Trust Deed and corporate policies govern NMWK.

07 Objectives

7.1 The appointment of an independent iwi appointed Kaikōmihana to assist the NMWK Board toward transformational change. The Kaikōmihana will assist with a strategic organisational reset of the following:

- Constitutional Trust Deed Reform
- Governance Re-organisation
- Operational Re-shape

7.2 To maintain and grow the mana motuhake of Ngāti Whātua o Kaipara.

08 Roles & Responsibilities

NMWK is responsible for:

- 8.1** Ensuring a tikanga basis underpins and guides the implementation of Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua as determined by the Nohoanga Kaumātua.
- 8.2** Supporting the appointment and resourcing of the Kaikōmihana as necessary to assist with the transformational change.
- 8.3** Supporting the delegated authority, role and responsibilities of the Kaikōmihana and Nohoanga Kaumātua Commissioning Panel as outlined in this Terms of Reference.

The Kaikōmihana will be responsible for:

- 8.4** Acting as an independent, occupying the role of Chairperson, dis-establishing all elected trustees and subsequently replacing the role of the Board (to the extent that the Trust Deed allows) including governance fiduciary responsibility for a period of eighteen (18) months + six (6) months, effective from October 2022 (refer to functions of the Board in the NMWK Trust Deed).

8.5 Leading a strategic organisational reset of the Constitutional Trust Deed Reform, Governance Re-organisation and Operational Re-shape that aligns with the Transformation Road Map Ngāti Whātua o Āpōpō and which includes:

Function

Occupying the role of Chairperson and subsequently the role of the Board

Action

- Refer to functions of the Board and the Nohoanga Kaumātua in the Ngā Maunga Whakahii o Kaipara Development Trust Deed (Trust Deed) and the Tari Pupuritaonga Trust Deed.

Conduct a thorough and objective review of the Trust Governance function including the Nohoanga Kaumātua

- To be conducted in accordance with tikanga and the principles of the Trust toward a constitutional realignment of the Trust Deed and the Tari Pupuritaonga Trust Deed
- Making such inquiries (including consideration of relevant documentation and interviews with relevant person(s) that is considered necessary and aligned to this Terms of Reference.

Conduct a review of the effectiveness and decision making of all subsidiaries of NMWK:

- Ngā Maunga Whakahii o Kaipara Development Trust
- Ngā Maunga Whakahii Tari Pupuritaonga Trust
- Whiti Ora o Kaipara Charitable Trust
- Ngā Maunga Whakahii o Kaipara Commercial Development Ltd
- Ngā Maunga Whakahii o Kaipara Whenua Hoko Holdings Ltd
- Ngā Maunga Whakahii o Kaipara Ngahere Ltd
- Te Rau Manga Ltd
- Te Uru Ltd
- Ōkahukura GP Limited

- This will include:
 - a. a review of the objectives and statements of intent; and
 - b. the return on investment and financial performance of all subsidiaries.
- Making such inquiries (including consideration of relevant documentation and interviews with relevant person(s) that are considered necessary and aligned to this Terms of Reference.

Election process of a new Trust Board

- Oversee and ensure the lawful and tikanga-aligned election process of a new Trust Board that is compliant with the Trust Deed.
- Ensure the newly appointed Trustees induction and work plan is appropriate to achieve the organisational transformation plan.
- The General Trustees will remain as Trustees for the Tari Pupuritaonga Trust

Working closely with the Manahautū Chief Executive of the Trust and in conjunction with the Director of Transformation to create and execute a Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua Future Directions Five Year plan

This will include the Kaikōmihana being responsible for:

- a. Overseeing the creation and execution of the Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua Future Directions Five Year Plan and any key actions resulting from the recommendations of the Independent 10 Year Review Report which will encompass:
 - i). constitutional changes to the Trust Deed & the Tari Pupuritaonga Trust Deed ensuring the management of any risks to the constitution
 - ii). the parallel process of a Forensic Financial Audit
- b. carrying out any constitutional amendments and recommendations resulting from the 10-year Review Report and the Forensic Financial Audit.
- c. Working within the timeline and processes provided by the Manahautū Chief Executive of the Trust to enable implementation of the strategy.
- d. Ensuring trustees with existing external representative portfolios have the option to continue with their roles as independent consultants.
- e. Executing authority to appoint ngā uri o Ngāti Whātua into representative Board portfolio roles as independent consultants.

The Nohoanga Kaumātua Commissioning Panel will be responsible for:

- 8.6 Ensuring the Kaikōmihana remains accountable to the Terms of Reference and a tikanga based process
- 8.7 Removing the Kaikōmihana through a tikanga based process should the Nohoanga Kaumātua Commissioning Panel deem such an action necessary and executing a course of action immediately following the removal decision
- 8.8 Providing quarterly updates to Ngā Uri o Ngāti Whātua o Kaipara

09 Appointment Process for the Kaikōmihana

- 9.1 The Kaikōmihana shall be appointed through a transparent, tikanga aligned appointment process and will be supported by an independent HR Specialist and an independent recruitment agency to conduct an Expressions of Interest process.
- 9.2 A Nohoanga Kaumātua Commissioning Panel will be appointed to determine the appointment and supervision of the Kaikōmihana role and to ensure that the mana motuhake of Ngāti Whātua o Kaipara is upheld for the duration of the term of the Kaikōmihana.

The Te Arawhiti Chief Executive will be invited to assume the role of independent advisor to:

- a. Stress test intentions and intended constitutional amendments
 - b. Assist protection of the Post Settlement Governance Entity (PSGE) status of NMWK.
- 9.3 An Expression of Interest process will be undertaken for the Kaikōmihana role. Applicants will be assessed against a set of criteria, which will ensure that the successful appointee has the necessary skills, knowledge and experience to fulfil the role and responsibilities outlined in this Terms of Reference.
 - 9.4 The Kaikōmihana will be appointed to the role by a Letter of Appointment. The Letter of Appointment will outline the Kaikōmihana role as per the Terms of Reference and will set out the remuneration they will receive for the term of the engagement.

10 Meetings

- 10.1 The Kaikōmihana will meet with and report to the Nohoanga Kaumātua Commissioning Panel along with the Manahautū CE and Director of Transformation on a weekly basis for the first four (4) weeks, and on a monthly basis thereafter.
- 10.2 The Kaikōmihana will work collaboratively with the Manahautū Chief Executive of NMWK and the Director of Transformation and meet together at least weekly.
- 10.3 Supervision of the Kaikōmihana will be conducted by the Nohoanga Kaumātua Commissioning Panel, supported by the Manahautū Chief Executive.

- 10.4** The Nohoanga Kaumātua Commissioning Panel will provide quarterly update reports to NMWK members.

11 Location

- 11.1** The Kaikōmihana shall work remotely and an office space will be provided at the NMWK Offices at 5 Rere Place, Parakai.

12 Working with Kaimahi

- 12.1** The Kaikōmihana is empowered to work with the Manahautū Chief Executive of the Trust to achieve the outcomes of their designated authorities.
- 12.2** The Kaikōmihana can not instruct or delegate strategic decision-making authorities to employees or contractors.

13 Administrative and Specialist Advisory Support

- 13.1** NMWK will provide the following transformational specialist advisory and administrative support to assist the Kaikōmihana during the term of the engagement. Including the Manahautū Chief Executive, Director of Transformation, Office of the CE staff (and replacement Transformation Unit) and a Specialist Advisory team managed by the Manahautū CE:

13.1.1 A Specialist/Advisor team:

- Legal
- Human Resource
- Communications
- Finance

13.1.2 Administrative Support:

- preparation of all documentation relevant to the Trust and all subsidiaries
- preparation of papers prior to the meeting, to be sent out in advance of all meetings to allow time for attendees to review;
- communicating with key stakeholders about dates and venues; and
- Minute and note taking

14 Final Report

- 14.1** The Kaikōmihana is required to complete and provide a full report of the key findings, changes, actions and all relevant documents thereof following the completion of the review and execution of its key findings. The report will be provided to the Nohoanga Kaumātua Commissioning Panel.

15 Intellectual Property

- 15.1** NMWK is the sole owner of all Intellectual Property (IP) Rights in all of the Trusts IP.
- 15.1** The Kaikōmihana does not have or claim any IP Rights in or relating to NMWK IP, and will not exploit any IP Rights in or relating to the Trusts IP for his or her personal gain or for anyone else;
- 15.3** To the extent the Kaikōmihana has or acquires any IP Rights in or relating to NMWK, the Kaikōmihana assigns all those IP Rights to NMWK by signing this Terms of Reference. To the extent that assignment is not possible at the time of signing of the Terms of Reference, the Kaikōmihana holds its interest in those IP Rights in trust for NMWK and assigns all IP Rights in or relating to the Trust's IP to NMWK immediately on those rights coming into existence or (if that is not possible) as soon it is able to do so; and
- 15.4** The Kaikōmihana will do all things necessary to secure NMWK full right, title and interest in the Trust's IP (including by executing any assignments) and confer on NMWK all rights of action in relation to any infringement of the Trust's IP by third parties.

16 Confidential Information

- 16.1** Any information produced by or for the Kaikōmihana in undertaking this role is confidential to the Kaikōmihana. For the avoidance of doubt, that includes conversations between Trustees, members, meeting records, documents for the Kaikōmihana, documents sent to Trustees, Office holders and third parties.

17 Signatories

17.1 Effective date: _____

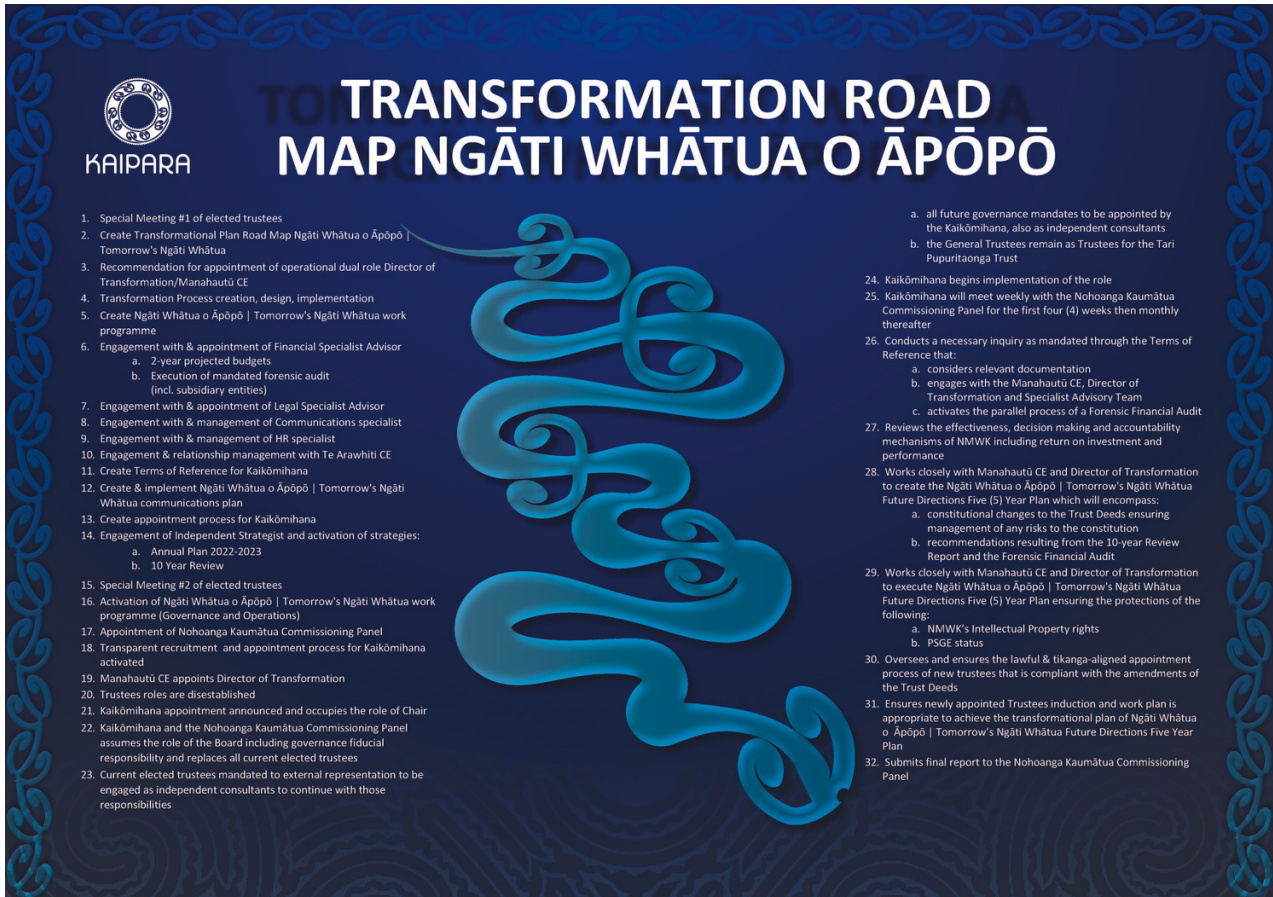
Signed and agreed on: _____

Signed by: _____

Dame Naida Rangimārie Glavish
Acting Chairperson
(on behalf of Ngā Maunga Whakahii o Kaipara Development Trust)

Appendix

1. Transformation Road Map Ngāti Whātua o Āpōpō



KAIPARA

TRANSFORMATION ROAD MAP NGĀTI WHĀTUA O ĀPŌPŌ

1. Special Meeting #1 of elected trustees
2. Create Transformational Plan Road Map Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua
3. Recommendation for appointment of operational dual role Director of Transformation/Manahautū CE
4. Transformation Process creation, design, implementation
5. Create Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua work programme
6. Engagement with & appointment of Financial Specialist Advisor
 - a. 2-year projected budgets
 - b. Execution of mandated forensic audit (incl. subsidiary entities)
7. Engagement with & appointment of Legal Specialist Advisor
8. Engagement with & management of Communications specialist
9. Engagement with & management of HR specialist
10. Engagement & relationship management with Te Arawhiti CE
11. Create Terms of Reference for Kaikōmihana
12. Create & implement Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua communications plan
13. Create appointment process for Kaikōmihana
14. Engagement of Independent Strategist and activation of strategies:
 - a. Annual Plan 2022-2023
 - b. 10 Year Review
15. Special Meeting #2 of elected trustees
16. Activation of Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua work programme (Governance and Operations)
17. Appointment of Nohoanga Kaumātua Commissioning Panel
18. Transparent recruitment and appointment process for Kaikōmihana activated
19. Manahautū CE appoints Director of Transformation
20. Trustees roles are disestablished
21. Kaikōmihana appointment announced and occupies the role of Chair
22. Kaikōmihana and the Nohoanga Kaumātua Commissioning Panel assumes the role of the Board including governance fiducial responsibility and replaces all current elected trustees
23. Current elected trustees mandated to external representation to be engaged as independent consultants to continue with those responsibilities
 - a. all future governance mandates to be appointed by the Kaikōmihana, also as independent consultants
 - b. The General Trustees remain as Trustees for the Tari Pūpūritanga Trust
24. Kaikōmihana begins implementation of the role
25. Kaikōmihana will meet weekly with the Nohoanga Kaumātua Commissioning Panel for the first four (4) weeks then monthly thereafter
26. Conducts a necessary inquiry as mandated through the Terms of Reference that:
 - a. considers relevant documentation
 - b. engages with the Manahautū CE, Director of Transformation and Specialist Advisory Team
 - c. activates the parallel process of a Forensic Financial Audit
27. Reviews the effectiveness, decision making and accountability mechanisms of NMWK including return on investment and performance
28. Works closely with Manahautū CE and Director of Transformation to create the Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua Future Directions Five (5) Year Plan which will encompass:
 - a. constitutional changes to the Trust Deeds ensuring management of any risks to the constitution
 - b. recommendations resulting from the 10-year Review Report and the Forensic Financial Audit
29. Works closely with Manahautū CE and Director of Transformation to execute Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua Future Directions Five (5) Year Plan ensuring the protections of the following:
 - a. NMWK's Intellectual Property rights
 - b. PSGE status
30. Oversees and ensures the lawful & tikanga-aligned appointment process of new trustees that is compliant with the amendments of the Trust Deeds
31. Ensures newly appointed Trustees induction and work plan is appropriate to achieve the transformational plan of Ngāti Whātua o Āpōpō | Tomorrow's Ngāti Whātua Future Directions Five Year Plan
32. Submits final report to the Nohoanga Kaumātua Commissioning Panel

