

**Māori Fisheries Review**

**Appendix 7**

**Te Ohu Kaimoana's Business Model**

**Feedback from regional hui held in February 2016**





# TE OHU'S BUSINESS MODEL

Feedback from Regional Hui held in February 2016

Ka ora ki tai – ka hua ki uta  
A bountiful ocean will sustain us

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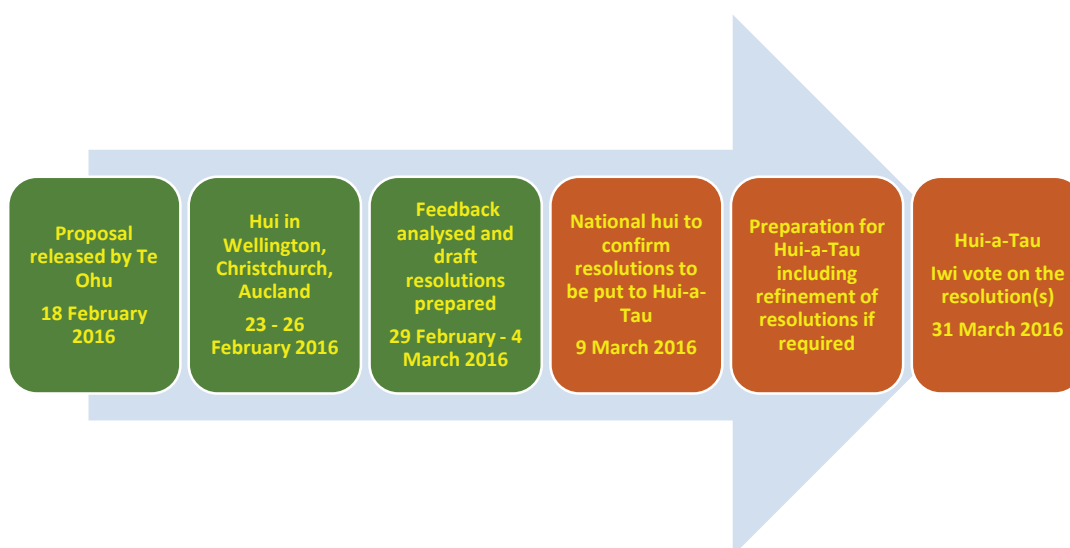
## Purpose

1. Iwi will vote on a funding model for Te Ohu Kaimoana at the Hui-a-Tau on 31 March 2016. This paper progresses Te Ohu's funding model by:
  - Providing further analysis of funding options to help confirm the resolution(s) to be voted on by iwi at the Hui-a-Tau.
  - Proposing draft resolutions for discussion at a national hui on 9 March
2. Feedback from iwi on other aspects of the review implementation programme for Maori Fisheries Entities is also covered briefly including AFL, Te Wai Maori, Te Putea Whakatupu and the process for sales and exchanges of fisheries settlement assets. Te Ohu will continue to develop these aspects further in consultation with iwi as we develop a report (including draft legislative amendments) that we will deliver to the Government by the end of September 2016.

## Introduction

3. On 18 February, Te Ohu distributed a consultation paper to iwi containing its proposed business model, including a funding proposal. A progress report on development of future governance arrangements for other Maori fisheries settlement entities and a simpler process for trading fisheries settlement assets was also included in the paper.
4. Between 23 – 26 February Te Ohu held three regional hui with iwi to discuss its proposed business and funding model, and provide a progress report on the other aspects. This paper summarises feedback from iwi on the proposals. It explores funding options in more depth as a basis for further discussion with iwi.
5. Te Ohu will hold a national hui on 9 March in Wellington to gain as much agreement as possible on the specific resolutions to be put to the Hui-a-Tau on 31 March.
6. Iwi will vote on the resolutions on 31 March 2016. Key steps to be taken up to the 31 March are summarised below.

**Figure 1: Key steps to the Hui-a-Tau when iwi vote on Te Ohu's funding model**



## Draft resolutions

7. A funding proposal for Te Ohu has been developed as a result of the following decisions made by iwi at the Special General Meeting on 4 June 2015:

*That Te Ohu Kai Moana Trust/Te Ohu Kai Moana Trustee Ltd be significantly restructured and works on priorities agreed by iwi to protect and enhance the settlements, including undertaking advocacy and policy advice for iwi*

*That an amended funding model for Te Ohu Kai Moana Trust/Te Ohu Kai Moana Trustee Ltd's operations be approved by iwi at the 2016 Hui-a-Tau following detailed business modelling and consultation with iwi, such model to consider the role (if any) of Te Ohu Kai Moana Trust/Te Ohu Kai Moana Trustee Ltd's redeemable preference shares and all other funds held in its own right*

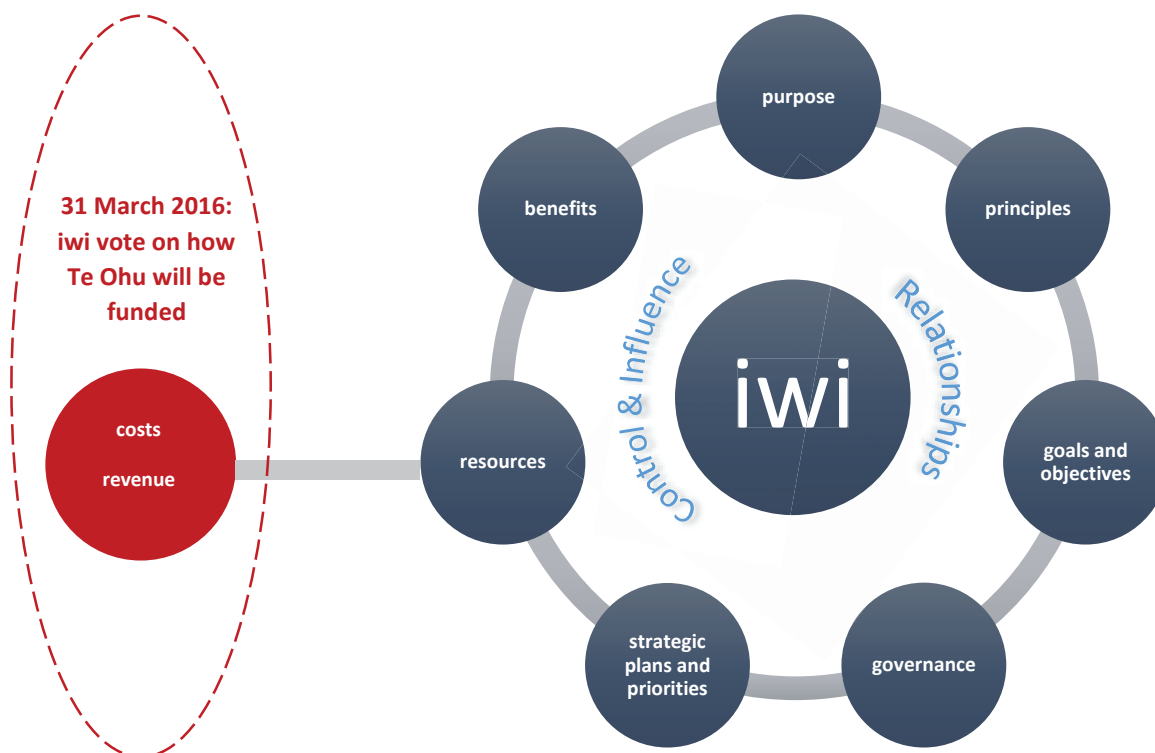
8. It is recommended, that iwi:

**agree**, following the transfer of Te Ohu Kai Moana Trustee Ltd's AFL voting and income shares to iwi, the accumulated funds within Te Ohu Kai Moana Trust be invested as an endowment fund to deliver the primary source of income to fund Te Ohu Kai Moana Trust's/Te Ohu Kai Moana Trustee Ltd's operations.

**agree** that the RPS be cancelled by converting them into ordinary shares to be transferred to iwi (at the same time as Te Ohu Kai Moana Trustee Ltd's AFL voting and income shares).

## A: Feedback on Te Ohu Kaimoana’s proposed business model

9. This funding proposal has been developed in consultation with iwi as part of a broader business model. The business model outlines Te Ohu’s purpose, operating principles, goals and objectives, governance arrangements, planning processes and estimated resources and costs. While Te Ohu will continue to develop all aspects of the business model, the resolutions make clear that iwi will vote on the funding model at the Hui-a-Tau on 31 March (see below).



10. Other than the funding proposal, feedback on the business model is in strong support of what is proposed although there are some areas of detail to resolve. The feedback we received is summarised below. They will not be subject to a vote at the Hui-a-Tau on 31 March, however we will continue to refine them and seek feedback from iwi as we develop draft legislative amendments for the Government to promote through Parliament.

### Purpose and principles

11. There is broad support for the proposed purpose and principles which arise from the resolutions agreed to by iwi and the recommendations of the Iwi Working Group (IWG).
12. The main points raised about this aspect of the model include the following:
- the purpose should make a stronger statement about Te Ohu’s role in protecting Treaty rights.
  - Te Ohu’s role at the “macro” level is vital: it needs to guard against Maori Treaty rights being nibbled away at the edges

- it is important to develop a Maori kaupapa for fisheries management to promote a different “macro-philosophy”: many forget the centrality of the customary right, and the fact that the commercial and non-commercial rights that are given effect through the Fisheries Settlement arise from mahinga kai – which are the core of our identity.
13. While the protection of Treaty rights is implicit in the purpose statement, we agree that it can be stated more directly.

### Goals, objectives, planning and priorities

14. No objections to the proposed goals and objectives were raised. Te Ohu has explained that the goals and objectives can be seen as “buckets” of activity. The relative priorities of each, and the particular focus of Te Ohu’s work year to year will be governed by strategic plans that identify priorities iwi have for Te Ohu. Strategic plans will be approved by iwi every three years.
15. There was some discussion about the different roles Te Ohu might play in delivering on its goals and objectives. In one hui we were asked whether or not Te Ohu is too operational. We proposed that in order to maintain a macro view, it is important to know what is going on locally as that is often where the macro level problems play out. At the same time, Te Ohu’s resources will be limited, and the role it plays in different contexts will need to be informed by our goals and objectives and agreed through strategic plans.
16. Participants in Christchurch, many of whom are tangata tiaki, identified some good examples of problems they face locally that signal a need to review the macro settings. They outlined some of the challenges they face at the local level, including increasing pressure from recreational fishing and the difficulties they face taking responsibility for managing fishing when they do not have control. They may make decisions to be conservative when issuing customary permits, but they are only able to exercise limited control. Some proposed that they should be able to be appointed as Honorary Fisheries Officers.
17. In Auckland the question was raised: where is research and innovation? We explained that some scientific capability would be held in-house however we will need to use our resources to gain leverage for funding and projects from research agencies. Te Putea Whakatupu could also have a role in supporting research.

### Governance

18. Feedback on the appointment process demonstrates the tensions that exist between the desire for transparency, avoidance of “board capture” and the need to attract quality candidates – particularly as merit and skills will be the basis for appointment rather than representation of particular areas or interests.
19. The role of the nominations committee was discussed. Its role is largely to manage the appointment process and the assessment of candidates. It would need to follow a robust process in which iwi would need to have confidence.

20. Some confirmed that the focus must be on the skills required by Te Ohu’s board. It isn’t clear that many candidates “would want to be a part of a beauty pageant”. A transparent process is needed to reduce large numbers.
21. There was much discussion about whether a shortlist should be presented to iwi to vote on at an AGM, or whether a longer list of candidates should be put forward. Te Ohu’s proposal provides for those candidates who don’t make the shortlist to continue through the process. In our view this would give them the choice of retaining confidentiality if they so wish – and would give iwi the opportunity to consider a broader list of candidates.
22. It was pointed out that if there are too many nominations put forward to the vote, the result could be unbalanced. A successful candidate should have a certain proportion of the votes.
23. Others support the idea of an open process that enables iwi to vote for alternatives to the Board’s recommendations. We need to “prevent decisions being made behind closed doors”.
24. A concern was raised that retiring directors should not be part of the nominations committee – particularly if they wished to be re-appointed. There would need to be a policy to prevent such conflicts of interest.
25. One participant asked whether directors of Te Ohu should be Maori. We explained that is the current legal requirement – which we do not propose to change. In the case of AFL however, directors need not be Maori if they have the necessary skills.
26. Some participants raised concerns about the proposal to remove the cap on the number of terms directors may serve. Some consider there is a danger that people will not move on when they should. “Nine years is enough time for a director to serve. Alternatively every director’s term would come up for renewal every three years and iwi would have the opportunity to appoint alternatives.
27. Some considered the Board should ensure it has a succession policy: Te Ohu and iwi have a shared responsibility to grow the skills of iwi members to take on governance roles.

### Te Ohu’s costs and proposed funding model

28. Feedback on Te Ohu’s estimated costs and proposed funding model is summarised below.

#### Costs

29. Some hui participants in Wellington raised questions about the estimated costs, including
  - Te Ohu should have provided more detail on how it estimated costs
  - information in the report suggested that the costs had been estimated to match the income estimated from the endowment fund - some participants wanted to see a “bottom up” approach
  - an efficiency drive should reduce costs further.
30. Te Ohu provided further detail in Christchurch and Auckland. We explained that we approached our cost estimates from a number of different bases. One approach involved



stripping away the duties we will no longer have responsibility for, along with relevant costs – leaving our responsibilities to protect and enhance the fisheries and aquaculture settlements as our core function in future. We complemented the first approach by taking a bottom up approach to estimating the costs of protecting and enhancing the settlements as our core work area. In doing so we assumed that a number of our current costs would be reduced, including travel, consultants, directors’ fees and facilities and human resources. An estimate is summarised in Table 1 below.

**Table 1: Comparison between FY2016 budget and FY2018 estimate**

	FY 2016 Budget	FY 2018 Estimate
<b>EXPENSES</b>		
Travel and Accommodation	451,404	267,475
Consultants / Expert Help	1,177,469	685,850
Directors Fees and Insurance	454,820	315,187
Te Kawai Taumata Fees and Travel	32,000	-
Scholarships	130,300	-
Sponsorships/Koha	47,290	24,000
Quota Related Fees & Levies	265,611	-
National Hui	162,020	147,020
Administration	145,774	70,500
Facilities and Human Resources	2,727,887	2,120,770
<b>TOTAL EXPENSES</b>	<b>5,594,575</b>	<b>3,630,802</b>

31. Our estimates fall within the range of costs for similar national organisations who protect and promote the interests of their members.
32. In our proposal document, we estimated Te Ohu would require \$3.6 million from FY2018. Of that, \$600,000 is estimated to be recovered from third parties for services provided (the Crown and subsidiary trusts). The remaining \$3 million - which we have estimated as “core funding”, would need to be generated through a funding model agreed by iwi. These estimates are for modelling purposes only.

#### Proposed funding model

33. Funding options for Te Ohu were discussed at a funding workshop we held in November 2015. Participants requested that Te Ohu assess two options in more depth: retaining the endowment fund (Te Ohu’s preference) and the levy option. These were explored in detail in our proposal paper.
34. Participants at the Wellington and Auckland hui recognised that the basis for levying iwi: either equal shares, based on population or settlement quota value (based on ACE values) is complex and that the different methodologies have very different implications for what each iwi would pay.
35. One participant suggested that if population was to be used as the basis for levying – it would conflict with the “1 iwi: 1 vote” system of decision-making.

36. It was explained that during the review process, Kahungunu considered a levy would lead iwi to take more of an interest in what Te Ohu does and provide for greater accountability. However they recognise the need for Te Ohu to have certainty of funding. Another option could be a combination of a levy and a portion of the endowment fund.
37. A participant asked what would happen if the endowment was to earn 6 – 8% for ten years (as opposed to the 5% we have assumed). We explained that our assumption that the funds would earn 5% is based on a long-term average and that some years it is quite possible that returns will be higher but in others it could be lower. The highs need to be seen in context of the overall movement in returns over time and our objective would be to obtain sufficient income to meet our costs and maintain the real value of the funds. That being the case it would be possible for the Board to agree to distributions, for example where returns are consistently higher than predicted. We note that any distributions made by Te Ohu will have to be made to iwi through their charitable entities. If Te Ohu was to lose its charitable tax status, its costs would be significantly higher.
38. An alternative funding option was proposed: that the endowment be distributed to AFL, and AFL would meet Te Ohu's costs from the dividend.
39. Variations to this proposal were put forward including:
- a. distribution of the endowment to iwi, with AFL meeting Te Ohu's costs from the dividend
  - b. distributing the endowment and RPS to iwi, with AFL meeting Te Ohu's costs
  - c. distributing a portion of the endowment to iwi and with AFL meeting Te Ohu's costs.
40. It was pointed out these options are a de-facto levy (based on population).
41. Following the discussion of alternatives in Wellington and Auckland we agreed to consider them in preparation for the national hui in Wellington on 9 March. No opposition to the use of the endowment fund was raised at the hui in Christchurch.

## B: The funding options

42. Te Ohu and AFL are part of the group of Maori Fisheries Settlement Entities established to create benefits for all Maori through iwi. Iwi have decided to retain Te Ohu to protect and enhance the settlements but with changes to its governance arrangements, in addition to those of other entities. In each case the changes will give iwi direct control over the entities so that they deliver the benefits iwi want in a transparent way.
43. We summarise what iwi have said they want from Te Ohu and AFL and identify what each requires to meet the aspirations of iwi. This forms the basis for an assessment of different funding options on the ability of Te Ohu and AFL to meet iwi aspirations.

### Te Ohu Kaimoana

What iwi want	What Te Ohu needs
<ul style="list-style-type: none"> <li>• direct control (through MIOs)</li> <li>• protect and enhance the Treaty settlements through advocacy and policy advice</li> <li>• focus on the settlements as a whole (including commercial and non-commercial) and its foundation in customary rights across all fisheries and regions</li> <li>• transparency</li> </ul>	<ul style="list-style-type: none"> <li>• clarity:               <ul style="list-style-type: none"> <li>○ direct relationships with iwi through MIOs</li> </ul> </li> <li>• certainty:               <ul style="list-style-type: none"> <li>○ ability to attract and retain appropriate core capacity (includes succession planning)</li> <li>○ ability to plan for longer term and undertake multi-year programmes</li> <li>○ sufficient critical mass to have involvement across all sectors (government, industry councils and others)</li> </ul> </li> <li>• flexibility:               <ul style="list-style-type: none"> <li>○ ability to respond quickly to major threats by accessing necessary resources</li> <li>○ effective communication channels suited to issues and audiences</li> </ul> </li> </ul>

44. Given Te Ohu’s “macro” focus and watchdog role, the type of benefits it can deliver are long term: primarily ensuring the regulatory environment, including government industry policies, enable iwi to benefit from their commercial and non-commercial fisheries in an appropriate way, or assisting iwi to build their capability. Aside from our fisheries and aquaculture allocation role, regular financial benefits are generally not able to be delivered.

## AFL

What iwi want	What AFL needs
<ul style="list-style-type: none"> <li>• direct control by iwi (through AHCs)</li> <li>• strong commercial performance with the ability to take advantage of new opportunities</li> <li>• higher returns to iwi</li> <li>• partnerships with iwi to drive commercial performance and enhance iwi assets and skills</li> </ul>	<ul style="list-style-type: none"> <li>• clarity:               <ul style="list-style-type: none"> <li>○ strong relationships with iwi through AHCs</li> <li>○ clear focus on commercial activity</li> </ul> </li> <li>• certainty:               <ul style="list-style-type: none"> <li>○ strong balance sheet</li> <li>○ access to capital</li> </ul> </li> <li>• flexibility:               <ul style="list-style-type: none"> <li>○ operational capability that matches fisheries and markets.</li> </ul> </li> </ul>

45. The type of benefits AFL delivers include financial benefits, as well as capability building through partnerships with iwi.

46. We set out four funding options that reflect the discussion at the hui. These are:

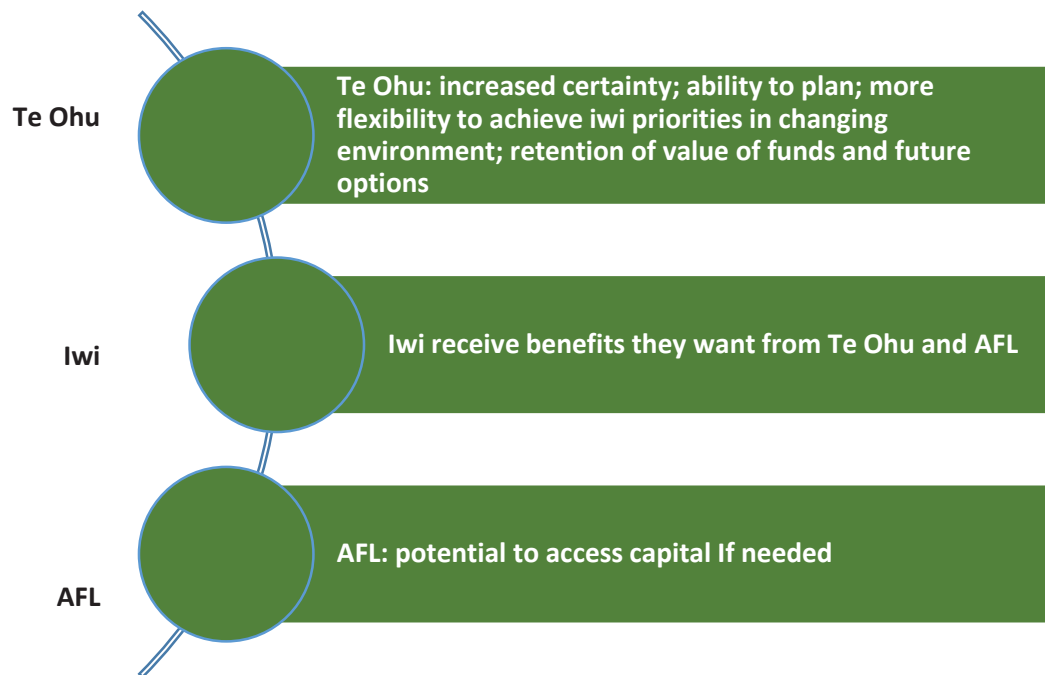
- A. Te Ohu retains the endowment fund and meets its costs through the income earned from investing the fund (Te Ohu's preferred option). Note we cover the proposal to providing funding to AFL under this option.
- B. Te Ohu distributes varying portions of the endowment fund to iwi (say, 100% or 25%) and iwi pay a levy directly to Te Ohu to meet any outstanding costs
- C. Te Ohu distributes varying portions of the endowment fund to iwi (say, 100% or 25%) and iwi pay a levy through AFL as a deduction from the AFL dividend
- D. Te Ohu distributes varying portions of the endowment fund to iwi (say, 100% or 25%) and iwi pay a levy through AFL as a deduction from AFL's income.

47. With a total estimated budget of \$3.6 million, and an estimated \$600,000 recovered from third parties for services delivered to them, Te Ohu will need to obtain at least \$3 million through its funding model.

## Option A: endowment fund retained by Te Ohu

48. Under this option Te Ohu's costs would be met from the endowment fund.
49. Te Ohu's current policy for managing the endowment funds is to ensure the portfolio retains its real value. The target return is 4.5% plus CPI (estimated at 0.5%). Annual spend would be limited to 4% and additional earnings would be added to funds under management to retain real value.
50. This option provides the greatest certainty that Te Ohu can deliver what iwi want and would enable Te Ohu to meet its estimated costs. It enables long-term planning, enables Te Ohu to have access to a fighting fund in the face of major threats and is simple and cost-effective. Transparency is provided through reporting, and approval of strategic plans and appointment of directors by iwi. If the fund is retained as the source of Te Ohu's income, the funds would grow sufficiently to cover the movement in costs and CPI and retain their real value.
51. We accept that if Te Ohu retains the endowment funds, iwi will not gain direct financial benefits from having the funds in their hands. However iwi will benefit from the services Te Ohu provides, and could receive distributions in future if surplus funds become available. Once the new governance provisions are in place, iwi will have a direct influence on priorities and appointment of the Te Ohu Board who will have the option of revisiting how it should treat the endowment fund in future. The ten year review will also provide another opportunity to revisit this question.
52. This option does not affect the level of dividend that AHCs will receive from AFL. As such it will allow AHCs to focus on AFL core business and drive its future as reflected in the resolutions agreed to by iwi in June 2015.
53. Given the right conditions, retaining the endowment fund may also provide AFL with access to capital. At the Wellington hui, the suggestion was made that the endowment fund could be transferred to AFL. Aside from amending legislation, that is not legally possible. In principle however AFL could if required access capital through a loan, subject to terms and conditions agreed by the Te Ohu Board. Te Ohu would expect any such loan to generate the returns set down in its investment policy (currently 5% over the long-term). The Board is likely to make its decision on the merits of the proposal and the need to have a diversified portfolio as part of their fiduciary duty to manage risk.

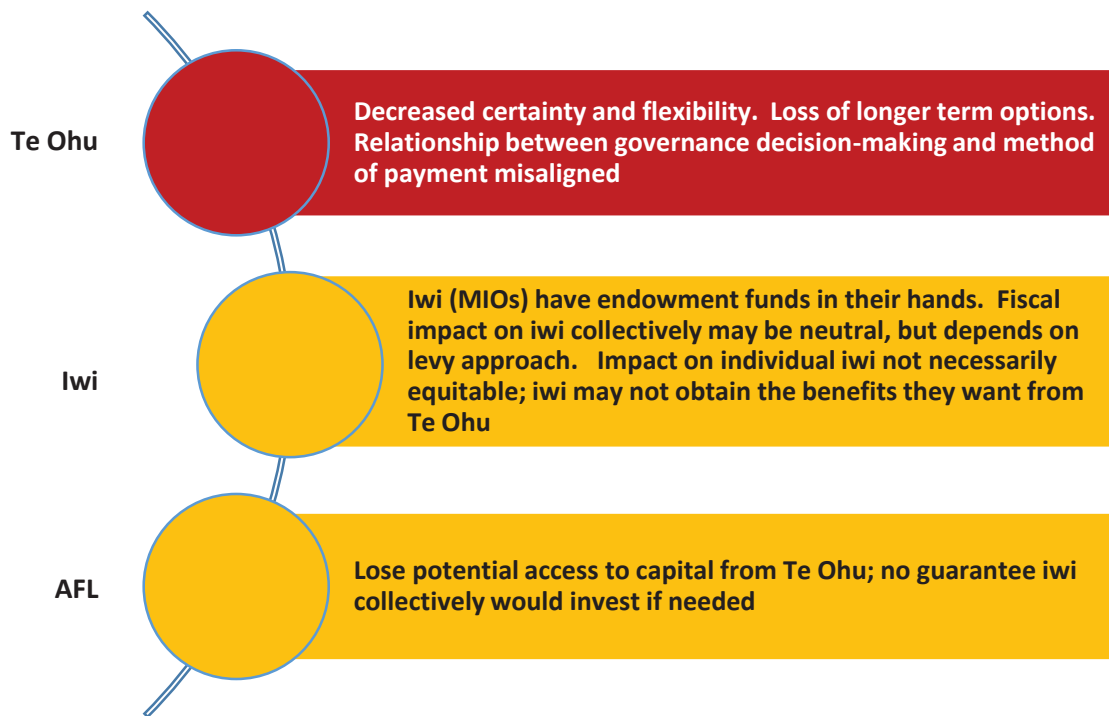
## A: Retain endowment: summary of implications



## Option B: Te Ohu distributes the endowment fund to iwi; iwi pay a levy directly to Te Ohu

54. Under this option, Te Ohu would distribute all or part of the endowment fund to iwi and iwi would directly pay Te Ohu their share of a levy to make up the balance of Te Ohu's costs. We have expanded the examples we provided in our proposal to illustrate the potential impact if Te Ohu distributed 100% or 25% of the funds respectively (see Tables 1 and 2).
55. If the levy was based on population, and the endowment funds are distributed on the same basis, the additional financial benefits iwi would receive are estimated to be neutral. Assuming iwi gained the same long-term returns from the endowment as Te Ohu and managed the funds to retain their real value, the difference in the financial benefits iwi would receive would be neutral. This needs to be balanced against the disadvantages of the levy system.
56. The impact on iwi individually would not necessarily be equitable. For some, the costs of investing smaller amounts could be higher, and they may not gain the level of return needed to meet the cost of the levy and maintain the value of their portion of the funds.
57. If the funds were distributed on the basis of population, but the levy was based on an equal share, some iwi would need to pay most of their share of the funds in levies in year one. Basing the levy on ACE value has a different outcome and some iwi would pay a substantial portion of the funds they receive in the first year (see tables 1 and 2).
58. The basis for the levy, if based on population or ACE value, does not align with 1 iwi: 1 Vote approach to approval of Te Ohu's strategic plans and priorities. Those who pay most will not have the same proportion of influence or benefit. This complicates the relationship between iwi and Te Ohu.
59. Certainty and flexibility are reduced for Te Ohu under this option. There is the potential that not all iwi will pay – and some may not be in a position to pay. Te Ohu will not have access to a fighting fund in the face of major threats. In addition, the amount levied will need to reflect the movement in costs over time.
60. This option does not affect the AFL dividend to iwi – as such it will allow AHCs to focus on core business and drive its future as intended by the resolutions agreed to by iwi in June 2015.
61. On the other hand, AFL would lose the ability to gain access to a portion of the endowment funds as a loan. There is no guarantee sufficient iwi would collectively lend the funds to AFL, if needed, once distributed.
62. We conclude that a levy system is unlikely to provide the clarity, certainty and flexibility required. The impact of this option may vary with reduced distribution of the endowment fund and a reduced levy.

**B: Distribute endowment to iwi, levy iwi directly: summary of implications**





**Table 1: 100% of endowment distributed; 100% of Te Ohu’s costs levied**

Iwi	Share of endowment fund based on population [100% distributed]	LEVY equal share (1/58)	LEVY population	LEVY settlement quota (based on ACE values)*
Ngapuhi (15.79% population)	\$11,685,340	\$51,700	\$473,730	\$155,000-169,000
Ngai Tahu (6.1% population)	\$4,521,400	\$51,700	\$183,300	\$1 – 1.1 million
Ngati Maru (0.134% population)	\$98,420	\$51,700	\$4,020	\$1,000 – 1,100
Te Atiawa ki Whakarongotai (0.073% population)	\$54,020	\$51,700	\$2,180	\$5,300 – 5,800
Ngati Whatua (1.931% population)	\$1,428,940	\$51,700	\$57,900	\$62,000 – 68,000

\* Estimated total value: \$33 – 36 million. Levy rate = 0.83 - 0.9c per \$1 of value

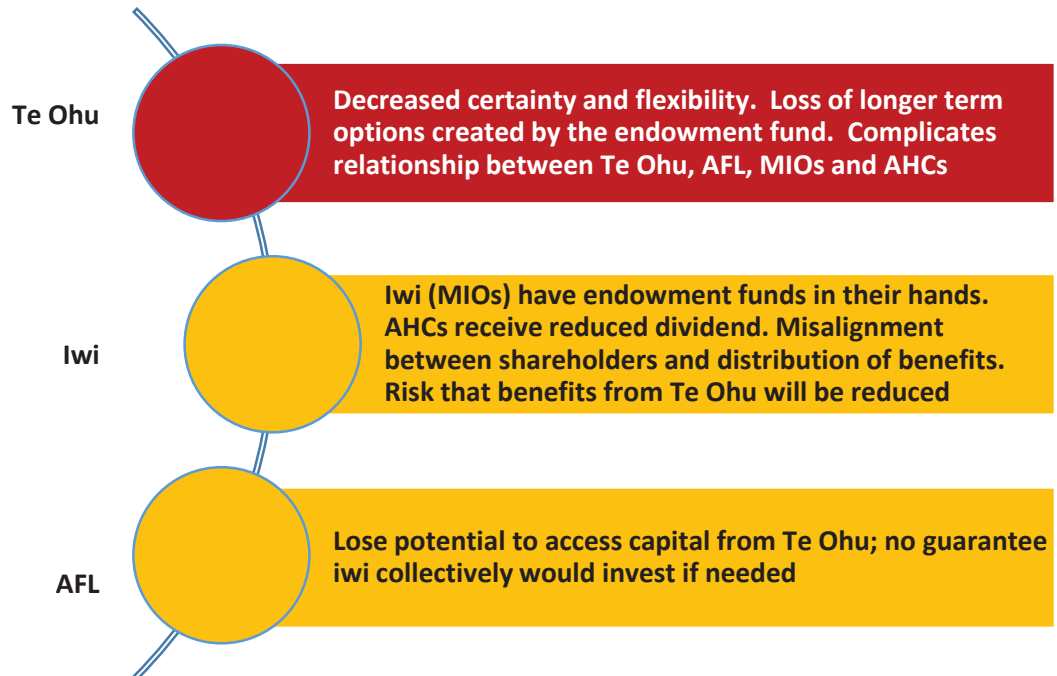
**Table 2: 25% of endowment distributed, 25% of Te Ohu’s costs levied**

Iwi	Share of endowment fund based on population (25% distributed)	LEVY equal share (1/58)	LEVY population	LEVY settlement quota (based on ACE values)*
Ngapuhi (15.79% population)	\$2,921,335	\$12,925	\$118,433	\$38,750-42,250
Ngai Tahu (6.1% population)	\$1,130,350	\$12,925	\$45,825	\$250,000 – 275,000
Ngati Maru (0.134% population)	\$98,420	\$12,925	\$998	\$250 - 275
Te Atiawa ki Whakarongotai (0.073% population)	\$13,505	\$12,925	\$548	\$1,325 – 1,450
Ngati Whatua (1.931% population)	\$357,235	\$12,925	\$14,483	\$15,500 – 17,000

### Option C: Te Ohu distributes the endowment fund to iwi; iwi pay a levy through AFL as a deduction from the AFL dividend

63. Under this option, all or part of the endowment fund is distributed to iwi, but the levy required to meet the balance of Te Ohu's costs is paid by AFL as a deduction from the dividend, based on population.
64. As is the case with the previous levy option based on population, the additional financial benefits iwi would receive are estimated to be neutral. Assuming iwi achieved the same long-term returns from the endowment as Te Ohu and managed the funds to retain their real value, the difference in the financial benefits iwi would receive would be neutral. Smaller iwi with smaller levels of capital may not be able to achieve the same level of return.
65. To ensure Te Ohu has sufficient funding from year one, AFL would need to pay annually in advance before the amount of the dividend is known. The amount received from the dividend will need to reflect the movement in costs over time. To ensure certainty, we would also expect Te Ohu to have first call on the dividend. However a risk for Te Ohu is the possibility that in some years there may be no dividend, or insufficient dividend, and AFL won't be able to meet Te Ohu's costs. Te Ohu is unlikely to have access to fighting funds if faced with major threats.
66. Funding Te Ohu as a priority out of AFL's dividend will significantly reduce the AFL dividend to AHCs. The level of impact will of course depend on AFL's performance. Using the last 5 years as a guide, if AFL were to provide Te Ohu with the core \$3 million this would reduce the income to AHCs by 40%.
67. As a result, this option further complicates the relationship between Te Ohu, AFL and their respective shareholders: MIOs and AHCs. While Te Ohu's objectives are to protect the commercial and non-commercial aspects of the settlements across all fisheries and regions, AFLs objectives are commercial and focussed on some fisheries. AFL is governed by AHCs on the basis of shareholding while Te Ohu is governed by MIOs based on 1 iwi 1 vote. Iwi have made it clear they want direct control of Te Ohu through MIOs. It is inevitable that over time, to improve their businesses, AFL and AHCs will try to reduce Te Ohu's costs and change its focus to align with their priorities. This would conflict with Te Ohu's responsibility to take a broader view.
68. We conclude that if AFL were to pay a levy to Te Ohu through the dividend, clarity, certainty and flexibility required will not be achieved. The impact of this option on these matters may vary with reduced distribution of the endowment fund and a reduced "levy".

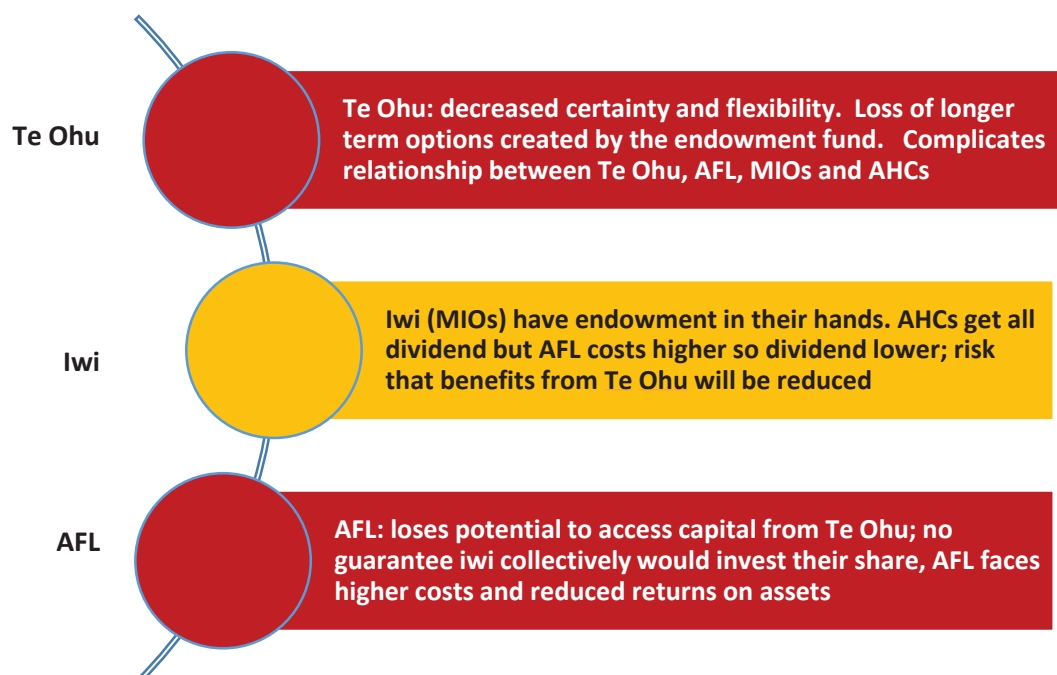
**C: Distribute endowment to iwi, levy paid by AFL from the dividend: summary of implications**



## Option D: Te Ohu distributes the endowment fund to iwi; iwi pay a levy through AFL as a deduction from AFL's income

69. Under this option, all or part of the endowment fund is distributed to iwi, but the levy required to meet the balance of Te Ohu's costs is paid by AFL as a deduction from their income.
70. Our assumptions about the returns iwi make on their portions of the endowment fund remain the same.
71. In the short term, iwi collectively could be better off as they would receive the endowment fund and a dividend from AFL, while AFL would pay a levy on their behalf. However AFL's costs would rise, reducing the profit they would otherwise make with a flow-on reduction in the dividend paid to AHCs. AFL's return on assets would decline. In addition, to continue to meet the movement in costs over time, AFL would need to increase the amount it pays Te Ohu over time. If there is no dividend Te Ohu would still need to be paid.
72. As with the previous option, this further complicates the relationship between Te Ohu, AFL and their respective shareholders: MIOs and AHCs. While iwi have made it clear they want direct control of Te Ohu through MIOs, AFL and AHCs would have an even stronger incentive to influence Te Ohu to have a narrower commercial focus and keep costs down, whereas Te Ohu has a responsibility to take a broader view.
73. We conclude that this option does not provide the clarity, certainty and flexibility required for AFL and Te Ohu to deliver what iwi want.

### D: Distribute endowment to iwi, levy paid by AFL from income: summary of implications



### Clarity, certainty and flexibility are important for Te Ohu, AFL and iwi

74. We conclude that Option A, where Te Ohu would retain the endowment fund as its primary source of income, provides the clarity, certainty and flexibility Te Ohu and iwi require. The relationship between Te Ohu and MIOs as its shareholders would be clear. Te Ohu would have sufficient funds to attract the resources it needs and access fighting funds when required. AHCs would receive all dividends from AFL and would concentrate on AFL's core business as intended by the resolutions agreed to by iwi in June 2015. In addition, AFL could have the option of accessing capital from Te Ohu, subject to the right conditions. Ultimately, of all options, Option A would enable Te Ohu and AFL to provide iwi with the benefits they want and maintain alignment with each-other and iwi.
75. Options B to D reduce clarity, certainty and flexibility for Te Ohu and AFL to varying degrees, whether Te Ohu distributes all or part of the endowment funds to iwi. Te Ohu will have less certainty that its income will meet its costs over time and its flexibility to respond to immediate threats and priorities will be reduced. The process of implementing a levy system as an income source would be more complex.
76. Under Options C and D, the direct control MIOs exercise over Te Ohu would become confused with the understandable interest that AFL and AHCs would have in reducing Te Ohu's costs and focus, as the options would affect the dividends AFL pays to AHCs.

## Redeemable Preference Shares (RPS)

77. The RPS were issued as part of the settlement of loans between AFL and the Treaty of Waitangi Fisheries Commission. The RPS were issued when Te Ohu was first being established. The funds were a loan, structured so that Te Ohu could call on it if required. At that time, the funding Te Ohu needed to fulfil its functions was uncertain. The purpose of the RPS is identified in the Deed as “being in the nature of financial insurance for the Trustee”.
78. Te Ohu considers the RPS is no longer required to meet its original purpose and it should be cancelled by converting it to shares and distributing it to iwi.
79. The conversion of RPS to shares reduces AFL’s liabilities, increasing its equity and therefore value to shareholders (iwi).
80. However a proposal was put forward at the February hui for the RPS to be cashed up and distributed to iwi. The impact of this proposal is summarised below.

## Impact on AFL of RPS redemption for cash

81. AFL currently has \$70m in debt. Paying out the RPS will require borrowing \$20m, which increases the debt load by nearly 30%.
82. AFL’s banker must approve any payment made in relation to the RPS. As part of an agreement it may require a new debt facility, with an adjusted risk factor (margin) borrowing cost across all debt. Any new facility and conditions may impact AFL through:
  - a. a specified debt reduction programme, including the non-payment of dividend until the debt reaches a level agreed by the bank
  - b. an increase in borrowing cost (margin) across the entire debt facility, increasing AFL’s interest cost, and reducing the dividend per year by an estimated \$2 million.
83. Increasing debt could also affect AFL’s growth and general capacity.

## C: Other matters

84. Feedback on other changes proposed as a result of the review are summarised below. These aspects will not be subject to a vote at the Hui-a-Tau on 31 March, however we will continue to refine them and seek feedback from iwi as we develop draft legislative amendments for the Government to promote through Parliament, along with relevant constitutional and policy changes.

### Governance of AFL

85. As was the case with Te Ohu's governance proposals, feedback focussed on the process for appointing directors and the proposed removal of the cap on the number of terms a director may serve.

86. Te Ohu's proposed process was presented alongside the process proposed by AFL. One participant pointed out that the process proposed by Te Ohu enabled iwi to appoint directors at an AGM, while that proposed by AFL only enabled them to remove incumbent directors – in essence by exercising a right of veto. The first option directly connects iwi to the appointment decision while the second option is more comfortable for the incumbent director.

87. Concern was expressed by a number of participants about the removal of a cap on the number of terms a director may serve: 9 years is enough. In response, another participant suggested that shareholders or the nominations committee would need to take into account the fact that any retiring director may have served 9 years.

88. The potential role of independent directors was also raised. The approach of appointing directors on merit should avoid the need for a specific requirement to have independent directors. However there is a question about purpose of independent directors and whether their purpose is to fill skill gaps, or to protect against conflicts of interest. Conflicts of interest could be managed through a policy.

### Subsidiary Trusts

89. A brief outline of the changes proposed for Te Wai Maori and Te Putea Whakatupu were outlined. No comments were made.

### Sales and Exchanges

90. An overview of proposed changes was given. One participant expressed concern about the effect of confidential or back-room deals could have on the value of AFL shares held by all AHCs, and considered that Te Ohu should manage an open tender process if any iwi wished to sell their AFL shares.

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