

**Māori Fisheries Review**

**Appendix 8**

**Te Ohu Kaimoana's Funding Model**

**Resolutions to be voted on at the Hui-a-Tau,  
31 March 2016**





# TE OHU KAIMOANA'S FUNDING MODEL

Resolutions to be voted on at the Hui-a-Tau  
on 31 March 2016

Te Ohu Kaimoana  
PO Box 3277  
Wellington 6011

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## Purpose and introduction

1. The purpose of this paper is to circulate the resolutions Te Ohu Kaimoana will put to iwi at the Hui-a-Tau on 31 March 2016 following consultation that has occurred with iwi since 4 June 2015.
2. A report back from the National Hui on 9 March 2016 is included as Appendix 1.

## Resolutions for the Hui-a-Tau

### Resolution 1

That iwi:

**agree** the accumulated funds within Te Ohu Kaimoana be invested as an endowment fund to resource Te Ohu Kaimoana's operations.

Note the Te Ohu Kaimoana Board will, consistent with its fiduciary duties, develop:

- a. appropriate release rules for any distribution of surplus funds, and
- b. policies for seafood related investments as part of the total investment portfolio.

### Resolution 2

That iwi:

**agree** the Redeemable Preference Shares be cancelled by converting them into ordinary shares and distributing them to iwi at the same time as Te Ohu Kaimoana's voting and income shares.

## Commentary

### Funding model

3. We consider these resolutions provide the best balance between secure funding for Te Ohu Kaimoana (consistent with the commitment iwi have made to “underwrite” Te Ohu Kaimoana) and flexibility for the future.
4. The board has committed to developing policies for any distribution of surpluses. There is a number of circumstances in which a surplus might arise, including:
  - a. The accumulated funds grow faster than the Board has anticipated and the income from the investment of those funds exceeds the organisation’s requirements, as determined through the strategic plan approved by iwi
  - b. The accumulated funds grow at the anticipated rate but the organisation’s income requirements are at a lower level
  - c. Iwi have agreed alternative secure measures by which Te Ohu Kaimoana will be adequately funded to offset the income that would otherwise have been available from the funds being deemed surplus.
5. The Maori Fisheries Act makes a number of references to surplus funds being distributed on the basis of population. Appropriate release rules will be developed for any distribution of surpluses to iwi (for example the number of years over which Te Ohu Kaimoana receives higher than anticipated returns that can be deemed to be surplus funds).
6. The Board will also develop policies for seafood related investments. This may require a revision to the current investment portfolio policies and objectives.

### Redeemable Preference Shares

7. Resolutions from the 4 June 2015 Special General Meeting require Te Ohu Kaimoana to recommend what, if any, role the RPS will play in our future funding model. We have not included the RPS in our proposed funding model.
8. The RPS were issued as part of the settlement of loans between AFL and the Treaty of Waitangi Fisheries Commission at the time Te Ohu Kaimoana was established. At that time the funding for Te Ohu Kaimoana was uncertain. The purpose of the RPS is identified as “being in the nature of financial insurance for the Trustee”. Te Ohu Kaimoana can redeem part or all of the RPS at an agreed value up until November 2019 subject to a number of conditions. After that time they can be redeemed for full value.
9. There are constraints on Te Ohu Kaimoana’s ability to redeem the RPS as they are subordinate to any bank debt.
10. Te Ohu Kaimoana does not propose to redeem the RPS. In our view, converting the RPS into shares and distributing them to iwi is the most practical option. It removes a liability from AFL’s balance sheet, increasing its equity and therefore AFL’s value to iwi.

## External review

11. In response to the proposal for a review of Te Ohu Kaimoana's estimated costs and the implications of different options for dealing with the RPS, Te Ohu Kaimoana has engaged KPMG to carry out an external review. We will report back on the results at the Hui-a-Tau.
12. Te Ohu Kaimoana also intends to provide for external reviews of remaining policy work to ensure there are no unintended consequences prior to providing draft legislation to the Government. We will report to iwi accordingly.

## Voting at the general meeting

13. A resolution shall be passed by a majority of MIOs/RIOs represented at the meeting and voting. Voting shall be by way of 1 voting representative only per iwi by poll (if required). A strong mandate for the option chosen by iwi (similar to the threshold for 4 June 2015 SGM) would help it get through the legislative process.
14. Iwi have been emailed either the document or a link to the document that needs to be filled in to appoint your voting representative for the Hui-a-Tau. If you have not yet received it and sent it back, it can be found at Appendix 2, or on Te Ohu Kaimoana's website. Please email the completed form to Te Ohu Kaimoana General Counsel ([simon.karipa@teohu.maori.nz](mailto:simon.karipa@teohu.maori.nz)) by 29 March or bring it with you to the Hui-a-Tau. To ensure we receive your form in time please do not post your MIO/RIO authorisation form.
15. Te Ohu Kaimoana would appreciate receiving any resolutions that iwi wish to put at the meeting by 24 March, to allow us to have them available on the screen at the meeting. Please also email them to Simon Karipa as above.

## Appendices

## Appendix 1: Report back on National Hui, 9 March 2016

### Summary of key issues

16. At the National Hui, Te Ohu discussed the following draft resolutions with iwi:
  - a. 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.
  - b. 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).

### Te Ohu funding model

17. The resolution on Te Ohu's funding model to retain the accumulated funds as an endowment was presented to the hui alongside alternative options including:
  - a. distribute the accumulated funds and meet Te Ohu's costs through a direct levy from iwi
  - b. distribute the accumulated funds and meet Te Ohu's costs through the AFL dividend
  - c. distribute the accumulated funds and meet Te Ohu's costs from AFL's income.
18. No-one disagreed that Te Ohu needs a secure funding base. However iwi came from different perspectives on the question of how Te Ohu should be funded.
19. The following reasons for Te Ohu to retain the funds as an endowment were put forward by some participants:
  - a. There is a need to keep things simple
  - b. Disputes about the allocation of the funds and Te Ohu's costs would undermine Te Ohu's functions
  - c. Levying iwi will not work
  - d. The funds should be retained for investment in the seafood industry
  - e. There is a need for a war chest to respond quickly to sudden major threats to the settlement. A war chest based on levies would be dangerously inadequate. Many court cases have never been resolved as parties have run out of funds.
  - f. Sourcing Te Ohu's funds from AFL would be complicated and may impact on iwi balance sheets through a reduction in the value of AFL shares
  - g. Iwi have made a commitment to underwrite Te Ohu. To underwrite an annuity is to capitalise Te Ohu
  - h. Any other method will require a distribution method and a method for allocating Te Ohu's costs. These matters need to be dealt with by a working group and it will take more than the 21 days between now and the Hui-a-Tau.
20. The following points were put forward by some participants in support of the distribution of all or part of the funds with a levy paid by iwi or AFL.
  - a. Iwi could earn more from the funds if they had them in their hands



- b. The funds should be distributed as iwi have aspirations in the industry
  - c. At least some of the funds should be distributed (we need to identify what size of endowment would provide Te Ohu with certainty), and any additional costs should be funded by AFL.
  - d. Te Ohu and AFL should be folded together to create 1 voice in dealing with the Crown. Doing so would also create cost-efficiencies.
21. The feedback suggests the following issues need to be balanced:
- a. secure funding for Te Ohu and the commitment iwi have made to underwrite Te Ohu
  - b. the need for access to a “war chest”
  - c. the desire of iwi to have access to distributions
  - d. desire of some iwi to invest further in the seafood industry
  - e. the potential benefits of investing the funds back into the seafood sector to strengthen collectively owned assets.
22. It was recommended by a number of participants that Te Ohu retain the funds at this stage as the alternative options are complex and there would need to be agreement on methods for allocating costs and distributing any funds. A suggestion was made that a working party be established consisting of iwi, Te Ohu and AFL to address these matters. Such a working group could also provide advice on the final package of proposals on the review, including governance of Te Ohu and AFL. It could also include analysis of the simplification of the trading process for settlement assets to ensure the combination of changes (as well as the remaining policies) will not have unintended consequences on iwi, Te Ohu, AFL, Te Putea Whakatupu or Te Wai Maori.
23. Participants agreed that the option of cancelling the RPS by converting them into ordinary shares for distribution to iwi should be put to the vote at the Hui a Tau.
24. Concern was expressed that decisions to be made by iwi involve significant funds and that the proposals should be subject to an independent review which would include a review of Te Ohu’s cost estimates and options for the RPS.
25. In closing the hui, the Chair said that Te Ohu would pull the feedback together and assess what it can do to respond to the suggestions made.

## List of participants<sup>1</sup>

<b>NAME</b>	<b>ORGANISATION</b>
Simon Jones	Aotearoa Fisheries Limited
Aisha Ross	Ngaruahine Fisheries
P H Murray	Te Runanga o Ngati Whatua
Eddie Watts	Te Runanga o Ngati Whatua
Robyn Rauna	Tamanuhiri Tutu Poroporo Trust
Hemi Toia	Ngati Rarua
Frans Van Boekhout	Koata Ltd
Tahua Solomon	Koata Ltd
Butch Bradley	Ngati Apa ki te Ra To AHC
Tom McClurg	Ngati Mutunga o Wharekauri AHC
Robert Warrington	Muaupoko
Marokopa Wiremu-Matakatea	Muaupoko
Pahia Turia	Nga Wairiki Ngati Apa
Grant Huwylar	Nga Wairiki Ngati Apa
Rachel Selby	Raukawa ki te Tonga
Bill Nathan	Te Upoko O te Ika
Kevin Robinson	Te Runanga o Te Rarawa
Stephen Hand	Hauraki
Holden Hohaia	Ngati Maru (Taranaki) Runanga
Bill Carter	Atiawa ki Whakarongotai/Maruehi Fisheries
Sharyn Smith	Ngati Kuia
Richard Paine	Te Atiawa te Tau Ihu
Te Mauri Apiata	Tuhoe Fisheries Quota Limited
Victor Hape	Tuhoe Fisheries Quota Limited
K Te Pou	Tuhoe Fisheries Quota Limited
Nathan Peri	Ngati Maru Taranaki
Haydn Edmonds	Ngatiwai
Morrie Love	Te Atiawa ki te Upoko o te Ika Trust
Mere George	Ngati Whare
Kim Skelton	Te Atiawa (Taranaki) Settlement Trust
Pete Bennett	Te Atiawa (Taranaki) Settlement Trust
Mark Ngata	Ngati Porou Seafoods (AHC)
Peter Charleton	Taranaki Iwi Fisheries
Matiu Rei	Ngati Toa
Brian Dickson	Ngai Te Rangī
Te Tuanui Paki	Te Runanga o Ngai Tahu

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<sup>1</sup> Names were recorded from the attendance register so it is possible the names of some attendees have been omitted.

Mark Jackways	Tainui Group Holdings
Wayne Mulligan	Taranaki Iwi Fisheries Limited
Tiaki Hunia	Te Runanga o Ngati Awa
Toa Pomare	Raukawa ki te Tonga
Paul Knight	Ngapuhi AHC
Mike Paku	Kahungunu
Carl Carrington	Aotearoa Fisheries Limited
Wane Wharerau	Ngapuhi Asset Holding Company
Tarina McDonald	Te Runanga a Rangitane o Wairau
Pat Park	Te Atiawa ki te Tau Ihu
C Stokes	Ngati Ranginui Fisheries Trust
Joseph Thomas	Ngati Mutunga o Wharekauri Iwi Trust
Ben Potaka	Whanganui
J Tamakehu	Whanganui
Whaimutu Dewes	Ngati Porou/Ngati Rangitihi/AFL/ Sealord
Danny Loughlan	Tuwharetoa Fisheries
Sonny Tau	Ngapuhi
Craig Ellison	Ngai Tahu
Ta Tipene O'Regan	Ngai Tahu

Te Ohu Kaimoana directors and staff members were in attendance

## Meeting notes from the National Hui

1. The hui was opened by Mahara Okeroa; Ta Tipene O'Regan replied.
2. Jamie Tuuta, Te Ohu Chair, introduced the topic of the hui and said the objective was to achieve some agreement about the resolutions to be put to the Hui-a-Tau. As Jamie worked through the presentation of options, the following comments were made.
3. Ta Tipene O'Regan made a plea that the funding option for Te Ohu should be kept as simple as possible. If parties allow themselves to get into disputes about their relative contributions to Te Ohu, there is a danger that Te Ohu's function (to overcome the things iwi can't do on their own) will be undermined. The problem of the centre vs constituents is a systemic problem (not unique to Maori) that needs simple solutions. Every iwi has this problem.
4. Kevin Robinson (Te Rarawa) asked whether the model takes into account a fighting fund, and whether the board had considered research. Jamie Tuuta replied that the budget just takes into account our costs. Research is part of the buckets of activity and should be considered as part of a broader strategy.
5. Sonny Tau (Ngapuhi) questioned the "certainty" criteria. Is the Board concerned iwi won't pay? Jamie Tuuta commented that part of the problem is the basis on which a levy would be implemented. Sonny considered that if the basis was population, larger iwi would be contributing most to the ongoing survival of Te Ohu.
6. Jamie Tuuta asked how many iwi were supportive of a levy. Kahungunu, Raukawa and Ngati Wai confirmed they were. Mike Paku (Kahungunu) stated that they had been keen on a levy during the review process but now the conversation has moved on. The AFL proposal to meet Te Ohu's costs is a "levy in drag".
7. Paul Knight (Ngapuhi) agrees that Te Ohu needs certainty of funding. Iwi could have access to \$74 million which is not insignificant for communities. If the funds are kept in Te Ohu and invested overseas, there is a question about the benefits. There are alternatives. If iwi had the funds, they might earn 1 – 2% over what would be required to fund Te Ohu. It could be used to help iwi collaborate on big projects.
8. Whai Dewes agreed for the need for Te Ohu to have certainty of funding and on the benefits of a simple approach. Look at the \$74 million as a heritage asset which has taken a long time to build. It should be kept for investment in the seafood industry. He disagreed with the idea that iwi won't invest. The Anton's deal was oversubscribed.
9. Bill Carter (Te Atiawa ki Whakarongotai) supported the principle of maintaining the fund. He drew attention to the Meat and Wool Boards where there was pressure to distribute funds and reliance on a levy system to support specific urgent needs. He supported the idea that the funds are a specific seafood asset.
10. Wayne Mulligan (Te Atiawa) commented that iwi can earn more from the funds if they had them in their hands.

11. Matiu Rei (Ngati Toa) commented that this is a decision for MIOs to make. The funds would go to MIOs. There are tax implications – the funds would need to be distributed to charitable entities. This must be driven by the needs of MIOs, not AHCs or AFL.
12. Paul Knight considered the issue of distribution to non-charitable entities to be a red-herring. As we are seeking legislative change, such changes could accommodate this. There could be significant complications if AFL pays Te Ohu's costs. If the AFL shares are sold, they would need to be significantly discounted if AFL is meeting Te Ohu's costs. This could have an impact on iwi balance sheets.
13. Whai Dewes commented he did not want to see a 10 year review in legislation. Ta Tipene O'Regan said not to hand over power to the state. We have fought for this to be here and we need to have command over ourselves and emancipate our decision-making from the legislative process.
14. Jamie Tuuta referred to Paul Knight's comments about AFL funding Te Ohu: if some iwi sell AFL shares, the remaining iwi would be funding the collective.
15. Whai Dewes noted that AFL management has worked on the idea of AFL paying from the dividend. AFL would find the most efficient way to do it. But meeting those costs would have an impact on the dividend -the costs imposed would flow through to distributions. He also considered there is a need to look at the 40% statutory dividend.
16. Sonny Tau proposed an independent review. Nearly \$100 million is up for discussion. We need an independent analysis of the options.
17. Butch Bradley (Ngati Apa – Te Tau Ihu) commented that it is good to go over the numbers but what is the strategic investment?
18. Tony Magner (Maniapoto) agreed Te Ohu needs wings. Tainui's view is: repatriate the funds to iwi; they have aspirations in the industry. There should be a levy system through AFL. There is debate over the RPS. He couldn't see the reason for \$74 million in the war chest.
19. Ta Tipene O'Regan reminded the hui that Tainui and Ngai Tahu carried the initial payments of the first "war". Other iwi had provided nothing. The war chest was enormous – a war chest based on levies would be dangerously inadequate. He noted instances where key legal cases taken by iwi had not been resolved because the parties ran out of money. The fund would mean that "never need to worry about running out of muskets."
20. Jamie Tuuta commented that much of the debate is about "mana vs moni".
21. Morrie Love (Te Atiawa) questioned who can use the funds best. Perhaps the question to explore is what size of endowment would give certainty but free up some capital. He considers iwi can use funds more successfully and rely on the balance of costs to come from AFL.

22. Kim Skelton (Te Atiawa) further discussed a compromise approach in which Te Ohu would retain \$54 million and \$20 million would be distributed. The proportions would need to be discussed.
23. Whai Dewes proposed that funding for Te Ohu should come through AFL. The funds should be kept intact to increase leverage in the seafood industry. He considered AFL could get better than secure returns – if not, they would look at distributing the cash. The funds would be utilised through AFL. Criteria would be confirmed by iwi and periodically reviewed. AFL would work with Te Ohu and iwi as part of a working group and get independent analysis. If kept as a corpus – it would enable smaller iwi to participate and ensure a more moderated spread of benefits.
24. Hemi Toia considered there are merits in Whai’s comments. He also noted the consistent call from some iwi to transfer some of the funds. And also noted the proposition that AFL fund the costs. He was more in favour of the invitation for nominees to a working group. The process could have been more robust. He considered it needs external peer review. MIOs and AHCs are in different frames.
25. Jamie Tuuta noted the need to make a decision. Sonny Tau considered it needs to take a decent amount of time.
26. Tom McClurg commented that it is important to avoid a false dichotomy between iwi and Te Ohu, and revenue and capital. It was agreed we need to do something to protect the settlement. The thrust of the review was iwi as owners who need to be in control. Looking forward, Te Ohu is the “child” of iwi – it will do what iwi want. If Te Ohu is going to do these things, iwi have to underwrite its financial capability with an annuity for as long as they want to keep it. To underwrite an annuity is to capitalise Te Ohu. The endowment fund vs levies is artificial as long as we are committed. We already have an example -the sub-trusts are funded by an endowment. It recognises the quality of the commitment. Iwi can use the capital for other things, but it has to be over and above the commitment to Te Ohu.
27. Toa Pomare (Ngati Raukawa) said he was supportive of Te Ohu II and supportive of a levy with distribution of capital.
28. Chris Stokes considered AFL and Te Ohu should be folded together – this would create 1 voice in dealing with the Crown and would bring economies of scale.
29. Mike Paku congratulated Te Ohu on the management of the funds. He commented there are large numbers of options and we should try to remove some items from the table. We need to provide security – which is presently the endowment fund. Until there is another option, that is the best security. Any other method would need a distribution method – whether to iwi or the fishing industry. We can’t find that pathway in 21 days. We need to put the issues together under a working group. There needs to be some independence as we all have vested interests.
30. Jamie Tuuta asked the hui what options should be put to the Hui-a-Tau re the RPS. Ngapuhi and Ngai Tahu supported putting option D (cancel the RPS and convert to ordinary shares for distribution to iwi).

31. Tony Magner referred to the exercise as a “lolly scramble”. It is incumbent on iwi to understand the consequences of significant decisions. With the RPS, we need to understand the effect on AFL. It needs to be seen the context of the \$74 million. Option D is asking iwi to invest another \$20 million in AFL.
32. Whai Dewes pointed out that was not the question. It was always intended to provide capital to AFL. It was not a gift – it was done at the time in the most tax efficient way. (He noted that AFL had looked at tax efficient measures and mentioned by bonus issue of \$33 million to income shareholders). We need to be careful about terminology – if iwi want a special distribution of \$20 million – it needs to be argued. This is not a gift – if you take it out of AFL there are consequences which will have significant impact on business costs and therefore returns to iwi.
33. Ta Tipene O’Regan wanted to say something about the general canvas for the new picture. The performance of our collective assets is not covered in glory. Whai and colleagues have a massive challenge. We need to be careful of treating the assets as a “milch cow”. It is the wrong approach. Look at rebuilding and strengthening the collective companies. To what extent does the RPS strengthen our assets rather than suck the fibre from them?
34. Jamie Tuuta closed the hui saying Te Ohu would pull everything together and develop resolutions for the Hui-a-Tau and before then look at what we can do to respond the suggestions that were made.

## Appendix 2: Authorised Representative Form



**TE OHU KAI MOANA TRUSTEE LIMITED**

**HUI-A-TAU / ANNUAL GENERAL MEETING 31 MARCH 2016**

**APPOINTMENT OF REPRESENTATIVE BY MANDATED IWI ORGANISATION FOR PURPOSE OF ANNUAL GENERAL MEETING**

1. Te Ohu Kai Moana Trustee Limited (**TOKMTL**) is holding its Annual General Meeting on 31 March 2016.
2. Mandated Iwi Organisations have the right to attend, speak and vote on resolutions at the Annual General Meeting.
3. In order to vote at the Annual General Meeting, the TOKMTL constitution (Schedule 2, paragraph 15) requires that a Mandated Iwi Organisation must:  

... not later than the commencement of that meeting (or during the meeting, if permitted by the chairperson of the meeting), deliver to the Board or chairperson at the meeting a written notice signed by at least two authorised representatives of that ... Mandated Iwi Organisation appointing one person (or, in his or her absence, another person) to vote on its behalf at that meeting and at any adjourned meeting. The representative named in that notice (or in his or her absence the second representative named in that notice) shall be entitled to vote at the meeting and at any adjourned meeting as if the representative were the ... Mandated Iwi Organisation.
4. This document constitutes written notice by the Mandated Iwi Organisation noted below (the **Appointer**) of its nominated representatives for the purpose of the Annual General Meeting on 31 March 2016.
5. The Appointer represents and warrants that this document has been validly authorised and signed on behalf of the Appointer in accordance with its constitutional document. The Appointer acknowledges that TOKMTL is entitled to rely on this representation and warranty.
6. The Appointer acknowledges that Representative Two named below will only be entitled to vote at the Annual General Meeting in the absence of the named Representative One.

**MANDATED IWI ORGANISATION:** \_\_\_\_\_(name)

**REPRESENTATIVE ONE:** \_\_\_\_\_(name)

**REPRESENTATIVE TWO:** \_\_\_\_\_(name)

**EXECUTED by AUTHORISED REPRESENTATIVES OF MANDATED IWI ORGANISATION:**

\_\_\_\_\_  
Name:  
Position:  
Date:

\_\_\_\_\_  
Name:  
Position:  
Date:

**Te Ohu Kai Moana Trustee Limited**

Level 4, Revera House  
48 Mulgrave Street, Thorndon

PO Box 3277  
Wellington, New Zealand

Phone 64-4-931 9500

Fax: 64 4 931 9518

Email: [tari@teohu.maori.nz](mailto:tari@teohu.maori.nz)

Web: [www.teohu.maori.nz](http://www.teohu.maori.nz)

