



Commercial Insights to the Treaty Settlement Process

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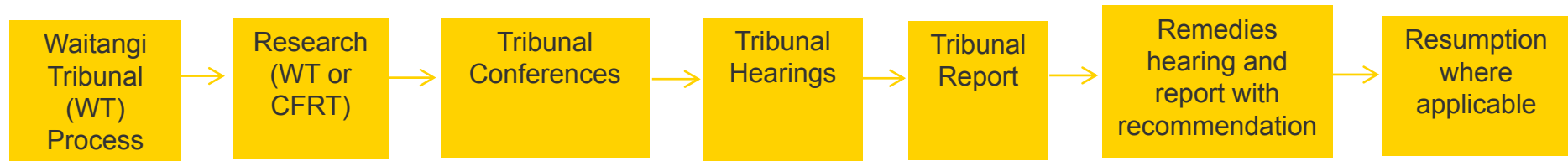
Overview

- ▶ Introduction
- ▶ Overview of the Treaty settlement process
- ▶ Our view of the commercial aspects to the process
- ▶ General observations on recent changes to the process
- ▶ Specific insights across two specialist fields:
 - ▶ Taxation
 - ▶ Commercial investment strategy
- ▶ Closing remarks

Introduction

- ▶ Objective - share our firm's experiences to:
 - ▶ Inform claimant groups that are yet to settle of the issues
 - ▶ Initiate or further encourage critical academic thinking, debate and research on these commercial issues affecting Māori
- ▶ Lack of critical research and debate on commercial issues affecting Māori – especially tribal organisations
- ▶ Scope – a practitioner's perspective, based on experiences, of commercial aspects of a Crown process

Overview of Treaty settlement process



There are **two distinct processes** for addressing historical Treaty claims. It may be possible to move from one to the other.



This presentation focuses on the direct negotiations process

Our commercial overview of the process

Vision and Strategy for Claim & Settlement Processes	Funding	Current State Review	Claims Negotiation Strategy & Execution	Post Settlement Structures & Support
<p>Working with the claimant to ascertain:</p> <ul style="list-style-type: none"> ➤ Long term aspirations ➤ Possible trade offs ➤ What does success look like ➤ Tikanga/cultural parameters <p>Strategic Considerations:</p> <ul style="list-style-type: none"> ➤ Asset base ➤ Social needs (education, housing, employment, health) <p>Negotiation entity</p> <ul style="list-style-type: none"> ➤ Clear purpose ➤ Governance ➤ Accounting ➤ Tax 	<p>CFRT/OTS requirements and funding process</p> <ul style="list-style-type: none"> ➤ What specialist advice is really needed? ➤ Brokering services and advice ➤ Contracting and issue resolution ➤ Accounting processes 	<p>Assessment review and assessment of whether assets are producing what is expected or planned</p> <p>Structures and processes review - The effectiveness of:</p> <ul style="list-style-type: none"> ➤ Tax structures ➤ Governance processes (e.g., Iwi voting process and engagement) ➤ Management systems and processes ➤ Decision making process ➤ Investment management 	<p>Facilitating negotiation strategy to achieve the claimants' underlying aspirations</p> <ul style="list-style-type: none"> ➤ Analysis of commercial opportunities within claim area ➤ Building financial models to analyse negotiations and settlement strategies ➤ Settlement options analysis (pay back relative to strategy) 	<p>Settlement Structure</p> <ul style="list-style-type: none"> ➤ Tax structure ➤ Governance ➤ Internal controls ➤ Optimizing processes <p>Post settlement support</p> <ul style="list-style-type: none"> ➤ Investment strategy and modelling ➤ Tax administration ➤ Assurance ➤ Special projects (e.g., Housing, investment due diligence).

General observations on commercial aspects of the process

- ▶ Crown's recent push to expedite number of settlements and process (terms of negotiation to settlement deed) is:
 - ▶ Positive – as settlements have taken far too long in the past, consuming a disproportionate amount of scarce iwi resource
 - ▶ Negative – as the increased risk of ill preparation through rushing creates a further imbalance in the “negotiation” process
- ▶ Crown has increased resourcing but no apparent change on claimants side (rather, a tightening of CFRT funding following the CNI deal)
- ▶ Scope for Crown agents to be more proactive in helping iwi identify and resource commercial negotiation needs (improves “Funding” and subsequent sections of table)

General observations on commercial aspects of the process (contd.)

- ▶ Crown policy on negotiating with “large natural groupings” has raised identity issues for some purpose-built collective negotiating entities
 - ▶ More an issue with separate legal company or trust structures (e.g., Tainui-Taranaki, Kurahaupō, Turanga Manu Whiriwhiri)
 - ▶ Rather than the unincorporated entities (e.g., Te Hiku Forum, CNI)
- ▶ Unclear purpose or changing opinions as collective nears settlement can create tension between negotiation body and iwi, and iwi themselves
- ▶ Clear vision and strategy based on collective discussion and agreement needed upfront (improves “Vision and Strategy” and subsequent sections of table)

Specific insights across certain specialist areas

1. Taxation

- ▶ Tax (and legal) design of a iwi organisation structure to receive and manage the current and impending Treaty settlement assets in a tax efficient manner
- ▶ “Current State Review” and “Post-Settlement Structures” sections

2. Commercial Investment Strategy

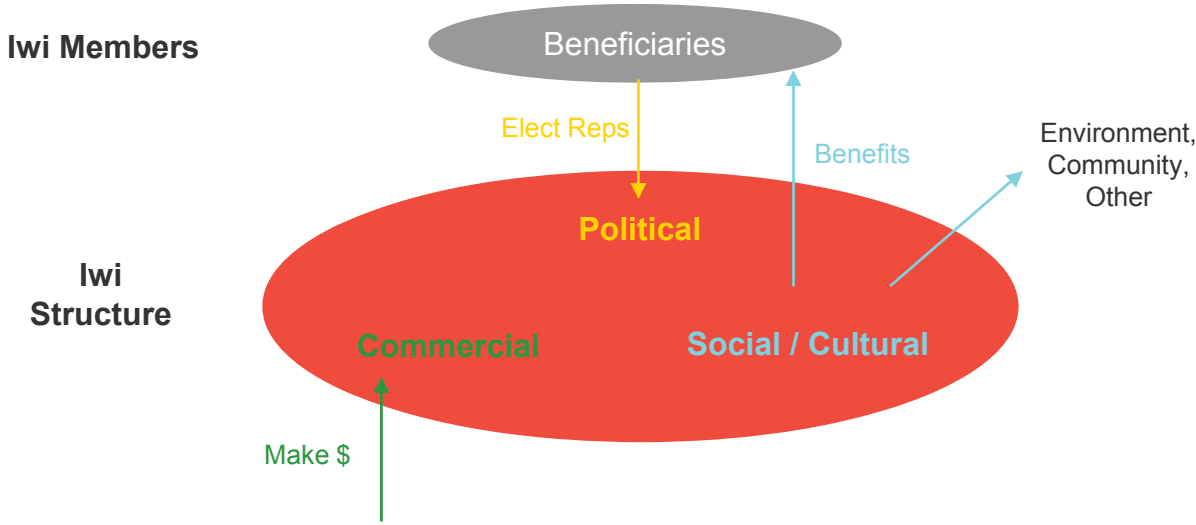
- ▶ Develop baseline ‘tools’ to help inform debate and guide strategy on the investment of an iwi’s commercial assets
- ▶ “Post-Settlement Structures and Support” section

1. Tax (& legal) structuring overview

- ▶ “Post Settlement Governance Entity” is required to receive settlement
- ▶ Choice of PSGE legal structure is very limited (“20 questions” and Crown preference)
- ▶ Slightly more choices for PSGE tax structure (generally three options)
- ▶ But focus on Group structure, not just PSGE and design driven by current and future needs, not by tax

Structuring principles for iwi groups

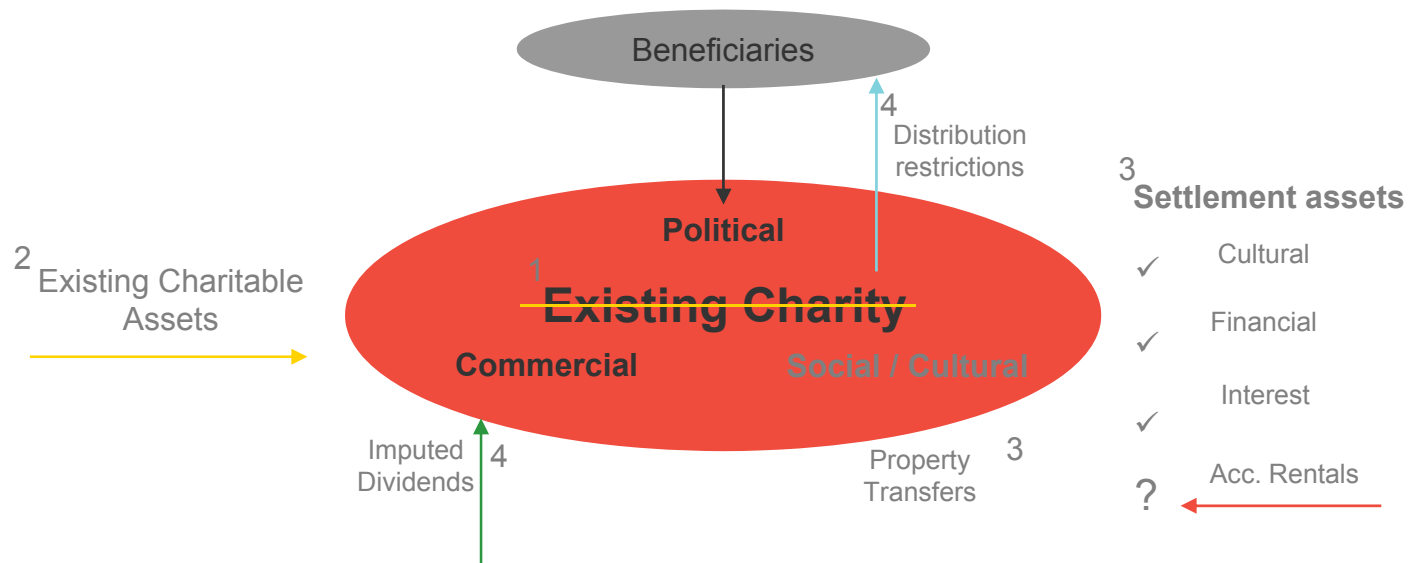
Political, Social/Cultural, Commercial Roles



Flexibility
(Structural, Commercial, Investment, Distributive)
Simple, Role Clarity
Commercially Robust
Cost Effective

Common tax issues with Treaty settlements

Post-settlement governance entity (PSGE) issues



1. Crown policy not to settle assets on charities, but most existing iwi structures are
2. Difficult to transition charitable assets into non-charitable PSGE (e.g., Māori Fisheries Act issues, different beneficiary classes)
3. Indemnification of accumulated CFL rentals and post-settlement transfer issues with property (e.g., NZU's and intra-group transfers)
4. Downsides to charities not understood/addressed (e.g., distribution restrictions, asset lock-up, imputed dividends)

Basic income tax structure choices

	Charity	Māori authority	Complying Trust
Income Tax	0% (but note below*)	19.5%	33% (Retained income)
Distribution to Members	Indirect (to “charitable purposes”)	Direct (with refundable tax credits)	Direct (with non-refundable)
Application of Assets & Income	“Charitable purposes” only	Flexible (per constitution)	Flexible (per constitution)
Tax on Imputed Dividends Dividend Income*	30%	10.5% → 0%	0% (if profitable)

Tax (& Legal) Structuring – summary

- ▶ Need iwi PSGE to receive settlement (can be as early as Deed of Settlement)
- ▶ Legal – no choice, difficulty depends on current entity and whether you revise the current or set-up a new entity
- ▶ Tax – limited choices (can't be a charity)
 - ▶ Transition issues with charities (and Fisheries entities)
 - ▶ Significant value in designing optimal Group now
- ▶ Best structuring window - current and future needs vital, develop structuring needs now, get good advice

2. Commercial investment strategy

▶ Objective:

- ▶ Develop baseline 'tools' to help inform debate and guide strategy on the investment of an iwi's commercial assets:

1. Statement of Investment Policy and Objectives (SIPO) – regulates the relationship between iwi governance and investment managers as well as setting investment parameters
2. Financial model - calculates financial impacts of various investment options (e.g., money in bank vs. buying businesses) and funding/operating structures (e.g., staff levels given the active or passive investment strategy).

- ▶ These 'tools' are standard for most successful commercial organisations

Financial Model and SIPO

Inputs

		Asset Allocation		
		Sc 1	Sc 2	Sc 2
R E T U R N S	Good			
	Ave			
	Bad			



Engine room

- ▶ Rates of return
- ▶ Corporate costs
- ▶ Governance structure
- ▶ Tax structure



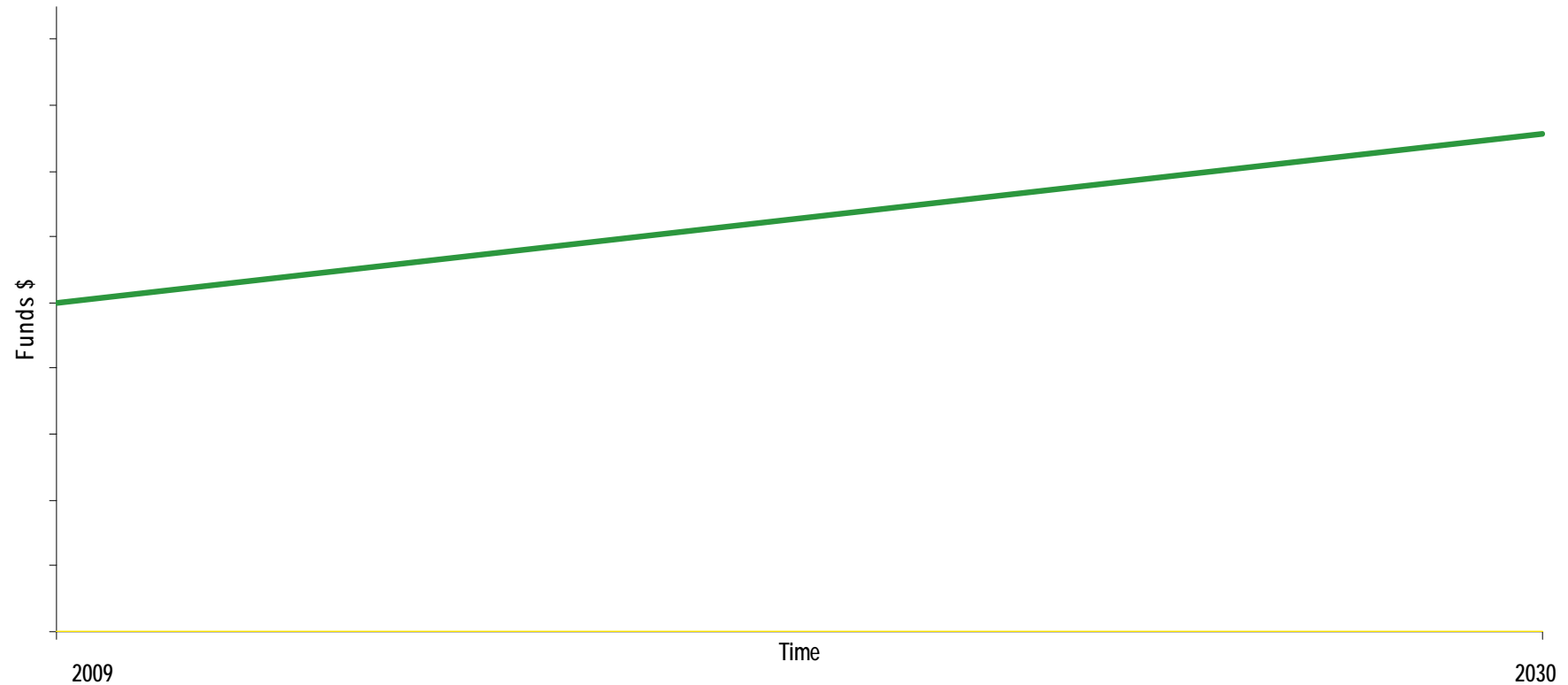
Outputs

- ▶ Asset base
- ▶ Profits for distribution



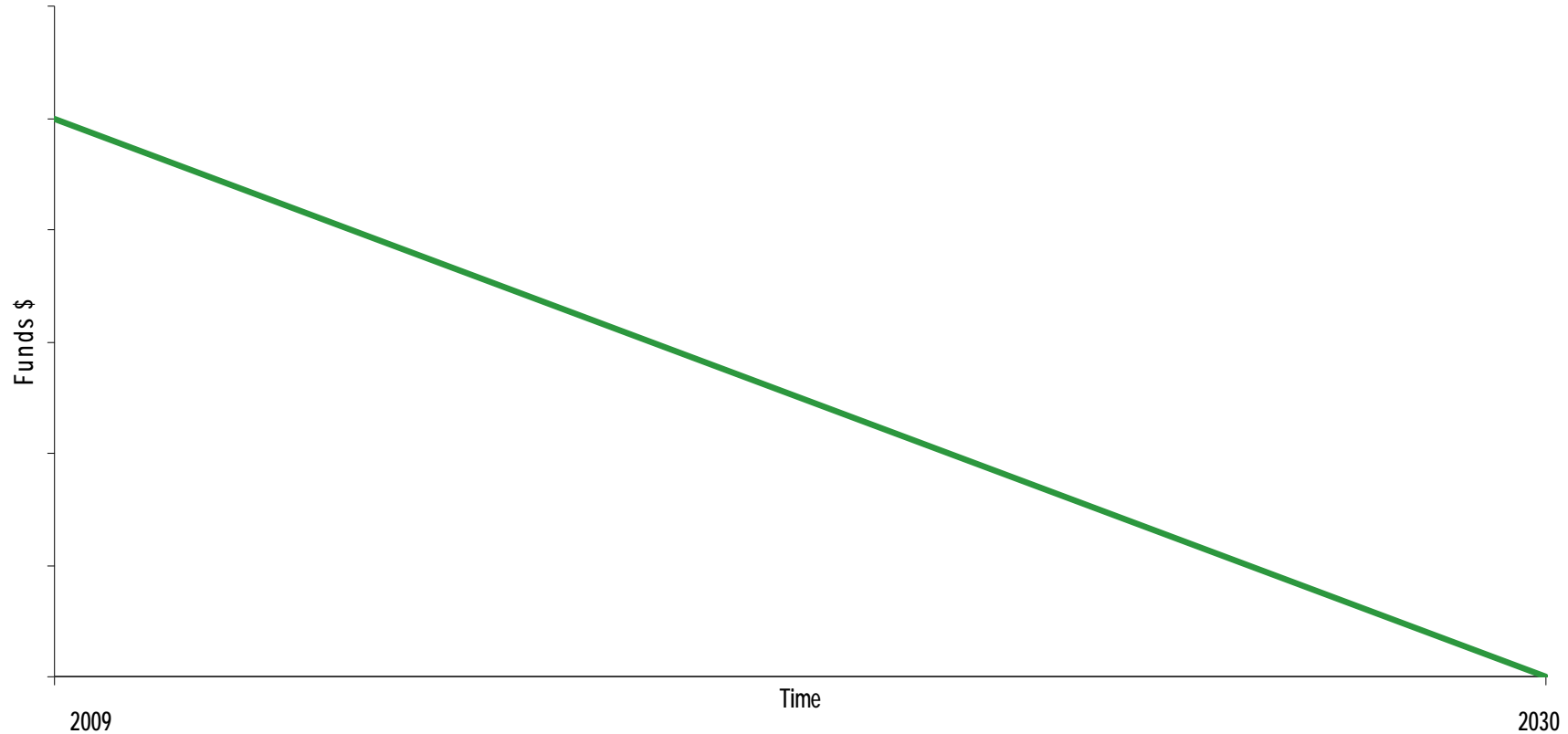
SIPO formation

Sustainable inter-generational equity



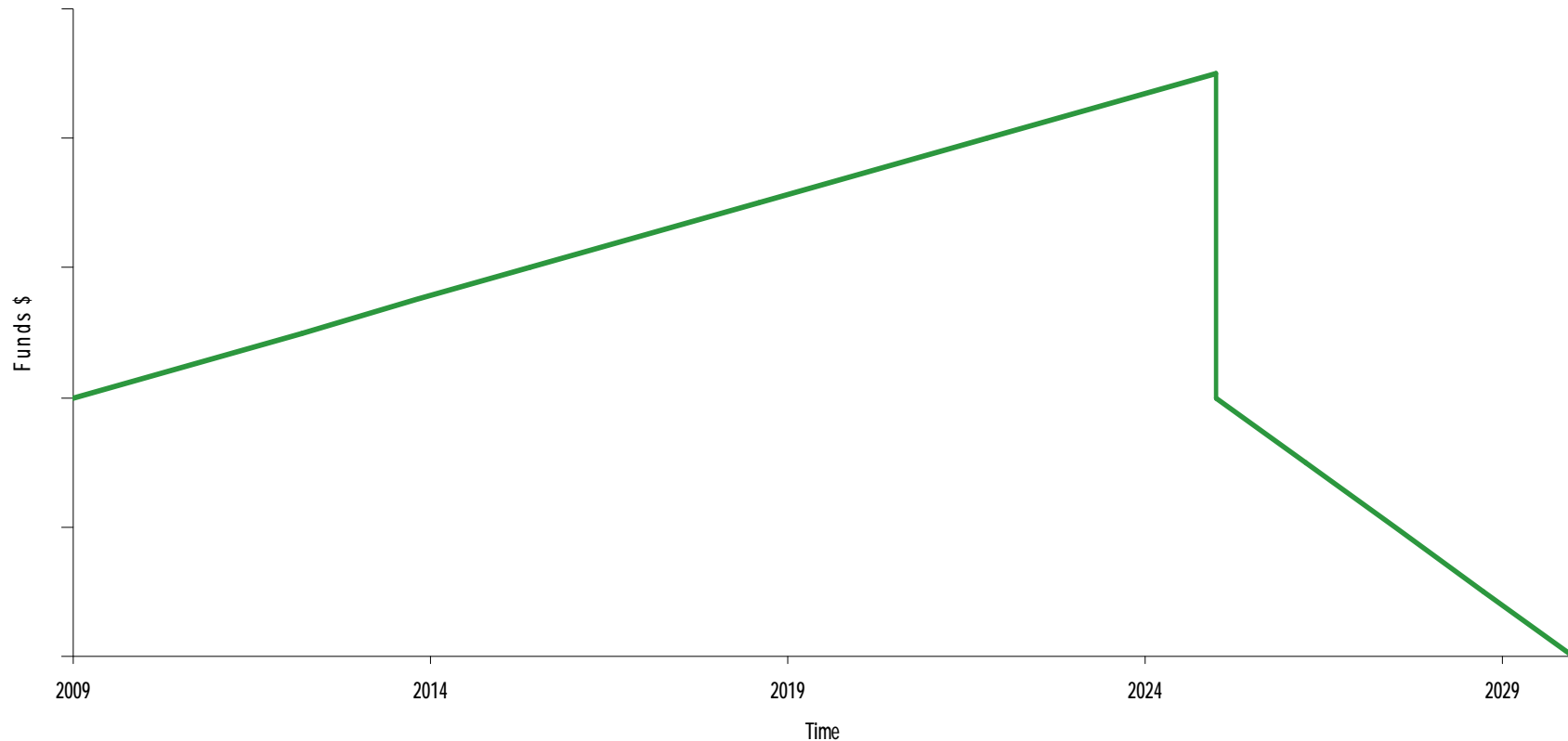
- ▶ Income is sustainably greater than expenditure
 - ▶ Asset base will grow over time as excess income can be profitably reinvested
 - ▶ Wealth supports current and future social programmes – inter-generational equity
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Wealth transfer and gentle strangulation



- ▶ Expenditure is greater than income
 - ▶ Unsustainable - over time will consume the asset base and wealth transfers between generations
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Death by catastrophe



- ▶ Income is greater than expenditure but the investments are very risky
- ▶ Asset base increases but eventually money is lost (through excessive risk taking) and income is no longer sufficient to meet expenditure

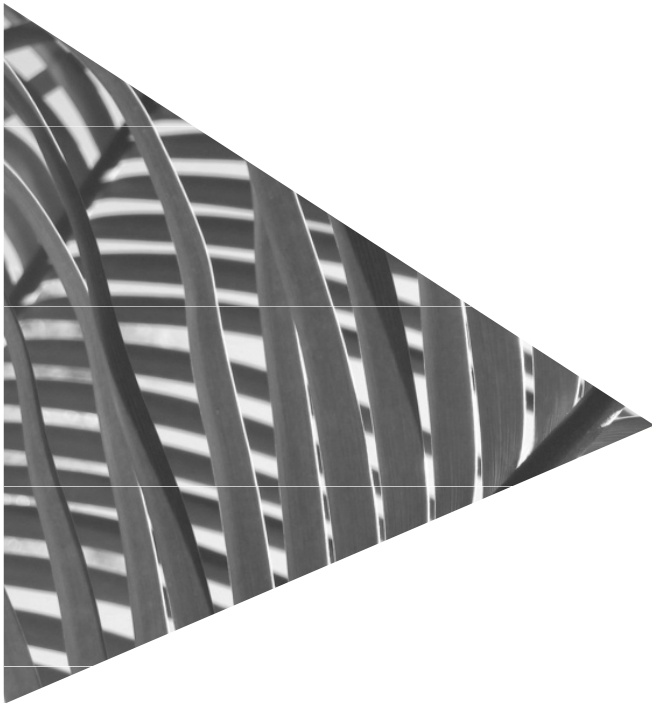
Balancing risk and return



- ▶ Risk needs to be balanced against return when considering investments
 - ▶ Generally, the greater the return, the greater the risk associated with the investment
 - ▶ If investment portfolio is too volatile, may risk losing capital
 - ▶ Future income needs to be more than expenditure for assets to grow
 - ▶ SIPO and financial model provide baseline tools to manage these equations
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Closing remarks

- ▶ More assistance required for iwi to maximise commercial opportunities in the settlement process (from Crown, iwi members, private and academic sectors?)
 - ▶ Develop/clarify vision and strategies early (difficult but ideal)
 - ▶ Identify what commercial assistance is needed (leverage off other iwi experience) and from whom to get it from (get good, experienced help)
 - ▶ Plan and act as early as possible - reduce risks and costs
 - ▶ More critical research and analysis required on a whole range of commercial issues affecting Māori including Treaty settlement issues e.g. inter-generational equity
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Ngā mihi

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