

Executive Summary

I Maraina Mc Grath (nee Taotahi) of Ngāti Torehina ki Mata-ure ō Hau, make this submission on behalf of my great-great-great grandfather Te Taotahi a venerable Ariki (Chief), born around 1750, known simply as Te Tao whom signed, the 1835, Declaration of Independence and the Treaty of Waitangi, 1840.

In Article 1., of the Treaty, Te Tao is acknowledged as a Chief of the Confederation of the United Tribes of Aotearoa, with the authority and power of a Sole Sovereign exercising or possessing territories within the Independent Territorial State boundaries of the Northern Tribes of Aotearoa.

In Article 2. Her Majesty Queen Victoria “confirmed and guaranteed” to the Chief Te Tao and his family” Native Title to all resources within the territories of Ngati Torehina Ki Mata-ure O Hau described as the “undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties”.

In Article 3. Her Majesty the Queen offered her Royal Protection, of Ngati Torehina ki Mata-ure ō Hau’s property and resource rights guaranteed in Article 2.

The Treaty is a binding contractual agreement under Article 37 (1) of 61/295: United Nations Declaration on the Rights of Indigenous Peoples, (UNDRIP) 2007, between the hereditary successors to the signatory Chiefs and the Successor to Queen Victoria, King Charles III, of the United Kingdom. a ratifying nation to UNDRIP, 2007.

New Zealand, Australia, Canada, and the United States voted against (UNDRIP) 2007. New Zealand ‘s antagonistic endorsement in 2010, was described by Māori Affairs Minister Dr Pita Sharples as a ‘non-binding declaration’, effectively annulling all articles of UNDRIP.

We assert that the United Kingdom, has a contractual obligation as signatory to the Treaty of Waitangi, 1840 to support the Te Taotahi Ariki Whanau of Ngati Torehina ki Mata-ure ō Hau in its bid to have the New Zealand Government pass into New Zealand Law a United Nations Declaration on the Rights of Indigenous Peoples Act as did the Government of Canada, in 2021.

In addition, we concurrently seek recognition, as co-signatory to the Treaty, and redress or just, fair and equitable compensation, for our lands, territories, resources, waters and coastal seas as held by us prior to 1769.

In 1857, Te Tao wrote to Land Commissioner Bell:

Koia tenei ko taku korero: ko toku pihī i tukua e te tangata ke, me whakahoki mai ki ahau. Kahore hoki he ture i mua, kotahi anake ture i mua, ko te atua anake. Koia tenei ko nga ingoa enei o toku kainga i tahaetia.

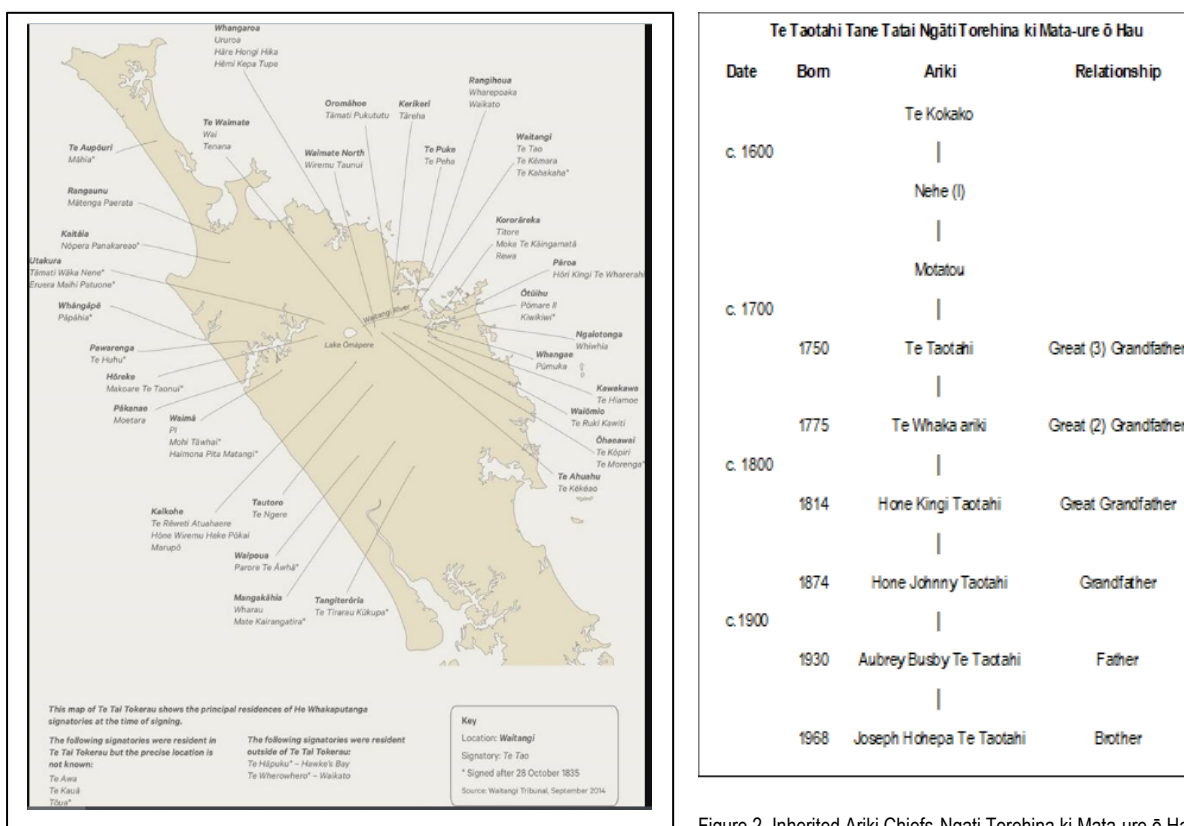
This is what I have to say: my piece of land, which was given away by a stranger, return it to me. There was no law in the past, there was only one law in the past, God alone. That’s why these are the names of the villages that were stolen.

Paroki, Te Wahapu, Owetanui, Te Kawemaheno, Tahunakuaka, Matatara-a-wai, Tarehu, Te Rangatapu, Tarepopo, Te Weranga-o-Tahura, Waikumete, Korotangi, and Taroi.

Ngati Torehina ki Mata-ure ō Hau

My family is the Te Taotahi Ariki Whanau of Ngati Torehina ki Mata-ure ō Hau representing the Te Taotahi Tane Tatai, which may be the only living male descendant lineage (Figure 2.) of any signatory to either the declaration “He Whakaputanga o te Rangatiratanga o Nu Tireni, 1835” or the “Treaty of Waitangi, 1840”. The name ‘Taotahi’ means ‘to recite genealogy in a single line of descent’ to the royal blood line of the chief, Iro-nui-Maoata, known as Whiro, from Tahiti, born circa 850 AD.

Te Tao, his first cousin Te Kahakaha, and grand-nephew Te Kemara and 32 other chiefs, defined the State boundaries of the Northern Tribes of Aotearoa, from North Cape to the latitude of the River Thames (Figure 1.). So that future hereditary chiefs could meet annually as a Koutunui of Chiefs, to exercise their human-right of self-determination to “frame laws, dispense justice, preserve peace, regulate trade and other resources”¹ in their traditionally owned, occupied and used lands, territories, waters and coastal seas².



Te Taotahi Tane Tatai Ngāti Torehina ki Mata-ure ō Hau			
Date	Born	Ariki	Relationship
		Te Kokako	
c. 1600			
		Nehe (I)	
		Motatou	
c. 1700			
1750		Te Taotahi	Great (3) Grandfather
1775		Te Whaka ariki	Great (2) Grandfather
c. 1800			
1814		Hone Kingi Taotahi	Great Grandfather
1874		Hone Johnny Taotahi	Grandfather
c. 1900			
1930		Aubrey Busby Te Taotahi	Father
1968		Joseph Hohepa Te Taotahi	Brother

Figure 2. Inherited Ariki Chiefs Ngati Torehina ki Mata-ure ō Hau

Figure 1. Independent Territorial State boundaries of the Northern Tribes of Aotearoa

1. Article 2., He Whakaputanga o te Rangatiratanga o Nu Tireni (The Declaration of Independence of the United Tribes of New Zealand), 1835.

2. As described in Article 26 and 27 of the United Nations Declaration on the Rights of Indigenous Peoples, (UNDRIP), 2007.

Background

To fulfil Stavenhagen, R. (2006)³ recommendations the Foreshore and Seabed Act 2004, which extinguished Māori property rights over the foreshore and seabed has been replaced with the more prejudicial Te Takutai Moana Act 2011. The new Act abolishes ownership of all ‘common marine and coastal areas’⁴ then provides the Crown and Local Authorities, with all the powers and authority conferred by ownership, to grant resource consents for usage right of the common marine and coastal areas for a defined period, in Part 2 s 11 (5) (b)-(f) and (6) of the Act⁵.

Ngati Torehina ki Mata-ure ō Hau has made an application for customary marine title and protected customary right under the Takutai Moana Act 2011 Part 3 s 54 (1), defined as “A protected customary right does not include any right or title over the part of the common marine and coastal area”, which essentially re-extinguishes Māori property rights over the foreshore and seabed.

Along with many other reluctant applicants we are under-resourced, under-funded, do not have full access to research sources and are reliant on legal aid that is paid out by re-imburement of which we have received \$1,700 over 12 years. In contrast, preferential treatment from Government pre-allocated \$M150 for Treaty Settlements to Ngapuhi, a Hapu that only came into existence in 1875⁶.

Ariki Chief Te Taotahi (Te Tao)

Te Taotahi would have been tutored in the traditional knowledge of the Ariki, the power of oratory, authority over the land, invocations to Tu (War-God) for war, the power over their domain, from the heavens for all things on the earth for their people, and for all their works⁷.

Te Tao would have witnessed the arrival of Captain Cook, November, 1769 whom described a Ngati Torehina ki Mata-ure ō Hau chief. “The people in these Canoes made a very good appearance, being all stout well-made men, having their Hair—which was black—combed up and tied upon the Crown of their heads, and there stuck with white feathers, and the Habits of these were rather superior to any we had yet seen”⁸ (Figure 3.).

Joseph Banks also described the encounter. “The strangers were numerous and appeared rich: their Canoes were well carved and ornamented and they had with them many weapons of patoo patoos of stone and whales’ bones, which they value much; they had also ribs of whales of which we had often seen imitations in wood carved and ornamented with Dog hair tufts⁹”.

3. (Stavenhagen, R. (2006). Commission On Human Rights; Sixty-second session Item 15 of the provisional agenda: INDIGENOUS ISSUES; Human rights and indigenous issues; Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people).

4. Te Takutai Moana Act 2011, s9(1) 11 s 6,12.

5. Sullivan, A., (2017). Politics, Indigenous Rights and Resource Ownership: Māori Customary Rights to the Foreshore, Seabed and Fresh Water in New Zealand. Studies in Arts and Humanities, 03, (02), 39-58.

6. <https://www.nzherald.co.nz/kahu/150m-fund-established-for-ngapuhi-while-negotiating-treaty-of-waitangi-claims/>

7. Te Kahui Karerehe. (1893). The Kurahoupo canoe. Journal of Polynesian Society. Volume 2, 3. p. 190.

8. Captain Cook's Journal during his first voyage round the world made in H.M.S. Bark "Endeavour" 1768-71. A Literal Transcription of the Original MSS with notes and introduction edited by Captain W.J.L. Wharton, R.N., F.R.S. Hydrographer of the Admiralty. Illustrated by Maps and Facsimiles. London, Elliot Stock, 62 Paternoster ROW, 1893. “Cavalle Islands, North Island; latitude 35 degrees 10 minutes 30 s South, Longitude 185 degrees 25 minutes West”.

9. The Endeavour Journal of Sir Joseph Banks by Sir Joseph Banks (1743-1820) [Journal from 25 August 1768-12 July 1771].



Figure 3. A Ngāti Torehina ki Mata-ure ō Hau Chief¹⁰

Arrival of Rev. Samuel Marsden of the Church Missionary Society

Reverend Samuel Marsden, myself (John Nicholas), Hongi Hika (Shungi), and Ruatara (Duaterra) arrive at the Cavalli Islands on board the *Active* and land at Waiheke Bay, adjacent to Mātāuri Bay (Figure 4.), on December 20th 1814¹⁰. Te Whakaariki, is the son of Te Tao (see Figure 2.) and resides at the papa Kainga (village) of Ngāti Torehina ki Mata-ure ō Hau beneath the maunga (mountain) Te Piki Puke O Te Taotahi in Mātāuri Bay. Nicholas describes the village as “consisting of about 50 huts and 150 inhabitants”¹⁰. Hongi Hika, the chief of Ngati Te Tautahi, is a brother-in-law to Te Whakaariki whom is married to Hongi Hika’s sister Waihora. After the welcome at Te Piki Puke O Te Taotahi, the *Active* set sail to Rangihoua on the 21st December, 1814, where Ruatara grand-nephew to Te Tao, gifted land to Marsden to establish his mission station at Oihi, Rangihoua¹⁰. The arrival of the Missionary’s would mark the beginning of land speculation in Aotearoa¹¹.

John Nicholas, made special mention of the Toa (warriors) of Ngāti Torehina ki Mata-ure ō Hau, describing them as 150 of the finest men as ever took the field in any country, with few less than six-foot tall, having determined countenances, with brawny limbs, a firm and martial pace¹⁰.

10. John Liddiard Nicholas, 1817. *Narrative of a Voyage to New Zealand performed in the years 1814 and 1815 in the company of Reverend Samuel Marsden*, Published by James Black & Son, London.

11. H. Hanson Turton. *Māori Deeds of Old Private Land Purchases in New Zealand, From the Year 1815 to 1840, with Pre-Emptive and Other Claims*.



Figure 4. Partial Map of the North Island of New Zealand 1885 with Old Land Claims pre-1840¹².

Defence of the Independent State of the Confederation of the United Tribes of Aotearoa (New Zealand)

Ngāti Torehina ki Mata-ure ō Hau, trace their origins back to the Tu-nui-O-rangi waka and are descendants of Ngai-Tahuhu that ruled the region from the Auckland Isthmus and past Whangarei¹³. The sale of land to land-speculators and foreigners¹¹, prompted the Confederation of Northland Tribes to protect their territory from incursions of other tribes. In 1821, Te Whaka Ariki and Hongi Hika's Waka Toa (war party) re-established dominion in the Tamaki Isthmus (Auckland) and Motus (Islands) in battles with Ngati Poa, Ngati Whatua, Ngai Tai and Te Kawerau O Maki tribes¹⁴. The vanquished tribes as is customary were required to vacate the area. In 1826, the tribes of the Kaipara and West coast of Auckland were also defeated¹⁵. In 1827, Dumont D'Urville, Commander of the Astrolabe visited Auckland and found no inhabitants¹⁶. Battles continued throughout 1832-33 in the Bay of Plenty and Rotorua, also in 1838-39 on the Great Barrier Island, Auckland¹⁴. Until the signing of the Treaty of Waitangi, the Auckland and Kaipara Districts were mostly uninhabited. Ngati Whatua, a small hapu of around 40 under Reweti, returned to Auckland in September 1840 under the protection of Governor Hobson¹⁴.

12. Pollen C. R. (1885). James Mc Kerrow, Surveyor General. Map Provincial District of Auckland Sheet 2.

13. Lieut.-Col. Gudgeon. (1903). The Whence of the Maori Part III. Journal of the Polynesian Society, (12) P 120-130.

14. Percy S. Smith. (1910). Maori Wars of the Nineteenth Century Whitcombe and Tombs Limited, Christchurch.

15. Hayward, B. W. & J. T. Diamond. Pre-historic Archaeological Sites of the Waitakere Ranges and West Auckland, New Zealand.

16. George Graham. A Maori History of the Auckland Isthmus. Chapter in John Barr. (1922). The City of Auckland New Zealand, 1840-1920, P. 22. Whitcombe & Tombs, Auckland).

The Intention of the Treaty of Waitangi, 1840

The Treaty of Waitangi was signed at the home of British Resident James Busby in Waitangi. Te Taotahi cultivated land on the opposite side of the Waitangi River, being a neighbour to Henry Williams and Busby, explicitly Te Tao lived on the land included in future Busby land claims¹⁷.

The only eye-witness account of the signing of the Treaty of Waitangi, New Zealand, February 5th and 6th, 1840 by Colenso provides very clear evidence that Te Tao and the other Aotearoa-Māori Chiefs that signed the Treaty were offered the return of their lands unjustly held by others¹⁸.

Before signing the Treaty Te Tao and the other Chiefs present had it explicitly explained to them by Busby that Governor Hobson had not come to take away their land, but to secure in their possession lands that they had not sold¹⁸.

The Chief Te Kemara, a grand nephew of Te Tao, explained to Governor Hobson that the land, which was the "inheritances of my ancestors, fathers, relatives, were all gone, stolen", by the missionaries and Busby. "The land on which we are now standing this day is mine. This land, even this under my feet, return it to me. O Governor! return me my lands"¹⁸. Governor Hobson, replied "that all lands unjustly held would be returned; and that all claims to lands, however purchased, after the date of the Proclamation would not be held to be lawful"¹⁸. Chief Moka responded, "That is good, O Governor! Baker, return to me my lands."¹⁸.

Mr. Baker replied, "E hoki, koia?" translated, "Will it, indeed, return?". Moka, Chief of the Patuheka Tribe replied, "There! Yes, that is as I said. The lands will not return to me"¹⁸.

The Land Commission 1841-1870

Te Tao provided brief evidence that James Busby's had returned land in Waitangi set aside for a reserve back to Te Tao, "a deed which makes the land mentioned in it sacred (wahi tapu) to him [Te Tao], but he cannot sell the land."¹⁹. Busby's evidence on the matter was inconsistent. It seemed that the deeds' actual purpose was to disguise from the Land Commission Courts that there were unextinguished Māori interests and continued Māori occupation of Busby's Waitangi land claims¹⁷.

Ernst Dieffenbach observed that Māori and British cohabited land "In transferring land to the Europeans, the natives [believed] ... that they gave the purchaser permission to make use of a certain district"²⁰, that is occupation rights only.

Governor Grey's assessment of pre-Treaty deeds, concluded; "It is by no means clear that Māori understood that they gave an absolute title to the land" "Māori continued to occupy areas within grant boundaries"²¹ consistent with Māori not consenting to ownership but occupation rights, which was the customary practice in Aotearoa.

17. Bruce Stirling & Richard Towers, (2007). "Not With the Sword but With the Pen": The Taking of the Northland Old Land Claims, Part 1: Historical Overview, Wai 1040 #A9.

18. Colenso W., (1890). The authentic and genuine history of the signing of the Treaty of Waitangi, New Zealand, February 5th and 6th, 1840. Wellington: George Didsbury, Government Printer.

19. Evidence of Te Tao, Okiato (Russel), 2 February 1841. IA 15/5d. Archives New Zealand. Document Bank, p.1262.

20. Ernest Dieffenbach, Travels in New Zealand, London, John Murray, 1843, VOL. 2, pp 143-144.

21. Grey to Earl Grey, 2 August 1847, British Parliamentary Papers, 1848 (1002), p. 110.

The Land Commission was actually required to issue Title to Te Tao for the reserve land. Lord John Russell's instruction to Governor Hobson was to provide reserves for Māori and that the Surveyor General was required to identify the land 'that the natives should permanently retain'²².

Busby's Waitangi survey plan, SO 930A eliminated Te Tao's land deeds of sacred (wahi tapu) land and designated a Māori 'Waitangi Reserve' south of the river, adjacent to the Williams Land Claim²³ (Figure 4.). Busby's son would later allege that the two land deeds to Te Tao were 'leases' granting occupation rights only²⁴. The Waitangi Busby claim was 9374 acres, the Crown got 1010 acres, and Te Tao received no land not even the Busby 'Waitangi Reserve'²³.

Legislating to alienate all of Aotearoa Maori Whenua (Land)

Governor FitzRoy in 1844 waived the Crown's right of pre-emption, a right of the Crown in Article 2 of the Treaty of Waitangi²⁵. The effect of the Crown waiver was to re-validate all Old Land Claims and any other private purchases of land from Māori²⁵ in direct contradiction to Governor Hobson's 1840 Treaty negotiation promise, "that all claims to lands, however purchased, after the date of the Proclamation would not be held to be lawful"¹⁸. Governor FitzRoy assured "that after due consideration, justice will be done to parties who have real claims to such land"²⁶.

Te Tao wrote to Land Commissioner Bell, from his Waitangi residence, 3rd October 1857 refuting Henry and William Williams 1833 claim to the 11,000-acre Pakaraka estate²⁷. Select translated passages follow:

This is what I have to say: my piece of land, which was given away by a stranger (Te Morenga), return it to me. These are the names of the villages that were stolen (provided in the original text)²⁷.

In November 1857, Williams paid Te Kemara and Te Tao £50 for the large cultivation reserve¹⁷. It was better to receive an out-of-court settlement than be awarded nothing by the Land Commissioners.

Most of the land claims were awarded without surveys, which the Privy Council had already described as 'void for uncertainty' in *Queen v Clarke*, 1851²⁸. The Crown disparately charged Williams a pre-emption waiver fee of £93¹⁷. Land Commissioner Clarke, as the Crown's Protector of Aborigines deplored the fact that claimants sought claims that included the villages and cultivations of Māori²⁹. Previously the Land Commissioners had petitioned Governor Hobson requesting that the Crown grant Māori reserves for "cultivation, fishing and sacred grounds"³⁰.

22. Russell (Secretary of State for the Colonies) to Hobson, 28 January 1841, British Parliamentary Papers, 1841 (311), pp. 51-52).

23. Moore, Rigby, & Russell, (1997). Rangahaua Whanui National Theme A Old Land Claims. Waitangi Tribunal Rangahaua Whanui Series.

24. William Busby to Land Claims Commissioner Dommet, 28 November, 1870, IA 15/5.

25. Rigby, B. (2015). Wai 1040 Local Issues Research Programme. Validation review of the Crown's tabulated data on land titling and alienation for the Te Paparahi o Te Raki inquiry region: Pre-emption waiver claims.

26. Minutes of Meeting of Native Chiefs, 26 March 1844, British Parliamentary Papers 1845 (131) pp. 43-4.

27. Te Tao to Bell, 3 October 1857. Williams claims study.

28. Return No's 2 and 3, New Ulster Gazette 1849; Return No. 8, New Ulster Gazette 1849.

29. David Armstrong, 'The Land Claims Commission: Practice and Procedure 1840-1845' Wai 45 Record of Documents, doc 14, P. 70.

30. Commissioners to Hobson, 2 May 1842, 1A 1/1842/721.

The right to sell

Land Commissioner Clarke admitted that Europeans purchased “from certain natives, but whether those natives ‘had a right to sell’ or how that right was acquired, is still, in the majority of cases, quite a matter of doubt”³¹.

The Deed of Purchase for Auckland City of 3,000 acres was signed 29th July 1841 by Kawau, Tinana, Reweti Tamaki and Horo for £56 plus a similar value in goods, whose ‘right to sell’ was a matter of doubt. An unfurnished house rented for £60-£80 per annum. The Auckland City land was pre-sold in April 1841 for £58,202³².

Charles Heaphy, National Commissioner of Native Reserves in 1870, noted that the Auckland Deed signatories from Ngati Whatua, Te Rarawa, and Patukirikiri of Hauraki tribes had 'sold recklessly, and were in danger of becoming paupers'³³. These tribes were used by the Crown to purchase vast tracks of land in the Tamaki Isthmus (Auckland) and Kaipara Districts. The Ngati Whatua hapu now receive preferential treatment from the State.

31. Clarke report, 1 July 1845; quoted in Armstrong, 'The Land Claims Commission: Practice and Procedure 1840-1845' Wai 45 Record of Documents, doc 14, pp 192-193.

32. John Barr. (1922). *The City of Auckland New Zealand, 1840-1920*, P. 26. Whitcombe & Tombs, Auckland.

33. Report of Commissioner of Native Reserves, 19 July 1871, Appendices to the Journals of the House of Representatives, 1871, F-4, P 5.