

# What the Treaty of Waitangi Really Said in 1840.

Open Letter to our Politicians from the One New Zealand Foundation Inc.

What the Treaty of Waitangi Really Said in 1840.

The agreement the Maori chiefs signed in 1840 with Queen Victoria has been completely rewritten since the 1975 Treaty of Waitangi Act, therefore, those who use the rewritten Tiriti o Waitangi must remember when they meet the Maori chiefs who signed the Tiriti o Waitangi in 1840, they will have to explain to them why they rewrote the agreement they had made with Queen Victoria in 1840 that saved their people from total extinction by their own hand. Especially, the 200 Chiefs who attended the 1860 Kohimarama Conference where they, *"Pledged to each other to do nothing inconsistent with their declared recognition of the Queen's sovereignty, and of the unions of the two races"*.

Just imagine Willy Jackson and his mates in the Maori Party trying to explain the lies they have told about the Treaty to the cannibal warrior chiefs who signed the agreement with Queen Victoria in 1840, that saved Maori from possible extinction as the tangata whenua before them.

In 1869, the Legislative Council asked the Native Department for an "Official" English translation of the Treaty of Waitangi and this "Official" translation was made by Mr T E Young of the Native Department. See page 2: **Changes to the Final Draft Approved by Hobson, Busby and Williams.**

Since this time, many Maori scholars, such as Professor Margaret Mutu and Professor Hugh Kawharu have attempted to translate the Tiriti o Waitangi into English, but all these translations make the Tiriti o Waitangi mean something that

was never intended by Queen Victoria or the 500 Maori chiefs who signed it in 1840. They have rewritten the Tiriti o Waitangi to give Maori special rights and privileges never intended by those who signed it in 1840. See page 6: **What the Treaty of Waitangi Really Said in 1840.**

In fact, Professor Hugh Kawharu, who made the translation for the 1987 Court of Appeal, which is used today by the Government and the Maori Party as the "Official" translation of the Tiriti o Waitangi, admitted, *"It was an attempt at a reconstruction of the literal translation of the Maori text"*. This *"attempted"* translation of the Maori text by Professor Hugh Kawharu was to give Maori special rights and privileges not intended by those who signed it in 1840. See page 8: **Page 663, Maori Council V Attorney General 1987.**

When we compare Professor Hugh Kawharu's translations with Lt. Governor Hobson's final English draft and the "Official" translation by the Native Department in 1869, they are like *"Chalk and Cheese"*! See page 2: **Changes to the Final Draft Approved by Hobson, Busby, and Williams.**

From what is happening in New Zealand today, it seems many people, including Government and the Maori Party, have forgotten what the Treaty of Waitangi between the tangata Maori and Queen Victoria really said in 1840.

**What the Treaty of Waitangi Really Said in 1840.**

It was a very simple document that gave the Maori people protection, not only from the French but also from themselves, which 13 Ngapuhi chiefs had asked the King in 1831.

**Over 500 Maori chiefs agreed on behalf of their people to become British Subjects with the same rights as the people of England when they signed the Treaty of Waitangi in 1840. No more, no less, no Partnership and definitely, no Co-**

## **governance.**

In fact, a British Subject cannot be in Partnership or Co-governance with the Crown under English Law. Queen Victoria did not have the power or authority to give the tangata Maori any special rights or privileges in the Treaty not enjoyed by all the people of New Zealand, and none were given!

Yours sincerely,

Ross Baker.

Researcher, One New Zealand Foundation Inc. 13 June 2023.

## **CHANGES TO FINAL DRAFT APPROVED BY HOBSON, BUSBY AND WILLIAMS.**

### **CONFUSION**

Since the Tiriti O Waitangi was signed in 1840, there has been on going confusion over the words, **“all the people of New Zealand”**, in Article Two. Some say it refers to **“Maori only”** while others say it refers to, **all the people of New Zealand of all races, colours or creeds**. It's only since the **final draft** was found in 1989 and extensive research, we can now prove beyond doubt',

**Article One asked the tangata Maori to give up their “governments” to the Queen and in return, they would become British Subjects with the same rights as the people of England. Article 2 referred to both the tangata Maori and all the other races of people living in New Zealand.**

While the final draft asked the tangata Maori to give up the sovereignty to the Queen, Rev Henry Williams knew tangata Maori did not hold sovereignty as, *“No political body existed capable of making cession of sovereignty”* so he changed sovereignty to government, both Hobson and Busby agreed to this change. It was ruled by Chief Justice Prendergast in

1877, "So far indeed as that instrument (The Treaty of Waitangi) purported to cede the sovereignty it must be regarded as a '**simple nullity**'. No political body existed capable of making cession of sovereignty".

**Article Two refers to, all the people of New Zealand of all races, colours and creeds.**

## **AMERICANS BECOME INVOLVED**

As well as the brief to Hobson by the Colonial Office that the tangata Maori must have the same rights as the people of New Zealand, once the Treaty was signed, other nations, which also had people and investment in New Zealand must also have these protected. At the time the Treaty was being drafted, the Americans were conducting extensive and costly research into whaling and sealing in the Southern Oceans. There were 28 known onshore whaling stations, many owned by the Americans as well as large tracts of land, businesses and investments owned by people other than Maori or British. Unless changes were made, once the Tiriti o Waitangi was signed and New Zealand became British soil, only the Maori the British would have had any rights to their lands, dwellings, and property within New Zealand.

This is where Englishman James Clendon, the American Consul who had been involved in drafting the Declaration of Independence in 1835 and a witness to it, also became very involved in the final drafting of the Treaty, especially Article Two. This has only become evident since the final draft was found which was written at his home and on paper he supplied. Clendon was also a witness to the Tiriti o Waitangi.

## CHANGE TO EARLY DRAFTS

James Clendon had to make sure that American interests and property were fully protected. This is the reason why Article two was changed in the earlier draft from, "**Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respected families and individuals thereof the full exclusive and undisturbed possession of the Lands and Estates, Forests, Fisheries and other possessions which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession**", which confirmed and guaranteed exclusive and undisturbed rights to Maori only. This was changed to, "**The Queen of England confirms and guarantees to the chiefs and the tribes and "To all the people of New Zealand", the possession of "their" lands, "their" dwellings and all "their" property**".

## FINAL CHANGES TO THE TIRITI O WAITANGI

This change to the earlier drafts took care of confirming and guaranteeing to all the people of New Zealand the same rights to their lands, dwellings, and property but it overlooked the fact in the final draft that the same wording, "*the people of New Zealand*", had been used in the Preamble and Article Three to refer to Maori only. The Preamble was changed to read, **the Hapus** of New Zealand and Article Three to read, all the **tangata Maori** of New Zealand when translated into the Tiriti o Waitangi. Article Two remained unchanged and therefore, referred **to all the people of New Zealand** of all races when read to the gathering at Waitangi on 5 of February 1840, then signed by over 500 chiefs during 1840. (See copies of Treaty below).

As Rev. Henry Williams had helped draft the Treaty from its early stages, he would have had a full understanding of what

Hobson and the Colonial Office required when he translated the final draft into the Tiriti o Waitangi. The task of translation was a difficult one, it being essential to avoid all expressions of English for which there was no equivalent in Maori, as well as it must comply with the way Maori was spoken and understood at the time. Williams admitted he made changes, he also admitted he did not make alterations which would **'destroy the original spirit and tenor of the Treaty'**.

Before the Tiriti o Waitangi was read and explained to the people gathered at Waitangi, Hobson, Busby and Williams met behind locked doors with police guards to make sure they all agreed with the translation, **"For the tangata Maori to give up their governments to the Queen and make the tangata Maori British Subjects with the same rights as the people of England under one flag and one law"**. They must have examined it thoroughly as Busby did change whakaminenga for huihuinga at this late stage. **Hobson, Busby, and Williams were then completely satisfied with the wording of the Tiriti o Waitangi.**

Without these changes, there would have been major problems for all those not tangata Maori when the Tiriti o Waitangi was signed. The Tiriti o Waitangi confirmed and guaranteed **"To all the people of New Zealand of all races, colours or creeds"** their lands, their dwellings and all their property. The Tiriti o Waitangi, while a very simple document, adequately covered all that was intended and expected of it.

**"It made all the people of New Zealand the same under one flag, one law"**.

**“He iwi tahi tatou – We are now one people.”**

James Busby's final English draft written on the 4th of February 1840.	Rev. Henry Williams' translation into Maori from Busby's final draft.	T.E Young's back-translation of the Maori text into English (1869).
<p>Her Majesty Victoria, Queen of England in Her gracious consideration of the chiefs and <b>the people of New Zealand</b>, and Her desire to preserve to them their lands and to maintain peace and order amongst them, has been pleased to appoint an officer to treat with them for the cession of the <b>Sovereignty</b> of their country and of the islands adjacent to the Queen. Seeing that many of Her Majesty's subjects have already settled in the country and are constantly arriving, and it is desirable for their protection as well as the protection of the natives, to establish a <b>government</b> amongst them.</p>	<p>Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga <b>Hapu o Nu Tirani</b> i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira-hei kai wakarite ki nga Tangata Maori; o Nu Tirania kua wakaetia e nga Rangatira Maori; te <b>Kawanatanga</b> o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.</p>	<p>Victoria, Queen of England, in her kind thoughtfulness to the Chiefs and <b>Hapus of New Zealand</b>, and her desire to preserve to them their chieftainship and their land, and that peace may always be kept with them and quietness, she has thought it a right thing that a Chief should be sent here as a negotiator with the Maoris of New Zealand - that the Maoris of New Zealand may consent to the <b>Government</b> of the Queen of all parts of this land and the islands, because there are many people of her tribe that have settled on this land and are coming hither.</p>
<p>Her Majesty has accordingly been pleased to appoint Mr. William Hobson, a captain in the Royal Navy to be <b>Governor</b> of such parts of New Zealand as may now or hereafter be ceded to Her Majesty and proposes to the chiefs of the Confederation of United Tribes of New Zealand and the other chiefs to agree to the following articles.</p>	<p>Na ko te Kuini e hiahia ana kia wakaritea te <b>Kawanatanga</b> kia kua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.</p>	<p>Now the Queen is desirous to establish the <b>Government</b>, that evil may not come to the Maoris and the Europeans who are living without law.</p>
<p>Article first</p>	<p>Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei <b>Kawana</b> mo nga wahi katoa o Nu Tirani e tukua aianei, amoa atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.</p>	<p>Now the Queen has been pleased to send me, William Hobson, a Captain in the Royal Navy, to be <b>Governor</b> to all the places of New Zealand which may be given up now or hereafter to the Queen; an he give forth to the Chiefs of the Assembly of the Hapus of New Zealand and other Chiefs the laws spoken here.</p>
<p>The chiefs of the Confederation of the United Tribes and the other chiefs who have not joined the confederation, cede to the Queen of England for ever the entire <b>Sovereignty</b> of their country.</p>	<p>KO TE TUATAHI Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te <b>Kawanatanga</b> katoa o ratou wenua.</p>	<p>The First The Chiefs of the Assembly, and all Chiefs also who have not joined the Assembly, give up entirely to the Queen of England for ever all the <b>Government</b> of their lands.</p>
<p>Article second</p>	<p>KO TE TUARUA Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-<b>ki nga tangata katoa o Nu Tirani</b> te tino rangatiratanga o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua ki te ritenga e te utu</p>	<p>The Second The Queen of England arranges and agrees to give to the Chiefs, the Hapus and <b>all the people of New Zealand</b>, the full chieftainship of their lands, their settlements, and their property. But the Chiefs of the Assembly, and all the other Chiefs, gives to the Queen the purchase of those pieces of land which the proprietors may wish, for such payment as may be agreed upon by them and</p>

From the changes to the final draft, ***“It confirmed and guaranteed the same rights to all the people of New Zealand of all races, colours or creeds, to their lands, their dwellings, their settlements, and their property”.***

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**What the Treaty of Waitangi Really Said.**

**Tangata Maori Chief's Agreement with Queen Victoria in 1840.**

**In 1840, over 500 tangata Maori chiefs made an agreement with Queen Victoria; if they gave up their governments to the Queen, they would become British Subjects with the same rights as the people of England. No more, no less, no Partnership and definitely, no Co-governance!**

British intervention in New Zealand began in 1831 when 13 Ngapuhi chiefs ask Britain to be their guardian and protector, not only from themselves but also from the French who were showing an interest in annexing New Zealand to France. In 1833 Britain sent a British Resident, James Busby to try and bring peace, protection, law and order to all the people of New Zealand.

In 1835 the British Resident, James Busby tried to get the tangata Maori to claim sovereignty over New Zealand with his unauthorised *“Declaration of Independence”*, but he could only entice 52 chiefs to sign it before they were back fighting each other, and it was abandoned without one meeting taking place. It was obvious the tangata Maori chiefs could never form a united government and claim sovereignty over New Zealand.

Chief Justice Prendergast explained this in his ruling in 1877. *“So far indeed as that instrument (The Treaty of Waitangi) purported to cede the sovereignty, it must be*

regarded as a '**simple nullity**'. No political body existed capable of making cession of sovereignty". This ruling has never been overruled but is completely ignored by the Government, the Maori Party and most of our researchers/historians today.

With over half the tangata Maori population killed, taken as slaves, or eaten by the intertribal wars and two-thirds of the country had been sold by the chiefs to foreigners by 1839, Britain reluctantly had to take a more active role if the tangata Maori were to survive. Britain reluctantly decided to place New Zealanders under the dependency of New South Wales in 1839 by Royal Charter and a Treaty with the tangata Maori chiefs in 1840, which would make the tangata Maori British Subjects the same rights as the people of England.

The Treaty of Waitangi's instructions were drafted by the Under Secretary for Colonies, James Stephens, a strong supporter of the Clapham Sect and given to Captain Hobson by Lord Normanby before he left England for New Zealand in 1839. Hobson, who had now been made Lieutenant Governor to New Zealand, drafted the Treaty of Waitangi that was signed in 1840 by over 500 tangata Maori chiefs. Most of the land the chiefs had sold before the Treaty was signed, virtually the whole of the South Island, was returned to Maori by the Colonial Government without compensation to the buyers.

### **What the Treaty of Waitangi Really Said.**

Article 1 of the Treaty of Waitangi asked the tangata Maori chiefs to give up their kawanatanga/ governments to the Queen and in return, Article 3 made the tangata Maori British Subjects with the same rights as the people of England.

**No more, no less, no Partnership and definitely, no Co-Governance.**

The Preamble and Article 2 explained to the tangata Maori people they would have the same rights/protection to "their"

lands, “their “settlements and all “their” property, the same as “all the people of New Zealand” once the Treaty of Waitangi was signed. This is English Law based on the Magna Carta.

**Under English Law, Queen Victoria did not have the authority or power to give the tangata Maori any special rights in the Treaty of Waitangi not enjoyed by all the people of England and none were given!**

The Chiefs who signed the Treaty at Waitangi on 6 February 1840 fully understood this when they shook Lt. Governor Hobson’s hand with the words. *“He iwi tahi tatou – We are now one people”*. Over 500 tangata Maori chiefs signed the Tiriti o Waitangi on behalf of their people in 1840 and became British Subjects with the same rights as the people of England, under British Sovereignty and English Law. No more, no less, no Partnership and definitely, no Co-Governance!

This was endorsed by Sir Apirana Ngata, Minister of Native Affairs in 1923 in his book, *“The Treaty of Waitangi – An Explanation”* when he stated, *“The chiefs placed in the hands of the Queen of England, the Sovereignty and authority to make Laws. If you think these things are wrong, then blame your ancestors who gave away their rights when they were strong”*.

In 1860 over 200 tangata Maori chiefs swore their allegiance to the Queen’s Rule at the Kohimarama Conference with a unanimous vote, *“Do not consent that the Treaty should be for the Europeans alone but let us take it for ourselves. Let this meeting be joined to the Treaty of Waitangi, let us urge upon the Government not to withhold it from us. That this conference takes cognisance of the fact that several chiefs, members thereof, are pledged to each other to do nothing inconsistent with their declared recognition of the Queen’s sovereignty, and of the unions of the two races”*.

**There is no denying, today’s Maori ancestors gave up their rights to Queen Victoria in 1840 under one flag and one law.**

**Since this time, the Tangata Maori have intermarried with other races and adapted to their way of life, therefore, it is wrong for them to expect to be given special rights over all other New Zealand citizens, especially when their ancestors agreed to become British Subjects with the same rights as the people of England. No more, no less, no partnership and definitely, no Co-governance!**

The Treaty referred to the people who signed it as tangata Maori, not the indigenous people of New Zealand or the tangata whenua as there were people living in New Zealand before the tangata Maori arrived in 1350. Even the Government does not have forensic evidence or a definition of the indigenous people of New Zealand. This was endorsed by Dr Ranginui Walker, Head of Maori Studies at Auckland University in the "1986 New Zealand Yearbook", page 18 when he stated, *"The traditions are quite clear on one point, whenever crew disembarked there were already tangata whenua (prior inhabitants) living in New Zealand"*. Cape Reinga-Spirits Bay region of the Far North has great spiritual significance for Māori, as when they die their spirits leave New Zealand by Cape Reinga to return to the homeland of their ancestors in Hawaiki.

**Maori must remember, when they meet their tangata Maori ancestors, they will have to explain to them how they rewrote the agreement their ancestors had made with Queen Victoria in 1840 that saved their people from extinction by their own hand.**

### **New Zealand's True Founding Document and First Constitution**

The Treaty of Waitangi was never intended to be our Founding Document as it only asked the tangata Maori to give up their governments to the Queen and in return, they would become British Subjects with the same rights as the people of England. Lt. Governor Hobson announced British Sovereignty over all the Islands of New Zealand on 21 May 1840 and on 16

November 1840, a Royal Charter/Letters Patent was issued by "Victoria by the Grace of God" under "The Great Seal of the United Kingdom of Great Britain and Ireland. This was New Zealand's true Founding Document and first Constitution that involved all the people of New Zealand, irrespective of race colour or creed.

See: <http://onenzfoundation.co.nz/queen-victorias-two-royal-charters-letters-patent/>.

**Queen Victoria's Royal Charter/Letters Patent dated 16 November 1840 is New Zealand's true Founding Document and first Constitution. It separated New Zealand from New South Wales on 3 May 1841 and made New Zealand into a British Colony with a Governor and Constitution that set up New Zealand's political, legal and justice systems under one flag and one law, irrespective of race colour or creed.**

For further information: [www.onenzfoundation.co.nz](http://www.onenzfoundation.co.nz) or contact: [ONZF@bigpond.com.au](mailto:ONZF@bigpond.com.au).

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### **Page 663: Maori Council V Attorney General 1987**

Professor Hugh Kawharu's "Attempt at a reconstruction of the literal translation of the Maori text" for the 1987 Court of Appeal. This translation, solely for the benefit of his people was wrongly used by the 1987 Court of Appeal for this case and was never intended to be used by the Government and the Maori Party to give Maori advantage and privilege over all other New Zealanders.

The principles of the Treaty are to be applied, not the literal words. As is well known, the English and Maori texts in the first schedule to the Treaty of Waitangi Act 1975 are not translations the one of the other and do not necessarily convey precisely the same meaning. The story of the drafting of the Treaty and the procurement of signatures from more than 500 Maori chiefs, including some Maori women of appropriate rank – events in which no lawyer seems to have played a part – is an absorbing one, but not within the ambit of this judgment.

Instead of repeating the two texts scheduled to the 1975 Act, I set out what a distinguished Maori scholar, Professor Kawharu, calls his “attempt at a reconstruction of the literal translation” of the Maori text. It was put before us on behalf of the applicants. The Crown likewise accepted it for the purposes of this case:

“Victoria, the Queen of England, in her concern to protect the chiefs and subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come.

“So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness.

“So the Queen has appointed me, William Hobson a captain in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

“The first  
“The Chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

“The second  
“The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

“The third  
“For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

Signed William Hobson  
Consul and Lieutenant Governor

“So we, the Chiefs of the Confederation and of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and marks thus

“Was done at Waitangi on the sixth of February in the year of our Lord 1840

The Chiefs of the Confederation”