

Our ref 557680 (Complaint grounds: 557681,
560779, 560780, 560782)
Contact Michael Cleary
4 October 2021



Dame Rangimarie Naida Glavish
By email: contact@sosnz.org.nz

Ms Joanne Malcolm
jo@jomalcolm.com

Mr Steve Phillips
Tewhanaupiripi@gmail.com

Ms Anne Coney
atats@xtra.co.nz

Ms Margaret Brough
broughmargo@gmail.com

Mr Roger Burton
rogerburton@bigpond.com

Tēnā koutou

Investigation of complaints against Ministry for Culture and Heritage and Auckland Council

I am writing on behalf of Chief Ombudsman Peter Boshier, regarding your complaints against the Ministry for Culture and Heritage and Auckland Council.

Thank you for your patience through this process. I can confirm that Mr Boshier is investigating your complaints as outlined below. I have today written to the Chief Executives of both the Ministry and the Council advising them of the Mr Boshier's decision to commence the investigations.

Your complaints

Your complaints are about the actions of the Ministry:

- in consulting with the various interested parties on the proposal for the National Erebus Memorial; and
- in response to the concerns raised about the potential impact on the Pōhutukawa in the vicinity of the proposed Memorial;

and of the Council:

- in consulting on the proposal; and
- the recommendation that the resource consent application for the Memorial not be notified.

You have complained that the actions and recommendation are unreasonable.

As previously covered, the Chief Ombudsman is not able to review the decision not to notify the resource consent application, as it was made by an independent commissioner. He also cannot investigate the decision of the Waitemātā Local Board to grant landowner approval, as the decision was made by a *'committee of the whole'*. As a result, these specific decisions will not form part of the investigation.

The investigations

I have today written to the Chief Executives of the Ministry and the Council advising them of the Chief Ombudsman's decision to commence the investigations. I have sought information and comment, including the relevant papers.

I have asked both agencies to consider whether they might be able to resolve your complaints without further investigation, and will advise you of any developments in this regard. I have also conveyed to the Chief Executive of the Ministry your request that any work on the proposed memorial cease while this investigation is ongoing. As was prefaced at the meeting last month, the Chief Ombudsman does not have the authority to require such an assurance of the Ministry, however we have conveyed your stance on it, and will advise what the Ministry's position on this is when we can.

We will keep you updated on the investigations.

Contact person

If you wish to discuss this matter, please contact Manager Michael Cleary (04 460 9709 or michael.cleary@ombudsman.parliament.nz). Please also advise Mr Cleary if there is any relevant change of circumstances.

Nāku noa, nā



Chloe Longdin-Prisk
Acting Assistant Ombudsman

Encl Appendix: An Ombudsman's role

Appendix 1. An Ombudsman's role

An Ombudsman may investigate any administrative action by a public sector agency which affects someone in their personal capacity.

After investigating, the Ombudsman forms an opinion whether the action:

- appears contrary to law;
- was unreasonable, unjust, oppressive or improperly discriminatory;
- was in accordance with a rule of law, legislative provision or practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
- was based wholly or partly on a mistake of law or fact; or
- was wrong;

and whether:

- a discretionary power has been exercised for an improper purpose or on irrelevant grounds; or
- reasons should have been given for the decision.

The Ombudsman does not act as an advocate for either the complainant or the agency. The Ombudsman will form an independent opinion on the merits of the complaint.

The investigation process

The Ombudsman's first step is to notify the Chief Executive of the agency that an investigation has been commenced. The Ombudsman will seek comments and relevant information from the agency, complainant and third parties as necessary.

The complaint may be resolved during the course of the investigation—for example by the agency offering to remedy the matter of concern. If so, the Ombudsman may discontinue the investigation.

If the matter is not resolved, the Ombudsman will provide any party adversely affected an opportunity to comment before forming a final opinion. Once a final opinion is formed, the Ombudsman can make any recommendations he or she thinks fit.

If the Ombudsman decides to publish details of the matter, the parties would be advised.

Confidentiality

Ombudsmen must conduct their investigations in private,¹ and are required to maintain secrecy in respect of all matters that come to their knowledge. This is subject only to specific exceptions, one of which relates to explaining to parties the outcome of an investigation.

Because of this, we ask that you maintain the confidentiality of the Ombudsman's correspondence to you, until the outcome of this investigation is finalised. This does not prevent you from seeking legal advice or support on your complaint.

¹ Section 18(2) Ombudsmen Act 1975. This also applies to OIA and LGOIMA investigations: see sections 29 and 28, respectively.