

Email to Brodie Stubbs and Bernadette Cavanagh

Copy: PM Jacinda Ardern; Dame Naida Glavish

28 March 2022

Kia ora Koutou,

Re: The Chief Ombudsman's Final Opinion & The Way Forward With The Community

A copy of the Chief Ombudsman's final report has been received by our rōpū.

With the greatest of respect, we oppose your interpretation of Chief Ombudsman Boshier's recommendations in your recent statement:

*"The overall finding is that construction of the memorial at this site can proceed but recommends that the Ministry engage in a direct dialogue with opponents."*¹

This appears to be a rather narrow take on a significant national matter that has generated much grievance.

Your view diminishes the mana and depth of the Chief Ombudsman's substantive findings which show that the site has been tainted by the process conducted by the Ministry.

We urge you to take into account, the whole of the 31 page final opinion.

It lists gross failures of your government agency which include breaches of Te Tiriti and natural justice that a prudent leader would resolve before proceeding any further.

Namely:

"Para 1. I have found that the lack of consultation by the Ministry for Culture and Heritage/Manatū Taonga (the Ministry) before forming a preference in August 2018 for Dove-Myer Robinson Park/Taurarua as the site for the National Erebus Memorial was unreasonable. Specifically, my view is that the Ministry should have consulted the wider local community and all Tāmaki Makaurau iwi comprising the mana whenua before forming a preference for any site in Auckland.

Para 2. I also find that the Ministry acted unreasonably in failing to reply in October 2019 to correspondence about the resource consent.

Para 32. I find the lack of any contact with mana whenua interests prior to forming a preference particularly surprising given the obligations of consultation with indigenous peoples recognised at an international level and the Crown's partnership obligations under Te Tiriti/Treaty of Waitangi. Quite apart from whether it can be said that a legal obligation to consult mana whenua exists, my view is that before forming a preference for a site there should have been engagement with all mana whenua who had an interest in possible sites as a matter of good administration. That failure to do so here appears to me to be unreasonable."

The failure to consult the wider local community, and all iwi of Tāmaki Makaurau² before forming a preference for any site in Auckland for such a national memorial has not served Aotearoa.

¹ Email sent to complainants Friday 25 March 2022

² Comprising of 19 mana whenua in Tāmaki Makaurau

The failure to uphold Te Tiriti – Treaty of Waitangi obligations by choosing the Parnell site unilaterally ahead of consultation with iwi was a breach. So was transgressing the rāhui, not once but twice.

The failure to show sound administration of the official process so it had integrity was repeatedly raised in our evidenced submissions about the Ministry of Culture and Heritage.

The failure to take responsibility for deficient processes in favour of proactively releasing official public statements to the media saying the Ministry followed a “robust process”³. Yet after the Chief Ombudsman tested the facts, he determined that the process was “deficient”⁴.

Therefore, we invite the Ministry of Culture and Heritage to agree that:

1. The Taurarua/Mataharehare/Dove-Myer Robinson site is not suitable because any memorial built there would be subject to the “taint”⁵ noted by the Chief Ombudsman.

We also wish to draw to your attention to three other democratic processes that are currently a foot.

These are:

1. Stage two of the Chief Ombudsman’s investigation examining the actions of the Auckland Council concerning non-notified consent.
2. Hearings of public submissions by the Māori Affairs Committee and the Petitions Select Committee who were on stand-by pending release of the Chief Ombudsman’s findings. We have written to both today and shared the opinion with them.

The grievance felt by the community, Tangata Whenua, and 24,000 petition signatories will not subside while this matter remains unresolved. It calls for concessions by both sides - particularly the Ministry agreeing to act in a bone fide matter with an open mind.

Therefore, we propose in good faith:

1. Mediation. The final opinion of the Chief Ombudsman affords the Ministry of Culture and Heritage an opportunity to do the right thing by consulting with the community on a more appropriate memorial site.
2. Removal of the fencing, security, and Naylor Love staff. All stood down, while the three processes take place given the substantial public monies spent to date. Under those circumstances protectors of the park would by way of mutual agreement exit the park on the proviso both parties act in good faith by upholding the pact.
3. Taking a two week pause to reflect on how we work through the grievances identified which is a fair and a reasonable timeframe to consider the next steps.

Kindest regards,

Roger

Roger Burton

³ Media Release 2 December 2019 <https://mch.govt.nz/ministry-defers-landowner-approval-application-erebus-memorial>

⁴ Para 109 Chief Ombudsman’s Final Report

⁵ Para 129 Chief Ombudsman’s Final Report

Email to Roger Burton

25 March 2022

Re: Proposal for a meeting

Kia ora Roger

Thank you for your response.

I understand that you and the other complainants will have received a copy of the Ombudsman's final report. The overall finding is that construction of the memorial at this site can proceed but recommends that the Ministry engage in a direct dialogue with opponents. The Ministry fully supports the recommendations in the report and I suggest this is the basis for any meeting. You have acknowledged that a process of reconciliation will be needed if this memorial is not to be seen as a symbol of resentment by some, rather than healing. We agree that will be an important step to move from a position of opposition to a position where the families and other affected by the Erebus tragedy are embraced and welcomed by the local community.

In order to expedite this we are keen for a meeting to take place as soon as possible and Bernadette Cavanagh would make sure she is available to participate. Perhaps we could talk again early next week to finalise participants, date and agenda?

Regarding the recommendation in the report, you and others have said that if the Ombudsman found that construction could proceed that opponents would accept that finding and withdraw your opposition. Ahead of any meeting I would be interested in your advice on whether that is still the case.

On a related matter, as I am sure you will have noted, some of the current fencing blew over in the last day or so. On inspection, some of the fencing clamps had been removed creating a significant health and safety risk. This will now need to be rectified by our contractors who will be onsite in the next day or so.

I look forward to hearing from you

Ngā mihi

Brodie