

17 October 2021

Nā. Bernadette Cavanagh, CEO Ministry of Culture and Heritage

With copies to:

Pirimia Rt Hon Jacinda Ardern

Mr. Peter Boshier, Ombudsman

Mayor Phil Goff, Mayor of Auckland

Mr. Jim Stabback, CEO Auckland Council

Mr. Richard Northey, Chair Waitematā Local Board, and Board Members

Nā. Marama Royal, Chair Ngāti Whātua Ōrākei Trust

Mr. Rick Herd, CEO, Naylor Love, Commercial Construction

Tēnā koe Bernadette,

Late Friday, 15 October 2021 we were informed as a courtesy by the Office of the Ombudsman that Ministry of Culture and Heritage intend to start works.

We understand the Ministry's position is it will only undertake preliminary "*site establishment*" works and that all work will be "*reversible*".

This is an inexplicable position to choose given a Rāhui has been laid on the whenua.

We also understand that the Chief Ombudsman has taken several steps to ensure this matter is expedited while still investigated completely and transparently.

We appreciate the principled approach and are prepared to stand down while this investigation is underway, in exchange for a written commitment that the Ministry of Culture and Heritage will not commence any works on site.

Commencing even preliminary works is irreversible for the reasons set out below:

1. *Trangressing Tapu*: Construction contractor Naylor Love has already taken steps that have breached the Rāhui that is in place, and this was confirmed to you earlier this week¹. You are aware of the ramifications of such a breach led by Ministry of Culture and Heritage not just within Tāmaki Makaurau but across the Motu. The Rāhui affords not only protection of the whenua and Te Hā but the tikanga of the process and the mana of the affected parties. The impact of a breach on the Crown, Auckland Council and on all mana whenua (including Ngāti Whātua Ōrākei) is completely irreversible.

¹ Letter sent to all parties from Kaumatua of Ngāti Whātua Ōrākei 11 October 2021

2. *Transgressing the Whenua & Tupuna Rākau*: Bringing trucks, a site office and building a temporary haul road on the whenua is an irreversible act, especially when the plans show this is within the root zone of Te Hā. The risk to Te Hā of these actions, without understanding the root system is unacceptable. Any damage to Te Hā is irreversible.
3. *Transgressing the Ngāhere*: Any establishment of a perimeter fence requires the cutting back of trees as laid out in the arborist's plans submitted for resource consent. Cutting back trees is an irreversible act.
4. *Misappropriation of Taxpayer Funds*: Commencing any construction likely triggers financial obligations under the construction contract, incurring unnecessary additional costs to the taxpayer. This is an irreversible act.
5. *Public Health Risk*: Several construction companies have confirmed cases of Covid 19². We are in the middle of a pandemic. Steps to start construction places the community at unnecessary risk. This is an irreversible act.
6. *Incalculable Trauma to Erebus Whānau*: The pain caused to Erebus whānau of works starting and then needing to be stopped and reversed will cause unnecessary trauma and hurt, especially when the Ombudsman's investigation is already underway. This trauma is irreversible.
7. *Adverse Community Impact*: Today, several yoga classes took place on the lawn, yesterday a socially distanced wedding. The community use this space, now more than ever. Depriving them of open spaces during level 3 restrictions will have an impact on the mental health of those who need it right now. That impact is irreversible.
8. *Loss of Mana to Government & Local Government*: The reputational damage to both the Ministry and Auckland Council of any works commencing while the Ombudsman is investigating both, is irreversible.
9. *Breach of Good Faith*: We are still waiting on a response to several suggestions of a hui and of mediation. Starting works without responding to that is a breach of good faith. Any breach of good faith is irreversible.
10. *Perpetuation of the Moemoeā*: Finally, and importantly, any hope of the community accepting this memorial in their midst, and of the Erebus families finding healing on this site, and the end to the peaceful protection of the site will be lost, if this unnecessary show of force by the Ministry supported by Auckland Council proceeds. That damage is irreversible and will result in the ultimate failure of the memorial to deliver on its intent.

We believe the attitude to proceed comes from a place of force by the State rather than a place of resolution.

The Crown asserting control instead of respecting tikanga - of the Ombudsman and the community that is prepared to abide by the process.

To transgress Rāhui is not mana enhancing or the appropriate actions of a Treaty partner.

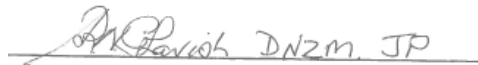
² Source NZ Herald, Stuff, Newshub

We will abide by any decision of the Ombudsman, should the Office find that the processes undertaken by the Ministry of Culture and Heritage have been fair and robust.

The consequence would be that our peaceful protest would end, provided that the Ministry of Culture and Heritage does not commence any works at all on site before that report is delivered.

Now is the opportunity to pause and protect the mana of all.

Ngā manaakitanga

A handwritten signature in black ink, reading "Rangimarie DNZM, JP", written over a horizontal line.

Dame Rangimarie Naida Glavish DNZM, JP
Chair, Te Rūnanga o Ngāti Whātua
Chief Advisor – Tikanga, Auckland and Waitematā DHBs
Long Serving Member Heritage NZ Pou Here Taonga