

13 October 2021

Pirimia Rt Hon Jacinda Ardern

Bernadette Cavanagh  
Jim Stabback  
Richard Northey  
Marama Royal

Tēnā koe e te Pirimia Jacinda

Thank you for your response to my letter that was received on 6 October 2021.

Unfortunately, the letter remains incomplete. It does not address the determining matters in full that have been transparently raised with you supported by mounting factual evidence.

The sequencing of your letter is disturbing also as it was dispatched on the same day the Chief Ombudsman calls out the conduct of your Ministry.<sup>1</sup>

This yet again elevates concerns that the government is not acting with clean hands and integrity in this matter.

The effect has caused widespread disquiet among a diverse collective of people.

When the Office of the Ombudsman's Office advises it is investigating complaints about the actions of your Ministry, in civil society one would expect some mana to be afforded to the process and wait until the outcome.

No-one should be above natural justice in Aotearoa. Least of all our government or Pirimia.

Yet your Ministry chose not to respect the formal notification that the Office of the Ombudsman was investigating.

Instead, it defiantly contacted Erebus whānau and Ngāti Whātua Ōrākei hapu who contacted us, saying construction was proceeding. Those actions speak of entitlement and elitism.

This pattern gives rise to what we believe has happened all along.

A decision was made by you and your Ministry that everyone has had to shoehorn with no respect of your own system's proper processes or protocols.

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15,000 plus voices who signed the petition will continue to challenge you on such conduct by calling it out.

They will get louder as time reveals a chronology of actions that place not only the integrity of the process at risk; the choices place your mana as Piriimia at stake.

**The core issue here is about values.**

1. How the government values mātauranga Māori, particularly higher lore that elevates the mana of the whenua and rākau tupuna above us all.
2. How the legislation and consent process values mātauranga Māori.
3. How the government values scrutiny of its processes by that of the Ombudsman.
4. How the government values the voices of the collective in consultation on issues that matter.

When allegedly the Ministry calls a member of mana whenua saying, “what can you live with?” a determination of location has already been made without affording the Treaty Partner equitable space to exercise mana motuhake and tino rangatiratanga.

This telegraphs a dangerous precursor to an already predetermined plan with an agenda to subordinate traditional tikanga to the will and desires of the Crown.

All hope is not lost though.

More can be gained in constructive dialogue, so we respectfully request a further hui with you and the Ministry team to discuss these outstanding matters:

- ***Cultural Transgressions:***
  - Your Ministry’s continued clear intention to undermine and breach a Rāhui laid on the whenua by Ngāti Whātua Ōrākei: Tautoko Witika, Marsh Grey, Maurice Watene and Steve Philips supported by hapū members.
  - We understand your Ministry has questioned the validity of the Rāhui and displayed disturbing lack of cultural competence in this regard. Matua Tautoko Witika is happy to fully brief your Ministry on this Rāhui so that they do not embarrass the Crown and be out of step with their own kaupapa of ‘culture and heritage’ kaitiakitanga any further.
  - We are confirming the Rāhui. It is not mana enhancing for the Crown and hapū to challenge a Rāhui in the public domain.
- ***Restricting Visibility of Mana Whenua:***
  - The Ngāti Whātua Ōrākei Taumata raised concerns regarding the size of the structure and made a formal request for it to be considerably smaller and for Ngāti Whātua Ōrākei to be involved in that process. That has not occurred.
  - The Taumata also sought confirmation of Erebus whānau support. We have seen their response and it falls well short of addressing this question.

- ***Insubordination of the Treaty Partner:***
  - The queries raised in this letter make clear the Taumata did not approve and were not aware of the proposed memorial. While that may be a matter for Ngāti Whātua Ōrākei, your Ministry knew there was an issue and based on OIA documentation, they planned to push ahead regardless, ignoring the mana and status of the Taumata. This is unacceptable from a Treaty Partner according to the principles of Te Tiriti.
  - We understand the Taumata have not yet had an opportunity to meet and fully discuss their response. It is completely culturally inappropriate to rush this process.
  
- ***Misrepresentation About Support:***
  - Your Ministry has misled both the Waitematā Local Board and the Taumata in relation to support from the Erebus whānau. They did not advise the Taumata (or the Waitematā Local Board) that there is no validation of the connections to flight TE 901 of 40% of those individuals on your contact list, notwithstanding that you answered a written Parliamentary question confirming they had been. It is concerning that your Ministry may have misled you.
  - Of those Erebus whānau the Ministry does know, the connections of, only 89 are what most would consider direct relatives (Spouse, sibling, parent, and child).
  - Your Ministry advised the Waitematā Local Board that of 288 Erebus whānau “at least 95%” support the site and advised the Taumata that the “vast majority of them support the site”. The Erebus whānau have never been asked the question, let alone provided any clear support. Your Ministry is manipulating the views and wishes of whānau of the victims of Erebus.
  
- ***Lack of Fulsome Assessment:***
  - When we spoke, you told me your Ministry could not find a Māori arborist to undertake a cultural assessment of Te Hā. We have identified several. We are in the process of commissioning such a report. We are also obtaining a detailed ultrasound of the extent of the root systems of Te Hā. We have been advised by the Auckland Council arborist these roots may extend 20 meters beyond the drip line. You cannot wholeheartedly claim the tree is not at risk, if you have no idea factually where the roots extend too without expert investigation.
  - Your Ministry has advised by way of OIA, they have undertaken no assessment of the future growth of the Tūpuna Rākau. According to experts in Pōhutukawa rather than simply an arborist it has 800 years to grow. Placing the memorial directly in the growth path of this incredible Rākau and cutting into potentially 20 meters of root structure, along with annual invasive cutbacks and your Ministry claim it will not impact the tree? With all due respect Pirimia, that is farcical. Trees grow. Concrete and Stainless Steel do not bend. Your Ministry only commits to not cutting back the tree during construction. That commitment is meaningless with no comprehension of legacy impact.

- There has been no proper cultural assessment undertaken of the whenua. Ngāti Whātua Ōrākei Board produced a 2-paragraph summary of their connection to the land. Your Ministry were advised in 2018 by Auckland Council that there were many other iwi who whakapapa to this whenua. Your Ministry not only denied those iwi an opportunity to provide their history. They have been denied any meaningful consultation at the outset even though Auckland Council recommended it.
- ***Earthworks Impact Withheld Purposefully:***
  - The extent of earthworks and the foundations of the structure were withheld from the public by Auckland Council until very recently. The detailed drawings show significantly more impact on the whenua than the resource consent plans, including foundations and tones of metal fill compacted to 95%. This detail was not shared with decision makers, despite Ngāti Whātua Ōrākei requirement is that this structure sits lightly on the land.
- ***Ministry Seeking to Leapfrog Process:***
  - The Ombudsman has now announced he is investigating both the Ministry and Auckland Council about their actions. We have requested that this process be allowed to be completed prior to works starting. That is a more than reasonable request. To ignore not only reveals a superiority perception; it may open a case in the future where natural justice has been breached knowingly by a Ministry under your watch.
  - You have advised the Ministry is intending to prepare a submission to the petition Committee in response to Margaret Brough's petition of over 15,000 New Zealanders. As an Erebus family member, she has the right to see that submission and respond before any works commence on site.
- ***Personal Agenda:***
  - You told me yourself, that "*you looked them in the eye and gave them my word*" when you chose to make a personal undertaking to the Erebus whānau.
  - For you this is personal, a promise made at any cost.
  - So too this is for me, for tikanga reasons. This Tupuna Rākau is our ancestor tree and we cannot allow it to be placed at risk.
  - Your verbal message from Hon Willie Jackson was inappropriate and rejected. The summary emailed after our conversation, is not how I recorded it. I will not be bought. What's more, I am offended that you think I can be.

I appreciate your Ministry is in a hurry to erect this structure on the whenua. However, there are many outstanding matters that require proper resolution before any further steps can be taken.

Therefore, I propose that all works are paused until:

1. The Rāhui has been appropriately lifted by those that laid it.
2. All parties have the final report from the Ombudsman.
3. An appropriate Māori arborist has assessed the Pōhutukawa tree.
4. A full sonar mapping of the root system is undertaken.
5. An appropriate cultural assessment of the site is completed.
6. Margaret Brough's submission has been fully heard and that process concluded.

7. The Māori Affairs Select Committee has responded to our request.

Now is the time to come together to resolve the current situation with principle and mana so an enduring decision can be collectively reached with the assistance of a suitable and appropriate mediator.

We seek this:

- To preserve the mana of the whenua and the Tūpuna Rākau.
- To preserve the mana of mana whenua.
- To preserve the mana of the Rāhui.
- To preserve the mana of the Erebus whānau.
- To preserve the mana of the community.
- To preserve the mana of the landowner, the Waitematā Local Board
- To preserve the mana of the consent issuer, the Auckland Council.
- To preserve the mana of the process.
- To preserve the mana of the government, the Ministry of Culture and Heritage and the Pirimia who ultimately presides herself over our national memorials.
- And most importantly, to bring final healing and peace for the Erebus whānau.

We remain ready and willing to hui in good faith and invite all parties to join us on the whenua.

Ngā manaakitanga,



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

