

6 June 2022

Nā. Bernadette Cavanagh,  
Chief Executive,  
Manatū Taonga, Ministry of Culture and Heritage

VIA EMAIL: Bernadette.Cavanagh@mch.govt.nz

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Tēnā koe Bernadette

Thank you for your letter of 3 June 2022.

I have been copied in on the correspondence between Roger Burton and Brodie Stubbs, as have you. Roger acts as a spokesperson for the collective, therefore we are all aware of what he is communicating, and we are all united in our views.

### **Mediation**

As you know mediation is something that we proposed in March 2021. Mediation was also suggested as part of our response to the Ombudsman and is referred to by him in his final report as being a “reasonable” step for the Ministry to take<sup>1</sup>. We believe a proper mediated process is the only path forward, should your Ministry still wish to continue with plans to place any memorial at Taurarua/Mataharehare.

Your Ministry has been unclear about the process you are attempting to undertake to meet the Ombudsman’s recommendation. We believe this is entirely deliberate.

Mr. Stubbs has referred to it firstly as a “*facilitation*”<sup>2</sup> process and then as a “*facilitator/mediator*”<sup>3</sup> process on other correspondence. Mr. Mita from Laidlaw Law has referred to the process as a series of “*pre-mediation meetings*” to be followed by “*mediation*” with Mr. Mita acting as mediator<sup>4</sup>. Erebus families who have spoken with Mr. Mita have, in dialogue with us<sup>5</sup>, confirmed their view that Mr. Mita is acting as the mediator in this matter. You refer to it in your letter as “*facilitation*”, but there are clearly different interpretations as to what “*facilitation*” means.

Our concerns regarding the process are compounded by the way your Ministry has acted since the findings of the Ombudsman were released.

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<sup>1</sup> Ombudsman’s report

<https://static1.squarespace.com/static/6036d198c3e0453bf0f4e7c0/t/6240ca592b50e515aee76575/1648413276854/Latest+Ombudsman+Report.pdf>

<sup>2</sup> Email Brodie Stubbs to Roger Burton 1 May 2022

<sup>3</sup> Email Brodie Stubbs to Roger Burton 24 May 2022

<sup>4</sup> Email Mr. Mita to Roger Burton – 6 May 2022

<sup>5</sup> Facebook screen shot between Brett Christmas and Save Robbie Park

- Your Ministry has made public statements setting out a pre-determined view that the memorial “could and should now proceed on site”<sup>6</sup>.
- Your Ministry has adopted a very narrow and self-serving view of the process, and it appears to be attempting to predetermine the outcome<sup>7</sup>.
- You have purported to appoint a mediator without consultation with any other parties. We have advised your Ministry that this is unacceptable. Mr. Stubbs’ inexplicable response was to suggest adding an additional mediator to the process to represent our views. There is only ever one mediator, and that mediator is agreed by the parties at the outset.
- With respect it is entirely irrelevant what your views are in relation to the suitability of Mr. Mita or Laidlaw Law to act as a mediator or as a facilitator. You have not sought our views or input. This creates a sense of unfairness and an imbalance of power which precludes any positive outcome. We have alternative mediators that we are happy for you to consider when you agree to attend mediation.
- Your Ministry refuses to answer even basic questions in relation to your process, instead suggesting that it will become clear once we engage in it. Controlling the information parties have, is how the Ministry has behaved in relation to the Erebus project from the outset. Continuing this behaviour strongly suggests that you have not taken onboard the lessons offered by the Ombudsman.
- Our questions in relation to the 19 iwi (who make up the mana whenua of Tamaki Makaurau) and the way Ministry intends to address the breach of the Treaty of Waitangi, remain ignored. As Chair of Te Runanga o Ngāti Whātua and the Co-Chair of the Iwi Chairs Forum that directly represents 35 maraes in Tāmaki Makaurau, I find that highly offensive.
- You continue to rely on the narrow views of the Ngāti Whātua Ōrākei Trust Board and ignore my correspondence to you in December 2020<sup>8</sup> setting out the appropriate decision-making authority in relation to dealing with Ngāti Whātua, the whenua and the tupuna rākau. This flawed behaviour was highlighted by the Ombudsman and is further underscored by the outcome in the recent High Court case decision of Palmer J<sup>9</sup>.
- Ngāti Whātua Ōrākei cannot claim primacy of this whenua, yet it appears you continue to act as if they are the only iwi you should engage with. You provide no indication or response as to how you intend to remedy this flawed approach with the significant other iwi who whakapapa to Taurarua/Mataharehare. The failure to consult, as required under Te Tiriti is unacceptable to all Māori across the motu and cannot be ignored by the Ministry responsible for upholding and protecting our culture.
- Further you have indicated in your recent submission<sup>10</sup> to the Petitions Select Committee, the Ministry and Auckland Council’s own understanding of Mataharehare was in direct conflict with the views of the Ngāti Whātua Ōrākei Trust Board. The history of the whenua is in dispute and is complex and is far from determined. Something your Ministry were made aware of as early as October 2018<sup>11</sup>. You failed then to engage more widely. It is critical now to engage with all iwi and hapu to ensure *all* views and oral histories are incorporated.

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<sup>6</sup> Media Release 2 December 2019 <https://mch.govt.nz/ministry-defers-landowner-approval-application-erebus-memorial>

<sup>7</sup> Email correspondence between MCH and the office of the Ombudsman 19 April 2022

<sup>8</sup> Letter to MCH from Dame Naida Glavish 23 December 2020 letter

<sup>9</sup> <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZHC-843.pdf>

<sup>10</sup> [https://www.parliament.nz/resource/en-NZ/53SCPET\\_EVI\\_111607\\_PET2684/5abf693fdfaf7fdff0eb8b6b25ec18224002bdba](https://www.parliament.nz/resource/en-NZ/53SCPET_EVI_111607_PET2684/5abf693fdfaf7fdff0eb8b6b25ec18224002bdba)

<sup>11</sup> Email from Ian Maxwell to Brodie Stubbs 9 October 2018

- The only meaningful response we have had to our questions to date is confirmation that you have “not ruled anything out”<sup>12</sup> in terms of the outcome of mediation/facilitation, and that therefore everything remains on the table, including moving the memorial to a more appropriate site.

### **Parties to the process**

Protect Mataharehare is a collective made up of a diverse group of individuals, Erebus families, community and Tangata Whenua who share their united concern about the current situation. Our grievance is further echoed by over 24,800 signatures of Margaret Brough’s petition presented to the Government.

Once we get to mediation, it is anticipated that individuals will choose to step forward to share their own views and exercise their individual authority. Those individuals are not limited to the six complainants.

### **Rāhui and Te Hā**

Your Ministry has breached the rāhui on site on two occasions. You continue to ignore the significant impact of this. I remind you that the rāhui is fully endorsed by Kīngi Tūheitia and the Kīngitanga and no works can commence on site until this has been appropriately lifted. This will not occur until all matters are fully resolved and the whenua and Te Hā are properly and *completely* protected. While we appreciate your assurance that no work will commence while the current process unfolds, you must also appreciate the rāhui and the protection that it affords the tupuna rākau and the whenua. We will not accept any further breach.

Recently as I stood under Te Hā it became clear to me that the Tupuna Rākau exists in me and therefore I am the Tupuna Rākau.

As we come to the first time Matariki is formally recognised as a nation, it is offensive that this Government would act so disgracefully towards an almost 200-year-old Pōhutukawa, Tupuna Rākau. With Matariki you could take this opportunity to fully protect Te Hā and ensure Heritage New Zealand prioritises his registration as a Wāhi Tūpuna, instead you attempt to use this as a bargaining chip.

The Matariki Pōhutukawa star speaks directly to Te Hā. That is his mana. And yet you disregard his status and threaten his mauri. How can you claim leadership of Manatū Taonga?

The complete disrespect Manatū Taonga has displayed towards Te Ao Māori and in particular the mauri and mana of Te Hā, is completely unacceptable. The name Manatū Taonga is not simply words on a page that you can pick and choose. It indicates the behaviour and the mantle of responsibility; the Ministry must assume, or it must relinquish the title. Your Ministry is not acting in accordance with its title.

### **Erebus Whanau**

Once again you close your letter referring to the distress being caused to some Erebus whanau, apparently in an attempt at emotional blackmail. Yet you continue to ignore the distress you are causing to the balance of the Erebus whanau. They have told me that your actions are replicating those of Air NZ and the Government in the immediate aftermath of the accident and have done so since the outset. Further we understand that you have not invited all Erebus family members to be involved in any mediated process but have limited this to only some. This is an extension of how you have treated

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<sup>12</sup> Email correspondence between Brodie Stubbs and Roger Burton 24 May 2022

Erebus whanau since the outset, favouring the views of some over others and attempting to silence the balance. You label those who support you as “family” and those who oppose, “protestors”. All Erebus families need to be involved in deciding next steps, not just those you have a close relationship with or who share your views.

If you care for the families as you say you do, then the very best step you can take is to find an appropriate site that is not tainted with controversy; and begin the proper consultation process to move the memorial there.

### **Camera and fencing on site**

The expensive and invasive camera and security fencing remaining unnecessarily on site while the process unfolds is seen by the community and mana whenua as an absolute statement of intent and arrogance by the Ministry. We once again respectfully request that you remove it.

### **Auckland Council**

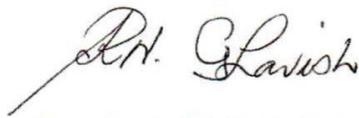
When we laid our complaint regarding the deficient and unreasonable process with the office of the Ombudsman, we did not separate out our concerns. The actions of the Ministry and the Council are inextricably linked in our view. The matter is hugely complex. It is not possible to meaningfully resolve our grievance by separating matters. Nor is it fair to expect the distressed Erebus families to be involved in a potential second process that may occur because of his findings into Auckland Council.

It would be presumptive to assume that the Auckland Council investigation will **not** have an impact on the Ministry’s decision-making in relation to the memorial. Our kaupapa has no ability to influence the process and decision making of the Ombudsman. If you have concerns with the timing of his investigation into Auckland Council, I suggest you raise those with his office as we have done.

We remain absolutely committed to partaking in a proper mediated process and have advised your office and Mr. Mita of this. We will do so, when the parties and the process is clear, the information required available to all and when the parties agree on the most appropriate mediator.

I will not be bullied into this process while these matters remain outstanding. Nor will any of the other complainants.

Ngā manaakitanga



Dame Rangimarie Naida Glavish DNZM, JP  
Chair, Te Rūnanga o Ngāti Whātua  
Co-Chair Pou Tangata Iwi Chairs Forum  
Chief Advisor-Tikanga Auckland/Waitemata DHBs