

4th March 2021

Rt Hon Jacinda Ardern

By email

Tēnā koe e te Piremia Jacinda

National Erebus Memorial

1. Thank you for your letter dated 3 March 2021 setting out your understanding of the planning and consultation that the Manatū Taonga Ministry of Culture and Heritage has taken leading to the decision to build the Erebus memorial at the Dove-Myer Robinson Park / Mataharehare Pā.
2. I appreciate the time you have taken to respond to my concerns. Unfortunately, however, my understanding of the background to this matter differs in many material respects. I have responded below using the headings in your letter. But first, as a matter of urgency can the Ministry please provide all documents¹ underpinning the timeline on iwi consultation which you provided with your letter. This timeline appears to differ materially from my understanding of the Ministry's consultation with iwi. I understand that these documents have been requested previously by other individuals under the Official Information Act 1982 and that the Ministry has refused to provide them on the basis that to do so would require substantial collation or research. It is evident from the timeline that the Ministry has now collated this information so please disclose it.

Site Selection

3. After reviewing the contemporaneous documents disclosed by the Ministry under various OIA requests, it is apparent that the decision to build the memorial at Mataharehare was predetermined by the Ministry, after superficial consideration of alternative sites, Cornwall Park, Maungakiekie/One Tree Hill, Wynyard Quarter and Whenua Rangatira/Bastion Point, and flawed consultation with mana whenua.
4. I understand from your letter that the Ministry has advised you that the views of Erebus and Ice Phase Families were purportedly a central consideration in respect of the memorial. In July 2018, the Ministry arranged for a Colmar Brunton survey of the Erebus and Ice Phase families' views on the memorial, including its design and location.
5. On 14 August 2018, the Ministry received the results of that survey which showed that the Erebus and Ice Phase families favoured a secluded and peaceful location with the memorial being somewhere for reflection and contemplation. Less than half of the surveyed families approved of the memorial as a place for picnicking. The families were asked to rank the

¹ Under the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987.
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importance of features of the site, and the highest-ranking feature was that it should be South facing (towards Antarctica). Mataharehare is not a quiet or secluded location. It is a popular inner-city park, near Tamaki Drive, the Port, railway, and heliport, and although contemplative at times, it is often used for picnicking and other family activities. Further, Mataharehare is North facing; the opposite of what the Erebus and Ice Phase families primarily wanted for the memorial location.

6. Shortly after the survey was undertaken in August 2018, planning and design consultants Boffa Miskell were engaged to assess the suitability of the Mataharehare site. There was no assessment of the other identified potential sites.
7. Boffa Miskell's initial assessment in August 2018 was far from an endorsement, noting:
 - 7.1 the existing community usage of the site could compromise its ability to house the memorial;
 - 7.2 the noise from Tamaki Drive and the Port, railway, and heliport were at odds with the families' desire for a place of remembrance, contemplation, and reflection;
 - 7.3 there was no logical connection or significance between the site and the Erebus disaster; and
 - 7.4 that the cultural significance of the site needed to be understood through consultation with mana whenua.

These points show that the site does not fit the Erebus and Ice Phase families' views on the memorial, nor that of mana whenua.

8. Boffa Miskell also noted that the Erebus flight departed from Auckland Airport in Mangere, therefore the landscape connection is with the Manukau Harbour (the South) not the Waitematā Harbour (the North).
9. Boffa Miskell recommended that it would *"be more appropriate to identify a location closer to Auckland Airport, with a view over the Manukau Harbour that has a connection and symbolism to Flight TE-90. This could be viewed as a destination in its own right and a true place for reflection and remembrance."* Again, this point is well made, but was disregarded by the Ministry.
10. The Boffa Miskell report was described in an email on 17 August 2018 from Brodie Stubbs (a Ministry employee) to Ian Maxwell (Auckland Council) as *"not a glowing endorsement of the site neither is it a fatal blow"*.
11. Following the receipt of the Boffa Miskell and Colmar Brunton report, Mr Maxwell offered, sensibly, to look for further sites including those overlooking the Manukau Harbour. Mr Stubbs declined this offer by email on 20 August 2018 saying instead that Sarah Ingham (Ministry) and he would *"come to Auckland (earlier the better) to discuss how we square things away with council on confirming the site and to visit the site with a couple of the family members we have a close relationship with"*.

12. At this point despite the views of the majority of the Erebus and Ice Phase families who were surveyed, and the experts engaged, the Ministry was determined that the memorial would be built at Mataharehare. I, unfortunately, must query whether there is something more concerning underlying Mr Stubb's insistence of proceeding in these circumstances given his mention of visiting the Mataharehare site with two families the Ministry has a "close relationship" with, whatever that means.
13. On 3 September 2018, the Ministry approached the Waitematā Local Board, the landowner for the site and Brodie Stubbs sent the (then) Chair of the Local Board, Pippa Coom, a plan of Dove-Myer Robinson Park indicating the area in which the Ministry proposed to locate the memorial. Pippa Coom responded that the Ministry had her personal support for the memorial to be located and at Mataharehare, and suggested that the proposal be put to the Local Board in confidence (i.e., without public notification) to seek "in principle" support.
14. Around 7 September 2018, the Ministry started to develop a plan to present to the Local Board to seek formal approval in principle for the memorial at Mataharehare. This plan is set out in an email from Mr Stubbs to Mr Maxell. We understand that on 12 September 2018, you confirmed by email that you were happy with the proposed Mataharehare site. At this stage, I imagine unknown to you, no consultation with mana whenua had occurred despite Boffa Miskell's firm recommendation in its report.
15. Ngāti Whātua Ōrākei was only consulted after the Mataharehare site had been selected, the alternative sites disregarded, and the Local Board had been approached for landowner approval in principle.
16. To expand, the consultation with Ngāti Whātua Ōrākei occurred only after the Local Board raised (rightly) concerns that mana whenua had not been consulted at about the Mataharehare Pā:
 - 16.1 On 4 October 2018 Simon Tattersfield, on behalf of the Local Board noted his concerns with the lack of iwi consultation.
 - 16.2 On 9 October 2018, the Local Board met and mandated that Ngāti Whātua Ōrākei had to be consulted. It is not clear whether any consultation with mana whenua would have eventuated at all if this mandate had not been issued.
 - 16.3 On 9 October 2018, the Ministry decided that they did not want to delay the Local Board's consideration of the issue of agreement "in principle" until November 2018 (a mere month later) so proposed adding "*mana whenua providing support for the proposal to locate the memorial at the park*" as a condition of the Local Board's agreement in principle.
 - 16.4 On 9 October 2018 in an internal email Mr Stubbs asked: "*if someone is able to provide a contact point at Ngati Whatua we will initiate discussions with the aim of securing agreement ahead of the meeting*".
17. It is only after this, in November 2018, that the Ministry advised Ngāti Whātua Ōrākei that Mataharehare was being "considered" as the location for the memorial. It was not provided with details of the other potential locations (all of which had been dismissed by the Ministry by that stage) and therefore was denied the opportunity to consider the full scenario.

18. It also appears to me that this initial “consultation” was done on an informal basis. There is no evidence of reports or plans being provided to Ngāti Whātua Ōrākei and as set out above, the Ministry’s approach to Ngāti Whātua Ōrākei was with the aim of “securing agreement”, rather than hearing from Ngāti Whātua Ōrākei their kaupapa on the location or design. The extent of the consultation with Ngāti Whātua Ōrākei on the location of the memorial appears to be discussions between Jamie Sinclair and Mr Stubbs.
19. On 12 November 2018, Mr Sinclair on behalf of Ngāti Whātua Ōrākei provided its support in principle via a four-paragraph letter. Mr Sinclair provided this support without being provided with sufficient detail, including the potential memorial’s design or scale because these matters had yet to be determined. That uninformed consent is meaningless.
20. On 16 November 2018, the Ministry publicly announced that it would be making a proposal to the Local Board for the memorial to be built at Mataharehare. As part of the announcement, the Ministry stated that the “[t]he view of families [had] been key around site selection”. As noted above, that, unfortunately, does not reflect the reality of the situation.
21. On 20 November 2018, the Local Board resolved that it would support the location of the memorial and grant landowner consent conditional on “the Ministry for Culture and Heritage will lead mana whenua consultation on the location”.
22. From late November 2018 until April 2019, the Ministry then undertook a rushed and opaque process to select a design for the memorial. This issue is discussed below.

Design Selection

23. The design selection process for the memorial was incredibly rushed:
 - 23.1 On 6 November 2019, the Ministry announced it was seeking expressions of interest for the design of the memorial.
 - 23.2 On 16 November 2018, the location of the memorial was publicly announced, and expressions of interest were sought from designers and architects.
 - 23.3 On 25 November 2018, the expressions of interest period was closed.
24. On 18 December 2018, the six shortlisted designers were provided with a document setting out the Ministry’s requirements for the final design. The document provided to them failed to set out the importance of the Māori history of Mataharehare, the archaeological significance of the site, or the cultural meaning of the site for mana whenua.
25. On 15 February 2019, the six shortlisted designers’ designs were received and David Barker (the Auckland Council Parks and Places Team Leader) emailed Pippa Coom and Shale Chambers (Waitematā Local Board) and said:

“The most important thing is not to end up in a position whereby the board are not comfortable, or won’t, grant LOA to the winning design. We therefore need to identify those designs which you don’t think work for Dove Myer Robinson. A lesser priority is identifying your preferred designs but we can still provide the Ministry with comments on preferences”.

26. The selection of the shortlisted designers was undertaken behind closed doors by the Ministry. The six shortlisted designs were reviewed by the Auckland Design Panel in February 2019. Tellingly, no input or attendance was sought from Ngāti Whātua Ōrākei or any other mana whenua.
27. On 14 April 2019, the final design *Te Paerangi Ataata – Sky Song* was announced as the final design. Mana whenua were not provided with an opportunity to provide input on this design before the selection and public announcement.
28. This was an incredibly short design selection process. By contrast, the design process undertaken for the comparable Christchurch earthquake memorial took two years.

Engagement with iwi

29. As you know, Mataharehare has historical significance for Ngāti Whātua Ōrākei.
30. The Ministry’s pre-application consenting memorandum provided to Auckland Council identified 15 different mana whenua groups as having an interest in the site.² Wider iwi were not consulted until 14 August 2019, at which time both the location and the final design had already been selected and widely publicised. Additionally, wider mana whenua groups were advised that “*Manatu Taonga have been working with Ngāti Whātua-o-Ōrākei, given their proximity to the proposed site, since the start of the project in mid-2018*”. This is misleading given that Ngāti Whātua Ōrākei were not advised on the site or the memorial until October 2018, and then were not meaningfully consulted on the location or the design.
31. The Ministry required that any mana whenua who wished to provide feedback on the site and design had to do so by 26 August 2019. They were given less than two weeks to respond on this matter; an unacceptably rushed deadline.
32. This consultation was retrospective window-dressing. The timing of the Ministry’s alleged consultation smacks of predetermination, and on anyone’s metric, it is fair to say that any feedback from mana whenua would have—at this stage—been highly unlikely to have been taken on board by the Ministry and result in changes to memorial site or design.
33. This point is clear when you consider that on 14 August 2019 (the same day the Ministry sought mana whenua feedback), Ngāti Whanaunga advised immediately that they wished to review the proposal in detail to provide their perspective. That request was dismissed by the Ministry on 27 August 2019 (the day after the Ministry’s deadline), who stated that “*we had not anticipated an extensive review of the design would be required by other hapu or iwi*”.³
34. The Ministry sought only to *advise* mana whenua of its decision to build the memorial at Mataharehare, rather than to actually *consult* with mana whenua in advance of making such a decision. This is predetermination and unacceptable.

Regulatory approvals

² Ngāi Tai ki Tāmaki, Ngāti Maru, Ngāti Pāoa, Ngāti Tamaoho, Ngāti Tamaterā, Ngāti Te Ata, Ngāti Whanaunga, Ngāti Whātua o Kaipara, Ngāti Whātua Ōrākei, Te Ahiwaru – Waiohua, Te Ākitai Waiohua, Te Kawerau a Maki, Te Patukirikiri, Te Rūnanga o Ngāti Whātua, Waikato – Tainui.

³ Email from Brodie Stubbs to Mike Baker, Ngāti Whanaunga on 27 August 2019.
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35. The resource consent application (prepared by Boffa Miskell) for the memorial filed on 16 September 2019 was misleading in respect of the mana whenua consultation on the project. The application states that *“Ngāti Whātua Ōrakei have been engaged with since the early design stages of the proposal”*. As I have already said, there was no mana whenua (including, Ngāti Whātua Ōrakei) involvement or consideration in either the design process or the site selection.
36. It is also concerning that the resource application proceeded on a non-notified basis, and no public notification of the application was made. This was clearly not appropriate given the scale of the design selected and the public outcry that was already being heard at this stage.

Pōhutukawa

37. To Māori, the pōhutukawa is a sacred tree. It is a messenger to Māori regards the lifting of rāhui regards particular food source in the sea. This particular pōhutukawa has stood in place at Mataharehare for over 180 plus years and is likely to be hurt by the construction of the memorial. The tree likely pre-dates the Te Tiriti o Waitangi. The arborist’s report you refer to is written from the perspective of Te Ao Pākehā and fails to consider how sacred this tree is to tangata whenua and mana whenua. The fact that it will require substantial pruning to accommodate the memorial is disheartening. The best way to ensure this tree is not harmed is to leave it be, as it has been for over 180 years, with its surrounding open spaces undeveloped. I understand that the original memorial design was set back further from the tree and was a lower structure. The design that the Ministry proposes to build now is larger and extends under the dripline of the pōhutukawa. The memorial will hinder the tree’s future growth.

The former Mataharehare Pā site

38. The wider Taurarua Pā and Mataharehare Pā site are an important historical place in Tāmaki Makaurau and Ōrakei. Mana whenua has and continues to have legitimate spiritual, ancestral, cultural, customary, and historic interests in the Taurarua Pā site. For good reason mana whenua value this land as taonga.
39. Despite the alienation of its land, mana whenua, and in particular, Ngāti Whātua Ōrakei, have maintained its ahi kā in areas of the central Auckland region.
40. Further, the proposed earthworks required to build the memorial will destroy a historical track to St Georges Bay which was used by Maori and William Swainson as far back as 1840.
41. I understand that while an archaeological assessment of the site was prepared, it was far from detailed. The archaeological assessment was prepared by Clough & Associates and provided to the Ministry on 1 December 2019. Again, this occurred after the public decision to proceed with the Mataharehare site.
42. While the report details extensively the European history of the site including the Kilbryde House, the report expressly reserves its findings and comments on the Maori cultural value of the site:

“This is an assessment of archaeological values and does not include an assessment of Maori cultural values. Such assessments should only be made by the tangata

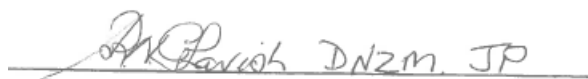
whenua. Maori cultural concerns may encompass a wider range of values than those associated with archaeological sites.”

43. Following receipt of this report, the Ministry did not re-engage with mana whenua and at no point was a detailed archaeological or historical account of the site from a Maori perspective sought. This is despite the clear reservation of the Clough & Associates report as to Māori cultural concerns and a Ngāti Whanaunga interest be provided in such a report. Instead, the Ministry relied on two paragraphs of historical context provided by Ngāti Whātua Ōrakei.

A place for all New Zealanders

44. I wholeheartedly agree that a national Erebus memorial is required for the families and friends of those who lost loved ones in the accident. However, the simple point is that the proposed site has no logical connection to the Erebus accident, or the victims and their families, and will come at a cost to mana whenua and the public.
45. The construction of the memorial, and in particular the chosen design—selected without any input from mana whenua—will dominate the landscape, is hard and inorganic, and jars with the natural features of the site. The failure of the design to be harmonious with the importance and natural features of Mataharehare and the whenua will erode substantially the mana whenua of iwi.
46. It appears to be a location based on what the Ministry considered to be convenient back in August 2018.
47. Ngāti Whātua Ōrakei, and other iwi, were entitled to full and proper consultation from the Ministry and Local Board before such important decisions were made. In this case, the Ministry and Local Board have failed to ensure that they met their obligations to consult with mana whenua in a meaningful manner. The decisions therefore made by the Ministry and Local Board leading to the decision to construct the memorial at Mataharehare are tainted with unfairness.
48. Please delay any construction until both the Ministry and Local Board undertake proper and fulsome consultation with mana whenua. That is the right course of action for a responsible government to take. I am confident that with open dialogue on this issue both the Ministry and Local Board will realise that Mataharehare is not an appropriate site, and an alternative location will need to be found for the Memorial.
49. Please provide your urgent response to this letter by 5.00 pm, 10th March 2021.

Ngā manaakitanga



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