

Our ref 557680 (Complaint grounds: 557681,
560779, 560780, 560782)
Contact Michael Cleary
6 October 2021



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Tēnā koutou

Investigation of complaints against Ministry for Culture and Heritage and Auckland Council – National Erebus Memorial

Further to Acting Assistant Ombudsman Chloe Longdin-Prisk’s letter of 4 October 2021, advising that I am investigating your complaints against the Ministry for Culture and Heritage and Auckland Council, I have now received a response from the Ministry regarding your request that work on the Memorial cease while my investigation is carried out.

The Ministry advised me that it had considered the request but was of the view that *‘the process is robust and it is appropriate to proceed with the construction of the Memorial’*. It indicated there was no intention for works to be paused, despite notification of my investigation, and observed that if you wish to halt construction it is open to you to seek an injunction through the High Court.

I have subsequently written to the Ministry advising that:

...it is not an Ombudsman’s role to second-guess the decision maker or substitute his or her own view in this context. Where a person lodges a complaint to me under the Ombudsmen Act 1975 (OA) that does not legally prevent the agency from proceeding to implement its decision. However, it is important for me to make clear that my role in undertaking an investigation under the OA is to consider the substance of the act or decision and the procedure followed by the agency involved and then to form an independent opinion as to whether the act or decision was properly arrived at and was one that the Ministry could reasonably make. Should the facts determined during the course of my investigation find that certain parts of the process lacked natural justice, procedural fairness, or did not sufficiently take into the account the Crown’s

obligations to its Treaty partner, it is open to me under the OA to recommend the decision be revisited, and report my opinion and recommendations to Parliament.

I expressed surprise and disappointment with the Ministry's advice that it will not cease work while my investigation into its process and decision-making is carried out, and noted:

...It is indeed important that all parties can have trust and confidence in this decision of the Ministry's, and I look forward to being in a position as the independent Officer of Parliament to find the same once I have reviewed all the evidence and had the opportunity to meet with you to hear the Ministry's submission.

I observed that the Ministry's intention to proceed with construction will significantly limit my ability to make any recommendations that may be required upon completion of my investigation, and noted:

... To be frank, the decision to proceed with construction seems to me to demonstrate a lack of recognition for the importance of my constitutional role and the need for independent oversight of departmental decision making by an Officer of Parliament.

I therefore strongly encourage the Ministry to review this decision and propose that we urgently meet to discuss the situation. I may decide to investigate whether the decision to refuse to cease work is unreasonable in all the circumstances.

I will write to you again when I have heard further from the Ministry.

Yours sincerely



Peter Boshier
Chief Ombudsman