

## Memo to the Chief Executive

To	Tumu Whakarae   Chief Executive
From	Glenis Philip-Barbara, Deputy Chief Executive Delivery Group
Date	24 April 2023
Decision due	26 April 2023
Subject	Construction of the National Erebus Memorial
Copies to	Erebus Memorial Governance Group
Appendices	Appendix 1: Addendum to Geotechnical Report Due to Recent Slips - Dove Myer Robinson Park, Parnell

### Purpose

1. On 2 November 2022 you instructed the Erebus Programme to prepare a final decision memo for your consideration as soon as practicable.
2. This memo provides a record of significant decisions up until November 2022. It then sets out the events that have taken place since November 2022 and actions that have been taken in response. It specifically addresses the impact of the extreme and unprecedented weather events of late January and early February 2023 and the significant consequence of these events on constructing the National Erebus Memorial (**the memorial**) at Taurarua/Dove-Myer Robinson Park (**DMR**), Auckland.
3. Two options are provided for your consideration and decision: Option 1 – continue to pursue the construction of the memorial, noting the updated advice from geotechnic engineers and Auckland Council; or Option 2 – seek an alternative site for the memorial.

### Executive summary

4. In November 2017 the government announced that Manatū Taonga would lead the construction of the National Erebus Memorial to commemorate the 257 people who died in the Erebus disaster, New Zealand's worst civil accident. In 2018, working with the families of those who died, Auckland Council, Ngāti Whātua Ōrākei Trust and others, DMR was identified as the preferred site for the memorial. Following a design process, resource and archaeological consents and landowner approval were granted in 2020. During 2021, efforts to establish the construction site were met with opposition from a group of local residents and their supporters. In late 2021, Manatū Taonga temporarily halted construction pending an investigation by the Chief Ombudsman.

5. The Chief Ombudsman's recommendation, issued in March 2022, recommended Manatū Taonga take steps to attempt to resolve the complainant group's sense of grievance about the memorial before deciding to commence construction on the site.
6. In November 2022 you were provided with a memo noting the reasonable steps undertaken by Manatū Taonga to address the Chief Ombudsman's recommendation and directed the Erebus Programme team to proceed to prepare a final decision memo for your consideration as soon as practicable, while continuing to engage with interested parties.
7. Later that month Manatū Taonga met with the Ombudsman and provided an official response to the recommendation, outlining how we had addressed the concerns in the Ombudsman's report. On 1 February 2023 you were informed that the Ombudsman had completed their investigation and would take no further action in regard to the complaint.
8. As some of the matters relating to the complaint related to the actions of the Auckland Council (specifically the resource consent and public consultation processes), the Ombudsman launched a separate investigation of the Council. This investigation was delayed until the investigation into the complaint against the Ministry was completed. The investigation of the complaint against the Council was completed on 10 March 2023. That investigation found the Council did not act unreasonably in regard to its actions (see below for further detail) and that no further recommendations from the Ombudsman were appropriate or necessary.
9. Manatū Taonga has continued to engage with Erebus families and their support remains strong for constructing a memorial. Manatū Taonga has also continued to build a strong relationship with Ngāti Whātua Ōrākei Trust. The Trust has also engaged with those opposed to the memorial to help address concerns raised around tikanga. We have been responsive to opponents and have reiterated our commitment to meeting with them to discuss concerns and hopefully resolve them.
10. On 22 November the Waitematā Local Board (**WLB**) considered and deferred a decision on our request for an extension to the National Erebus Memorial landowner approval, due to expire on 7 December 2022, 'for an initial period of three months, until the local board obtains further information, and has a reasonable opportunity to consider that information'. Manatū Taonga has responded to subsequent information requests from Auckland Council but has also communicated our position (as has Crown Law, on behalf of Manatū Taonga) that, even if Manatū Taonga's request is not granted and the timeframe within the Landowner approval letter is not extended, the underlying Landowner approval granted for the memorial and associated infrastructure at DMR remains in place.
11. Naylor Love, the construction contractors, had previously advised that if work on the site had not commenced by 30 March 2023, it would have to be delayed until Spring 2023. Site establishment would then take 4-6 weeks and includes repricing the contract, securing resources, and refreshing plans. Naylor Love has continued to support the Ministry while we awaited the results of the Ombudsman's investigations.

12. On 27 January 2023 a state of local emergency was declared for Auckland due to severe weather from ex- Cyclone Hale, which caused extensive flooding in Auckland. The rainfall which produced the widespread flooding across Auckland, has been described by NIWA as at least a 1-in-200-year event.<sup>1</sup> This was followed by further adverse weather on 1 February and then ex-tropical Cyclone Gabrielle between 12-14 February, which caused widespread damage to communities across the North Island and resulted in a National State of Emergency being declared for seven affected regions, including Auckland. This event is regarded as one of New Zealand's worst weather disasters.<sup>2</sup>
13. Three landslips have appeared along the cliff face adjacent to the site of the memorial as a result of these events, including one that is directly downslope of the memorial location.
14. Manatū Taonga commissioned a geotechnical engineer's report (7 February 2023) to assess the stability and ongoing suitability of the site for a national memorial. The report (received 11 April) concludes that the long-term stability of the site does not meet the minimum required factor of safety in several respects. This report was also provided to Auckland Council and their geotechnical expert has also provided advice regarding constructing a memorial on an eroding coastline. For reasons outlined in this report outlined in below and in the appended report, we present two options for your consideration:
  - a. Option 1 – continue to pursue the construction of the memorial, noting the updated advice from geotechnic engineers and Auckland Council.
  - b. Option 2 – seek an alternative site for the memorial.

## Previous decisions

15. On 28 November 1979, all 257 passengers and crew on Air New Zealand Flight TE901 lost their lives when their plane crashed into Mt Erebus in Antarctica. It remains the worst civil accident in New Zealand's history. In November 2017 the Prime Minister agreed to proceed with a National Erebus Memorial to be built by Manatū Taonga in a suitable location in New Zealand ([BR2017/470](#)).
16. During 2018 Manatū Taonga worked with the families of those who died, Auckland Council and others to determine a suitable location for the memorial and determine what kind of features of a possible memorial were most preferred by them ([BR2018/164](#) and [BR2018/407](#)). By August 2018 the site of DMR had been identified as the possible site of the memorial ([BR2018/471](#)) and Cabinet approved \$3.10 million for its construction. [DEV-18-MIN-0244, CAB-18-MIN-0541]
17. The design of the memorial was chosen by a competition, and the final design was approved in March 2019 ([BR2019/111](#)). In March 2020, Auckland Council granted resource consent, and in September 2020 Heritage New Zealand Pouhere Taonga

<sup>1</sup> Auckland suffers wettest month in history, NIWA, 2 February 2023, <https://niwa.co.nz/news/auckland-suffers-wettest-month-in-history>, accessed 20 April 2023.

<sup>2</sup> Climate Summary for February 2023, NIWA, 3 March 2023, <https://niwa.co.nz/climate/monthly/climate-summary-for-february-2023>, accessed 20 April 2023

granted an archaeological authority. On 7 December 2020 Manatū Taonga received the landowner approval letter from Auckland Council.

18. As outlined in greater detail in the memo of 2 November 2022, in March 2021 the then Chief Executive of Manatū Taonga agreed to the commencement of construction on the basis all necessary pre-conditions for construction had been satisfied. However, following protest action at the site, site establishment was halted while attempts were made to resolve the concerns of those opposed to the construction of the memorial (**the opponents**). In August 2021 the then Chief Executive agreed that reasonable attempts had been made to resolve the concerns and agreed to recommence construction ([Memo to CE 26 August 2021](#)). However, work was again unable to proceed, as on 4 October 2021 Manatū Taonga was notified of an investigation under the Ombudsmen Act 1975 into complaints from some of the opponents about the project.
19. The Ombudsman's final opinion and recommendation was received on 24 March 2022. The Ombudsman's report concluded a more thorough consultation process could have been undertaken to select the site in 2018, but acknowledged considerable consultation took place following the selection. The Ombudsman did not find the ultimate decision to proceed with DMR to be wrong.
20. At that time, Manatū Taonga committed not to proceed with site establishment and to working with the opponent group and other persons with an interest in the project to address the Chief Ombudsman's recommendation which noted: *"...before a decision is made to begin construction on the site the Ministry undertakes reasonable steps to attempt to resolve the sense of grievance that the failure to consult more widely has created"*. The steps the Ministry took to address the recommendations are outlined in detail in the memo of 2 November 2022.
21. On 2 November you noted the reasonable steps undertaken to date by Manatū Taonga to address the Chief Ombudsman's recommendation and directed the Erebus programme team to proceed to prepare a final decision memo for your consideration as soon as practicable, while continuing to engage with interested parties (option 1b, [Memo to the Chief Executive MCH - Construction of the National Erebus 2 November 2022 - Final](#) ).

## **Actions taken since 2 November 2022**

### ***Engagement with key parties***

#### Families

22. Erebus families' commitment to seeing a national memorial being built remains strong, as evidenced by a letter sent to the Deputy Chief Executive Delivery on 10 October 2022, which reaffirms their commitment to seeing the memorial built at DMR. This letter contains the names of more than 500 Erebus family members, and members of Operation Overdue. On 7 November you and members of the Erebus programme team met with a group of family members as part of our ongoing engagement with interested parties.

23. On 28 November 2022, the 43rd anniversary of the accident, Ngāti Whātua Ōrākei hosted a pōwhiri for Erebus whānau at Ōrākei Marae. The purpose of the gathering was for Ngāti Whātua Ōrākei to extend manaakitanga and support to the families and deepen connections, while acknowledging those who lost their lives. The Ministry helped support this event.
24. As part of our work to increase positive community engagement, the Ministry has been exploring how to make the Erebus story more accessible to New Zealanders. To this end we have established an Erebus Narrative public history workstream, to help ensure the accident and its long-term effects are understood and appreciated by current and future generations of New Zealanders. Erebus family members are key stakeholders in the development of this project. The narrative workstream is being developed in four ways: (1) undertake a stock take and promote Erebus content which already exists; (2) curriculum specific work; (3) long-term recognition and understanding; and (4) opportunities for public facing commemorative activities.

#### Ngāti Whātua Ōrākei

25. Manatū Taonga has continued to build a strong relationship with Ngāti Whātua Ōrākei Trust. Our position regarding tikanga Māori and cultural matters at the memorial site continues to be guided by the Trust. The Trust issued a media release dated 3 March 2021 in support of the memorial and reiterated this support in a letter to the Prime Minister in July 2022 ([Media Statement-Ngati-Whatua-Orakei Erebus-Memorial 3 March 2021](#) and [Ngati Whatua Orakei to Prime Minister Re Erebus July 2022](#) ).
26. Ngāti Whātua Ōrākei Trust has made multiple attempts to resolve the tikanga concerns raised with Manatū Taonga by those opposed to the construction of the memorial at DMR. On Monday 7 November 2022 Manatū Taonga representatives met with Te Reu Roa, the tikanga advisors to Ngāti Whatua Ōrākei Trust and Trust Chair Marama Royal at Ōrākei Marae. At that meeting Ngāti Whatua Ōrākei articulated their concern that, despite many attempts to meet with and discuss cultural issues directly with those opposed to the construction of the memorial at DMR, their requests had been ignored.
27. At that meeting, Manatū Taonga and Te Reu Roa discussed the two key issues raised by the opponents, firstly that the construction of reversible works (fences) was in breach of a rāhui and therefore tikanga, and secondly that a pōhutukawa rākau nearby was home to an ancestor who had been communicating with a member of the opposing group and had instructed them that the build should not go ahead. This meeting also provided an opportunity for Manatū Taonga to brief a wider cohort of Ngāti Whātua Ōrākei cultural leaders on the memorial project.
28. After careful consideration of the information provided, Te Reu Roa advised they could see no merit in the issues raised by the opponents on cultural grounds. The committee further reiterated their support for the project and their ongoing availability to advise Manatū Taonga on cultural matters.

29. To further cement the relationship, Manatū Taonga is currently in the process of formalising a partnership arrangement with Ngāti Whātua Ōrākei Trust. While Manatū Taonga and Ngāti Whātua Ōrākei have worked together on programmes unrelated to the memorial, a more formal long-term arrangement will set out our respective roles while we work together on this specific kaupapa, and until such a time as the memorial is constructed. The agreement will also take into consideration the work underway to tell the stories of Erebus families.

#### The opponent groups

30. As outlined in the memo dated 2 November, construction of the memorial at DMR has been opposed by a number of people, leading to a complaint to the Ombudsman in late 2021. Reasons given for this opposition include the concerns around engagement with the local community and iwi, the notable pōhutukawa tree, as well as some cultural concerns.

31. Following meetings between senior Manatū Taonga leaders and the opponents at DMR, you sent a letter of acknowledgment on 2 November addressed to those who laid the complaint with the Ombudsman ([Chief Executive MCH to 9\(2\)\(a\) 2 November 2022](#)). Manatū Taonga received a reply from 9(2)(a) (4 November), who acknowledged receipt of the letter and stated the letter would not be shared wider in expectation that they would be hearing back from the Ministry regarding mediation.

32. Manatū Taonga responded by email dated 8 November ([Correspondence between MCH and 9\(2\)\(a\) 8 November 2022](#)), noting that as initial steps to develop a facilitated process to help address their concerns were unable to be progressed, we had decided to continue with direct engagement instead.

33. Manatū Taonga noted this direct engagement had been positive and enabled the Ministry to further understand and consider the opponents' concerns. We reiterated our commitment to further meetings with 9(2)(a) and his group to continue discussing concerns and hopefully resolve them, and confirmed we did not intend to revisit the proposal for mediation. Since this time, direct engagement has continued with the opponent groups, mainly through written correspondence.

#### The Office of the Ombudsman

34. As noted in the memo dated 2 November, the Ministry considers we have taken reasonable steps to address the Chief Ombudsman's recommendation. On 15 November, you and the Deputy Chief Executive Delivery met with the Chief Ombudsman to inform him of the steps Manatū Taonga took to give effect to the recommendation.

35. This meeting was followed by a formal letter (dated 16 November) confirming those steps. On 1 February 2023 the Chief Ombudsman informed you their statutory role in relation to the investigation was complete and that there would be no further action in respect to the Ministry ([Office of the Ombudsman to Chief Executive Manatū Taonga 1 February 2023](#)).

36. On 20 March the Office of the Ombudsman released the Chief Ombudsman's final opinion regarding complaints about Auckland Council's role in the memorial project.

In particular, the Ombudsman was asked to investigate the Council's approval and consents process for the memorial in DMR, the decision not to notify the resource consent application, and for granting a building consent at the pre-consenting stage. The complainants also raised concerns about the consultation carried out by Council officials on behalf of the Waitematā Local Board and alleged the Council was biased toward Manatū Taonga.<sup>3</sup>

37. The Chief Ombudsman found that in two respects the Council had acted unreasonably: the Council was wrong to recommend to the Local Board its support of the landowner approval application in September and December 2019 before all the conditions set out in the board's in-principle resolution had been fulfilled; and the Council acted unreasonably when it failed to share an environmental consultant's report with the Local Board before it gave its in-principle support for the Ministry's application for landowner approval. However, the Council's procedures were reasonable in other respects, and the Ombudsman considered the consultation process carried out in September/October 2019 was adequate. In summarising his findings, the Chief Ombudsman stated: 'I consider that the results of the consultation were reported accurately and adequately to the Local Board. I consider that Council was justified in granting a building consent exemption in respect of the memorial.' ([Final opinion on Decision making in relation to the National Erebus Memorial 10 March 2023](#)) The report concluded that no recommendations from the Ombudsman were appropriate or necessary.

### ***Landowner approval conditions***

38. On 17 November 2020, Waitematā Local Board (**WLB**) approved the Ministry's landowner approval application for the memorial. On 7 December 2020, Auckland Council sent a letter to Manatū Taonga recording 'formal landowner approval on behalf of Auckland Council.' The letter set out that the landowner approval granted by the WLB was subject to conditions including: '23. This written approval expires two years from the date of issue of this letter'.

39. Between December 2020 and October 2022 Manatū Taonga was unable to commence construction due to reasons outside the control of the Ministry. These delays arose due to protest action at the site, COVID related restrictions, the Ombudsman's inquiries, and the need to address the Ombudsman's recommendations.

40. Manatū Taonga contacted Auckland Council requesting an extension of the landowner approval before it expired on 7 December 2022. On 4 November 2022 Manatū Taonga received a request from Auckland Council seeking information in response to this request.

41. On 9 November 2022, Manatū Taonga received a letter from Genevieve Sage, Chair of WLB, requesting that Manatū Taonga not carry out irreversible works until

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<sup>3</sup> <https://www.ombudsman.parliament.nz/news/chief-ombudsman-concludes-investigation-council-decisions-over-national-erebus-memorial>

the release of the Ombudsman's final report into Auckland Council ([Letter to MCH 8-11-22\(2\) from Genevieve Sage Chair Waitemata Local Board](#)).

42. On 10 November 2022 we received a request, by email, from Auckland Council seeking information on steps Manatū Taonga had taken to address concerns raised about the memorial. It was our understanding that this information would be used to inform a report going to WLB in advance of their meeting on 22 November 2022.
43. At our instigation, on 11 November, you, the Deputy Chief Executive Delivery and the memorial programme manager met with WLB Chair and Deputy Chair. This meeting was seen as an opportunity to meet the new Chair and explain our position. Following this meeting, Manatū Taonga sent a letter to the Chair in response to the 9 November letter ([Chief Executive MCH to Chair Waitemata Local Board 11 November 2022](#)).
44. On 11 November Manatū Taonga also responded to Auckland Council's 4 November letter confirming Manatū Taonga wished to extend the two-year timeframe set out in condition 23 of the formal landowner approval letter provided on behalf of Auckland Council and provided the information to support our request. This letter was also attached to our response to the Council's email request of 10 November, with the request that it be provided as an appendix to the report for WLB ([Manatū Taonga to Auckland Council 11 November 2022](#)).
45. This was followed by a letter from Crown Law to DLA Piper (counsel for Auckland Council) on 16 November, which set out the legal position Manatū Taonga takes regarding condition 23 of the landowner approval for the memorial. This information was provided so it could assist the Council's own consideration of the issues ([Crown Law to Auckland Council 16 November 2022](#)). Legal counsel for Auckland Council responded on 21 November 2022, stating their view that the Ministry's legal position contained significant misapprehensions regarding the statutory framework, and its view that the Board did not need a delegation to make a decision on extending the expiry date of the landowner approval letter ([20221121 Letter of response re National Erebus Memorial \(DLA Piper to Crown Law\)\(77178514.2\)](#)). This was followed by a more substantive letter on 27 February 2023, reiterating counsel for Auckland Council's view on the legal position ([20230227 letter of response re National Erebus Memorial \(DLA Piper to Crown Law\)\(77268373.3\)](#)).
46. At its meeting on 22 November, WLB considered and deferred a decision on our request for an extension to the memorial landowner approval, 'for an initial period of three months, until the local board obtains further information, and has a reasonable opportunity to consider that information.' This further information included: our response to address the Ombudsman's recommendation; any changes to design plans, method statements, or tikanga at the site as a result of recent engagement with those who hold concerns; and options to address cultural issues and the future management of the site with respect to the care of the notable pōhutukawa and memorial. WLB also indicated it would await the Ombudsman's final report in response to complaints into the process undertaken by Auckland Council and updated legal and other advice regarding the options available to the local board in light of the information received.



47. WLB also requested that Manatū Taonga undertake no work before a decision is made on whether to extend the time for landowner approval. It also requested that all fencing and other equipment be removed from the site as soon as practicable.
48. On 12 December 2022, Manatū Taonga responded to Auckland Council's confirmation of the Board's decision to defer ([Manatu Taonga to Auckland City Council 12 December 2022](#)). The response directly addressed the information requested by WLB to ensure it had all the relevant and accurate information necessary.
49. Our response also reiterated that Manatū Taonga maintains the position that WLB does not need to wait for the Ombudsman's report into Auckland Council to proceed with a decision, and that this investigation is not relevant to whether or not a decision to amend a condition concerned with mitigating adverse impacts on the park should be made.
50. Manatū Taonga reiterated it is committed to (and has been) working cooperatively with Auckland Council and WLB throughout this process. In the spirit of cooperation, and while we awaited the decision of the Board, Manatū Taonga also confirmed it would temporarily remove the fenced construction area of the memorial so the community could enjoy more of the park's green space over the summer months. The work was completed on Wednesday 7 December 2022.
51. Finally, the response confirmed the Ministry's position that, even if Manatū Taonga's request is not granted and the landowner approval letter is not extended, the underlying landowner approval granted for the memorial and associated infrastructure at DMR remains in place. Auckland Council partially responded on 16 December 2022 ([Ltr to MCH 16122022](#)), requesting further information, including on whether a decision had been made by the Chief Executive to proceed with construction.
52. On 21 December 2022, Crown Law Office wrote again to Auckland Council's legal counsel, reiterating Manatū Taonga's legal position with regard to condition 23 of the landowner approval letter ([Crown Law to Auckland Council 21 December 2022](#)). Legal counsel for Auckland Council responded on 23 December 2022, noting that a decision on the application for an extension would not be made until after the Ombudsman's final report was received and considered ([Auckland Council \(DLA Piper\) to Crown Law 23 December 2022](#)). Counsel advised that a further explanation of Auckland Council's legal position would be provided within a reasonable timeframe in the New Year. That explanation was consistent with the previous communications from counsel instructed by the Auckland Council and advised that the Council do not agree with Manatū Taonga's interpretation of the statutory framework applying to the Council and WLB.
53. As stated above, both Ombudsman's reports have now been completed. However, the recent extreme weather events have delayed further the WLB's consideration of the request for an extension to the landowner approval. This leaves the Ministry in a position of not having certainty of landowner approval. Further to this, the consequences of recent severe weather events have brought further uncertainty to the construction of the memorial at DMR.

## Impact of the extreme and unprecedented weather events

54. On 27 January 2023 a state of local emergency was declared for Auckland due to severe weather from ex-Cyclone Hale. The significant rainfall produced widespread flooding across Auckland, which NIWA has described as at least a 1-in-200-year event.<sup>4</sup>
55. This was followed by further adverse weather on 1 February and then by ex-tropical Cyclone Gabrielle, which caused further widespread damage to communities across the North Island and resulted in a National State of Emergency being declared for seven affected regions, including Auckland. This event is regarded as one of New Zealand's worst weather disasters.<sup>5</sup>
56. These weather events have caused significant land movement, including at DMR, where three landslips have occurred along the 17-metre-high cliff face adjacent to the site of the memorial. One of the landslips directly downslope of the memorial location has significantly undermined the cliff-top path and the area is currently closed-off from public access.
57. Manatū Taonga commissioned our geotechnical engineers to undertake a further site review and provide an addendum report on their findings in the original geotechnical investigation report provided in 2019. In addition to the evidence of the slips, the engineers were asked to take into consideration the intent that the memorial and its surrounding landscape would be intact for 100 years or more.
58. Information regarding the updated geotechnical engineering advice we received on 11 April 2023 is outlined in more detail in the next section. Considering the previous actions, and the recently received information on the status of the land, we propose there are two options for progressing the National Erebus Memorial.

## Options for proceeding with construction of the memorial.

59. We propose the two options are:

Option 1 – continue to pursue the construction of the memorial, noting the new advice from geotechnic engineers and Auckland Council

Option 2 – seek an alternative site for the memorial.

### ***Option 1: continue to pursue the construction of the memorial, noting the new advice from geotechnic engineers and Auckland Council***

60. Option 1 would see construction of the memorial at DMR, taking into account the newly assessed risks.

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<sup>4</sup> Auckland suffers wettest month in history, NIWA, 2 February 2023, <https://niwa.co.nz/news/auckland-suffers-wettest-month-in-history>, accessed 20 April 2023.

<sup>5</sup> Climate Summary for February 2023, NIWA, 3 March 2023, <https://niwa.co.nz/climate/monthly/climate-summary-for-february-2023>, accessed 20 April 2023

61. Manatū Taonga holds a resource consent issued by Auckland Council and the archaeological authority issued by Heritage New Zealand Pouhere Taonga. Both are valid for five years from the date of granting and are not due to end until March 2025 and September 2025 respectively. They are for the memorial as currently designed. The resource consent could be invalidated if there were to be significant changes to the design. The status of the landowner approval has already been referred to above.
62. On 11 April we received the updated geotechnical engineering report (Report appended, correspondence [FW: Erebus Memorial - Geotechnical Addendum Report 17.4.23](#)). The report makes the following updated recommendation:

*Based on our reassessment of the stability analysis, we consider that the recent slip events have compromised the Erebus Memorial development as it is currently proposed. We therefore consider that the recommendations given in the previous Geotechnical Investigation Report are no longer valid.*

*To achieve adequate factors of safety for the proposed Erebus Memorial and the surrounding land we would recommend that a palisade wall be installed downslope of the structure. The palisade wall will likely involve large diameter reinforced concrete piles extending 5 m to 10 m into rock at close centres. It may also require tie back anchors and a capping beam at the ground surface to limit wall deflections.*

*It should be noted that the palisade wall would not prevent further slips happening downslope of the wall (or beyond the extents of the wall), however it would provide protection to the proposed structure and the land upslope of the wall.*

*We would recommend that additional site investigation comprising machine boreholes is carried out to inform the detailed design stage of the proposed palisade wall.<sup>6</sup>*

63. The report noted that an alternative to a palisade would be ‘to pile the structure down to rock. This option would provide protection to the structure however it would not prevent slips potentially occurring in the surrounding land.’<sup>7</sup> The moving of the memorial away from the cliff face or to resize, was not considered in the report due to the protected trees around the memorial and the size and orientation of the memorial being critical to its overall design/appearance.
64. As DMR is an Auckland Council reserve, the geotechnical consultants discussed their findings with Council. The Council’s geotechnical specialist has separately advised (note this is not to be regarded as a peer review) that the approach taken in the report is technically sound and agrees with the landslide failure mechanism. However, the proposed palisade wall, although considered technically feasible, is not supported:

<sup>6</sup> Addendum to Geotechnical Report Due to Recent Slips - Dove Myer Robinson Park, Parnell, 16066.000.000\_10, ENGEO, 11 April 2023, p. 5

<sup>7</sup> Addendum to Geotechnical Report Due to Recent Slips - Dove Myer Robinson Park, Parnell, 16066.000.000\_10, ENGEO, 11 April 2023, p. 4

*Over time these cliffs will slowly regress, and eventually the palisade wall will be exposed. This may be after the end of the ‘design life’, but a memorial of this nature would be expected to remain in place permanently. The exposed palisade wall would be very unsightly, significantly detracting from the memorial, and would eventually become undermined and a risk of collapse. There is no mechanism proposed for decommissioning the palisade wall at the end of the design life and so this risk is unmitigated. For construction of a permanent memorial on an eroding coastline I would expect an adaptive approach with significantly less hard engineering of the slope and an allowance made in the design for the structure to be relocated in future should this be needed.* [Attached to [FW: Erebus Memorial - Geotechnical Addendum Report 17.4.23](#)]

65. The report and the advice of the Auckland Council’s geotechnic specialist has now been considered by the Erebus Memorial Governance Group.
66. We consider that, for Option 1 to proceed we would need to address the issues identified in the updated geotechnical report. A quantity surveyor has confirmed that, based on an indicative assessment of potential costs, the construction of a palisade wall in this location could cost in the vicinity of \$7—10 million. Further costs would arise with the long-term management of the palisade wall.
67. If we were to pursue the ‘adaptive approach’ described above, we would need to: (1) be assured of the long-term safety of the wider site; (2) modify the design of the memorial; (3) seek new consents, noting that eventually we may need to seek a new site due to the risk of continued cliff erosion; and (4) confirm landowner approval.

### **Option 2 – seek an alternative site**

68. Option 2 would see Manatū Taonga investigating a new location that would meet our expectations for a national memorial. At this stage, the preference is for the memorial to remain in Auckland, for the reasons that were originally identified: namely that the largest proportion of the New Zealanders who died in the tragedy were from Auckland; many Erebus families live in Auckland; Auckland was the city from which the flight departed; and because Auckland is a gateway for international visitors, providing easier access for families of the international passengers on the flight if they wish to visit.
69. It is proposed that any process to identify a new location should involve a reconsideration of the sites first identified in consultation with Auckland Council and other stakeholders as possible locations for the memorial, as well as any new locations that may have become available since 2018. Where possible, we will seek to reuse those aspects of the memorial that we have already invested in, including existing design principles, collateral, and expertise.
70. Manatū Taonga would continue to engage with Erebus families in this process, along with other key stakeholders such as members of Operation Overdue, Auckland Council and local iwi. Our approach to selecting a new site will benefit from our previous experiences, including being mindful of the recommendations of the Office of the Ombudsman. In building the memorial at another location we would also seek to reuse as much of the original design as chosen by the families: the

design process would not start anew. It is possible we may have to seek new regulatory approvals depending on the site.

71. In the meantime, we would continue to progress the Erebus Narrative workstream, outlined at paragraph 24. There are opportunities for public facing commemorative activities that could serve as a focal point to commemorate the 257 people who died, while we continue to work on the delivery of the permanent national memorial.

### ***Analysis of options***

72. The Government remains committed to constructing a National Erebus Memorial to commemorate the 257 people who died in the Erebus disaster, New Zealand's worst civil accident. In weighing up the options for constructing the memorial, we have considered the length of time to deliver the memorial (noting that it was first announced in late 2017), costs, and the suitability of the site for an enduring (long-term) national memorial.

73. In securing a new site (Option 2) (including seeking all necessary consents and approvals) could take several years. We know that family members are concerned about the ongoing delays, and that the delays have been highly frustrating and even distressing for some. However, Option 1 is more likely to take much longer. Given that the original recommendations in the Geotechnical Report which informed the resource consent for DMR are no longer considered valid, it is possible Auckland Council could cancel our existing resource consent and require us to seek a new one.

74. Cancellation would most likely occur by the Council first giving notice of a review of the conditions of the consent under ss 128-132 of the Resource Management Act 1991 (RMA). Those provisions allow the Council to review conditions of a consent where the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions (s 128(1)(c)). Following a review initiated under s 128(1)(c), a consent may be cancelled if inaccuracies materially influencing the decision are established and there will be significant adverse effects on the environment resulting from the exercise of the consent (see s 132(3)).

75. The fact the recent geotechnical report concludes the recommendations in the original Geotechnical Investigation Report, which informed the resource consent for DMR, are not valid would likely be found to satisfy the requirements for cancellation of the consent on review under the RMA.

76. It is noted that our current landowner approval depends on all other existing consents being in place.

77. The original sum set aside to construct the memorial was \$3.10 million. Prior to the weather events, the estimated total forecast expenditure for the development of the Memorial was \$4.812 million (GST exclusive). This included design, consultancy, and construction costs. Other costs incurred since inception of the project are \$2,008,975. As of 31 March 2023, the total expenditure on the project was

\$2,826,801 (including \$817,826 capital expenditure). There is \$3.804 million remaining in the Development of National Memorials appropriation for further construction work.

78. Option 1 carries the potential added cost (\$7-10 million) of remediation of the land as proposed in the geotechnical report, including future ongoing costs to manage the risks to the site for the length of time we would expect a national memorial to remain onsite. It is unclear who would be responsible for these costs as the land is owned by Auckland Council and noting that the construction of the palisade is not supported by the Council's geotechnical specialist. Regardless of whoever pays, the cost of mitigation (including long-term management) would be significantly greater than the memorial.

79. In deciding on the most suitable place to build a national memorial we need to be mindful of our role as responsible stewards of public assets. Given the updated geotechnical assessment and the investment that would be needed to mitigate the ongoing risk to the memorial and surrounding land, which even then would require the memorial to be relocated at some point in time, we now consider DMR no longer meets our expectations of being a site suitable for a national memorial that would endure for at least 100 years.

80. We recommend that you agree to Option 2 and direct Manatū Taonga to investigate a new location that would meet our expectations for a national memorial.

### **Legal Comment [Legal Privilege]**

9(2)(h)



## Next steps

85. Subject to your decision on the recommendations in this memo, we will provide you with an updated Communications and Engagement Plan. It will provide you with a clear plan for sequencing and timing of communications and will help ensure engagements with key stakeholders are coordinated and aligned, including with Erebus families and the Minister's Office.
86. If you agree to Option 2, we will undertake a review of all existing contracts and provide you with further advice.

## Recommendations

We recommend that you:

1. **Note** previous decisions summarised in paragraphs 15-21 including the decisions of the then Chief Executive to commence/recommence construction works.
2. **Note** that on 2 November 2022 you directed the Erebus programme team to prepare a final decision memo for your consideration as soon as practicable, while continuing to engage with the complainant group (Option 1b).
3. **Note** the actions we have undertaken with key parties since 2 November 2023, including engagement with Erebus families, Ngāti Whātua Ōrākei Trust, opponents, Office of the Chief Ombudsman, the Auckland Council and the Waitemātā Local Board as outlined in paragraphs 22-53.
4. **Note** that Manatū Taonga does not have certainty of landowner approval.
5. **Note** we are progressing the Erebus Narrative, a programme of work that seeks to tell the stories of the impact of the impact of the Erebus accident on surviving families and there are opportunities for public facing commemorative activities that could serve as a focal point to commemorate the 257 people who died, while we continue to work on the delivery of the permanent national memorial.
6. **Note** that in late January/early February severe weather events caused three landslips adjacent to the site of the memorial and that Manatū Taonga commissioned updated geotechnical engineering advice regarding the stability and ongoing future suitability of the site for a national memorial.

7. **Note** that the geotechnical report states: “Based on our reassessment of the stability analysis, we consider that the recent slip events have compromised the Erebus Memorial development as it is currently proposed. We therefore consider that the recommendations given in the previous Geotechnical Investigation Report are no longer valid.”
8. **Note** that given the updated geotechnical assessment and the measures that would be needed to mitigate the risk to the memorial and surrounding land, we now consider Taurarua/Dove-Myer Robinson Park (DMR) does not meet our expectation of being a site suitable for a national memorial (and the surrounding land), which would endure for at least 100 years.
9. **Agree** to Option 2 (seek an alternative site) and direct Manatū Taonga to investigate a new location that would meet our expectations for a national memorial.
10. **Note** that subject to your decision to the recommendations in this memo, we will provide you with a Communications and Engagement Plan.
11. **Note** if you agree to Option 2, we will undertake a review of all existing contracts and provide you with further advice.

Glenis Philip-Barbara

**Pou Mataaho o Te Hua | Deputy Chief Executive, Delivery**

Leauanae Laulu Mac Leauanae

**Tumu Whakarae | Chief Executive**



**Appendix 1:** Addendum to Geotechnical Report Due to Recent Slips - Dove Myer  
Robinson Park, Parnell

PROACTIVELY RELEASED