

DOIA22/126

27 July 2022

9(2)(a)

Tēnā koe 9(2)(a)

I refer to your request(s) received on 4 June 2022 for information relating to the National Erebus Memorial. Please find a response under the Official Information Act 1982 (OIA):

1. Names of the parties identified by the Ministry to be involved in the “facilitated” process.

The Ministry has not identified a definitive list of interested parties to be involved in a facilitated process. This would require your participation in designing the process.

However, to assist Laidlaw Law in its work to assist with the design and facilitation of a facilitated process, the Ministry provided an initial list of interested parties that could potentially be involved. This list included, and was not limited to: the complainants to the Ombudsman (case reference 557680); other individuals associated with the complainants (further information to be provided by the complainants’ representative); Erebus family members; Ngāti Whātua Ōrākei Trust; Waitematā Local Board; Auckland Council and NZ Police (Area Commander / Iwi Liaison).

2. A list of all the parties the Ministry has referred to Laidlaw Law in order to participate in your proposed “facilitated” process.

See response to Question 1 above.

3. Copies of all correspondence from the Ministry of Culture and Heritage and the 19 iwi and hapu that make up the mana whenua of Tamaki Makaurau in relation to the Ombudsman’s findings and their potential involvement in the “facilitated” process.

To search for the requested material, the Ministry has consulted with staff most likely to have had undertaken correspondence with the requested groups. The Ministry also undertook an email search based on the email addresses of some of these groups using the following parameters;

Date range: 24 March 2022 - 4 June 2022

Key word: "Ombudsman"

Results of this search are released to you subject to small amount of material redacted under section 9(2)(a) of the OIA.

4. All information Auckland Council have provided Ministry staff in relation to the Ombudsman’s investigation into Auckland Council’s process in

relation to the proposed Erebus Memorial.

To search for the requested material, the Ministry has consulted with staff most likely to have had undertaken correspondence with the requested groups. The Ministry also undertook an email search based on the email addresses of some of these groups using the following parameters;

Date range: 1 October 2021 – 4 June 2022

Key word: "Ombudsman" OR "Investigation"

To/from: "@aucklandcouncil.govt.nz"

This information is released to you subject to redactions made under section 9(2)(a) of the OIA. Please note, that where material does not relate to the Ombudsman's investigation into the Auckland Council, it has been removed as it is not in scope of the request.

In addition, and by way of explanation, you will be aware that 9(2)(a) has been engaging with parties in relation to the facilitation process. To ensure the integrity and independence of this process, the Ministry has not been privy to all conversations 9(2)(a) may have had. This statement applies to questions three and four.

5. A copy of any agreed brief provided to Laidlaw Law in relation to the "facilitation" process.

The Purpose and Description of Services from the contract with Laidlaw Law is provided as follows:

Purpose

The Buyer is looking to purchase services that assist with the design and facilitation of a process that the Buyer wishes to undertake for the purposes of addressing the Ombudsman's recommendation to undertake "reasonable steps to attempt to resolve the sense of grievance that the failure to consult more widely [before the site located in Taurarua / Dove-Myer Robinson park was selected in 2018] has created".

The outcome of the process would ideally be that people feel their "sense of grievance" has been heard and, if at all possible, been resolved or a set of actions agreed as a pathway to resolution.

There are multiple stakeholders involved including (but not limited to) representatives from Erebus Families, members of the local community where the site is located, the group of opponents to the site in Taurarua / Dove-Myer Robinson park that raised the complaint with the OOTO, Manatū Taonga, Ngāti Whātua Ōrākei and Auckland Council (herein collectively referred to as "Interested Parties").

Whilst it is recognised that a swift resolution may be challenging, the Buyer does not wish for any facilitation process to be delayed or prolonged – as it considers this would likely only serve to strengthen the Erebus families' sense of grievance.

Description of Services

The Supplier will provide facilitation services to the Buyer to achieve the Purpose stated above. The Supplier will not provide services for any purpose(s) other than the Purpose stated

above (ie addressing the Ombudsman’s recommendation to undertake reasonable steps to attempt to resolve the sense of grievance).

Facilitation services will be provided in two phases and are described in the table below.

| Description of service | Delivery date | Specific services (if any) | Price |
|---|------------------|---|--|
| <i>Phase 1</i> | | | |
| <p>This phase will involve the Supplier:</p> <ul style="list-style-type: none"> a) undertaking activities for the purposes of identifying the issues in dispute between the Buyer and Interested Parties; b) following this, working with the Buyer to agree on the scope of services that will be provided by the Supplier in Phase 2; and c) any other related services as required by the Buyer. <p>This phase will involve the Supplier reviewing relevant background materials and speaking to the Buyer and Interested Parties.</p> <p>At the end of this phase, the Supplier will provide a mediation approach and outline (herein referred to as “the Plan”) to the Buyer for the Buyer’s sign off if the Buyer agrees. The Plan must include the Supplier’s proposed fee structure for delivery of Phase 2 services, including delivery of the Summary Report (as referred to in Phase 2 below)</p> | 11-29 April 2022 | <p>Services include:</p> <ul style="list-style-type: none"> • Review of background materials provided by the Buyer (estimated 5-10 hours) • Engaging with The Buyer and Interested Parties to obtain relevant knowledge of the matter (estimated 5-10 hours) • Providing an understanding of the mediation process to the Buyer, including assisting the Buyer to better understand what may be required of the Buyer to successfully navigate a mediation process that meets the Purpose (estimated 5-10 hours) • Advising the Buyer on a proposed mediation process, including the proposed role of the Supplier, and the proposed approach to the mediation (estimated 5-10 hours) | |
| Total: | | | Up to 15-30 hours, charged in accordance with the Charges section below. |

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|--|--|---|--|
| <i>Phase 2</i> | | | |
| <p>This phase will involve the Supplier facilitating a mediation between the Buyer and Interested Parties in accordance with the Plan.</p> <p>The specific services that will be provided by the Supplier to the Buyer in Phase 2 will depend on the results of the services provided by the Supplier under Phase 1 and set out in the Plan.</p> <p>Unless otherwise signed off on in the Plan, it is expected the mediation will take place over one day, and three hours are allowed for the Supplier to provide a report to the Buyer summarising the mediation, including any agreed resolutions and next steps (Summary Report)</p> | As set out in the Plan referred to in Phase 1. | In accordance with the Plan and as required by the Buyer. | Up to 5-10 hours, charged in accordance with the Charges section below |

6. A copy of any correspondence from the Ministry to the Ombudsman's office updating the progress made to date.

Please note, s(2)(1)(i) of the OIA specifically excludes correspondence with an agency and the Office of the Ombudsman which relates to an investigation conducted by an Ombudsman under the OIA. However, on this occasion, I advise the Ministry has not provided a further update to the Office of the Ombudsman in relation to this matter (aside from the correspondence already provided to you).

If you wish to discuss this decision with us, please feel free to contact oiia@mch.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision.

Nāku noa, nā

s(2)(a)

Brodie Stubbs
Manager, Te Pae Mahara