

9 (2) (a)

From: Brodie Stubbs
Sent: Friday, 27 September 2019 9:41 AM
To: 9 (2) (a)
Subject: Fwd: Concerns regarding the Proposed National Erebus Memorial and the Local Board's consultation phase
Attachments: 3900164 Letter to Waitemata Local Board 2 - v4.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: Ian Maxwell <Ian.Maxwell@aucklandcouncil.govt.nz>
Date: 27 September 2019 at 7:38:05 AM NZST
To: Brodie Stubbs <Brodie.Stubbs@mch.govt.nz>
Subject: FW: Concerns regarding the Proposed National Erebus Memorial and the Local Board's consultation phase

FYI

Regards
Ian

From: 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>
Sent: Thursday, 26 September 2019 3:40 PM
To: David Barker <David.Barker@aucklandcouncil.govt.nz>; 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>; 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>
Cc: Ian Maxwell <Ian.Maxwell@aucklandcouncil.govt.nz>
Subject: FW: Concerns regarding the Proposed National Erebus Memorial and the Local Board's consultation phase

Greetings

FYI – please note that Bram Van Melle and his team are reviewing the letter now.

Regards

9 (2) (a)

From: 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>
Sent: Thursday, 26 September 2019 3:08 PM
To: 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>
Cc: 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>; 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>; 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>; 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>; 9 (2) (a) <[9\(2\)\(a\)@aucklandcouncil.govt.nz](mailto:9(2)(a)@aucklandcouncil.govt.nz)>
Subject: FW: Concerns regarding the Proposed National Erebus Memorial and the Local Board's consultation phase

Please share with other relevant people.

Thanks

Stephen

From: 9 (2) (a) <[REDACTED]@russellmcveagh.com>
Sent: Thursday, 26 September 2019 3:04 PM
To: 9 (2) (a) <[REDACTED]@aucklandcouncil.govt.nz>; Pippa Coom (Waitemata Local Board) <Pippa.Coom@aucklandcouncil.govt.nz>; Shale Chambers (Waitemata Local Board) <Shale.Chambers@aucklandcouncil.govt.nz>; 9 (2) (a) <[REDACTED]> (Waitemata Local Board) <[REDACTED]@aucklandcouncil.govt.nz>; 9 (2) (a) <[REDACTED]> (Waitemata Local Board) <[REDACTED]@aucklandcouncil.govt.nz>; 9 (2) (a) <[REDACTED]> (Waitemata Local Board) <[REDACTED]@aucklandcouncil.govt.nz>; 9 (2) (a) <[REDACTED]> - Waitemata <[REDACTED]@aucklandcouncil.govt.nz>; 9 (2) (a) <[REDACTED]> (Waitemata Local Board) <[REDACTED]@aucklandcouncil.govt.nz>
Cc: 9 (2) (a) <[REDACTED]@russellmcveagh.com>; 9 (2) (a) <[REDACTED]@xtira.co.nz>; 9 (2) (a) <[REDACTED]>
Subject: Concerns regarding the Proposed National Erebus Memorial and the Local Board's consultation phase

Dear all

We act for 9 (2) (a) <[REDACTED]>, a Parnell resident with concerns regarding Manatū Taonga Ministry for Culture and Heritage's proposal to establish a National Erebus Memorial in Dove Myer Robinson Park.

Please see the **attached** letter sent on behalf of our client.

We look forward to hearing from you as soon as possible.

Kind regards

9 (2) (a) <[REDACTED]>

9 (2) (a) <[REDACTED]>
Solicitor

Russell McVeagh, Vero Centre, 48 Shortland Street, PO Box 8, Auckland 1140, New Zealand
D +64 9 (2) (a) <[REDACTED]> F +64 9 367 8459

9 (2) (a) <[REDACTED]@russellmcveagh.com>

www.russellmcveagh.com

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26 September 2019

Waitematā Local Board
c/o Pippa Coom
email: pippa.coom@aucklandcouncil.govt.nz
AUCKLAND

By email

CONCERNS REGARDING THE PROPOSED NATIONAL EREBUS MEMORIAL

1. We act for [9 (2) (a)], a Parnell resident with significant concerns regarding Manatū Taonga Ministry for Culture and Heritage's ("**Ministry**") proposed National Erebus Memorial ("**Proposal**") to be located in Dove Myer Robinson Park. This letter is also written on behalf of [9 (2) (a)] [9 (2) (a)], who share the views of our client.
2. We refer to our earlier letter of 9 September 2019. We have not received a response to that letter.
3. The purpose of this letter is to outline our client's ongoing concerns with the Waitematā Local Board's handling of its consideration of the Proposal.
4. Our client's concerns are set out in more detail below.

Partners

Frederick Ward
Brendan Brown
Malcolm Crotty
Joe Windmeyer
Guy Lethbridge
John Powell
Ed Crook
Tim Clarke
Sarah Keene
Sarah Armstrong
David Hoare
Matthew Kersey
David Butler
Craig Shrive
Deemle Budhia
Mei Fern Johnson
Daniel Jones
Polly Pope
Allison Arthur-Young
Christopher Curran
David Raudkivi
Tom Hunt
Kylie Dunn
Daniel Minhinnick
Troy Pilkington
Marika Eastwick-Field
Ian Beaumont
Stephen Rendall
Cameron Lay
Joe Edwards
Benjamin Paterson
Emmeline Rushbrook
Anna Crosbie
David Weavers
Liz Blythe
Nathaniel Walker
William Irving

17 September Local Board Meeting

5. At the Local Board's ordinary meeting on 17 September 2019, the Ministry tabled a report seeking landowner approval for the Proposal at Dove-Myer Robinson Park ("**Report**").
6. Our client is disappointed that the Ministry's intentions to seek landowner approval during the 17 September meeting were not included in the online meeting agenda, or communicated to interested parties in advance of the meeting. A critical component of the Local Government Act 2002 ("**LGA**") obligations on decision-makers is to collaborate and co-operate with interested persons, and to provide those persons with reasonable access to relevant information in a manner that is appropriate.
7. The contents of the Report were directly relevant to a large part of the community. Our client and the interested residents who spoke at the 17 September meeting were fortunate to have requested to attend the meeting and therefore see a copy of the Report. However, they were prejudiced in only seeing it at the meeting itself, and other residents had no chance to consider the Report. Tabling the Report under urgency deprived interested residents of the opportunity to express their views and raise their concerns in an informed manner.

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8. Further, the reasons why the Report was tabled under urgency are not clear. Standing Order 2.4.5 of the Waitemata Local Board's Standing Orders states that urgent items not on the agenda may be dealt with at the meeting if the presiding member explains at the meeting the reason why the item is not on the agenda.
9. It was not made clear at the meeting why the Ministry's request for landowner approval was not included in the meeting agenda. The Ministry has been clear regarding its intention to start constructing the Memorial on 29 November 2019 to mark the 40th anniversary of the Erebus accident. Landowner approval from the Local Board at this time was therefore an entirely foreseeable requirement.
10. Given there is no clear basis for not including the Ministry's Report in the meeting agenda, the Local Board's consideration of the Report under urgency at its 17 September meeting is in breach of Standing Order 2.4.5.
11. A Local Board's breach of a standing order constitutes a breach of Clause 16 of Schedule 7 of the LGA.
12. Given the Board's consultation phase in respect of the Proposal introduces further concerns under the LGA (outlined in more detail below), our client requests that the decision to grant or deny landowner approval is deferred to the new Local Board, which is in a position to follow due process in respect to decisions relating to the Proposal.

Consultation phase

13. The Board has failed to fulfil its consultation obligations in respect of the Proposal under the LGA.
14. Consultation that a local authority undertakes must be carried out in accordance with the principles set out in section 82 of the LGA, which are designed to ensure consultation is proper. As outlined in our earlier letter, while the Local Board is given a discretion to observe the principles as appropriate, given the national significance of the Proposal, section 82 of the LGA directs the Local Board to have regard to the principles to a greater degree.
15. The Board's approach to consultation does not embody the principles set out in section 82 for a number of reasons:
 - (a) **Relevant information not reasonably accessible** – The Local Board leaflet includes very little information about the Proposal and directs concerned residents to access key information about the Proposal on the Council's website. The Local Board's email is also light on detail, and directs recipients to the Local Board webpage for more information. Providing key information online, does not afford concerned residents with poor IT knowledge and experience, reasonable access to that information.
 - (b) **Persons not encouraged to present their views** – The Local Board appears to have delivered information about its consultation on the Proposal to only a relatively small number of local residents. This is a

small subsection of persons interested in, or affected by, the Proposal. Interested parties who were not at the 17 September Local Board meeting, or who have been excluded from the Local Board's relatively small target group for consultation, have not been provided with reasonable access to relevant information, nor have they been encouraged to present their views.

- (c) **Access to clear records of relevant decisions not provided** – The Local Board's consultation webpage does not provide interested parties with a clear pathway to prior decisions the Local Board has made in relation to the Proposal, such as its decision to support the Proposal in principle at its 20 November 2018 meeting, or the Ministry's Report presented at the 17 September 2019 meeting.

16. Our client also takes issue with the short duration of the consultation phase. The consultation phase is only nine working days. This time period affords residents little time to properly consider the Proposal, including seeking any necessary advice. This short period of consultation does not provide interested parties with a meaningful opportunity to engage with the Local Board in respect of the Proposal.
17. For these reasons, 9 (2) (a) requests that the decision to grant or deny landowner approval is deferred to the new Local Board, which is in a position to undertake proper consultation in accordance with the LGA principles.

Yours faithfully
RUSSELL McVEAGH



9 (2) (a)
Partner | Solicitor

Direct phone: +64 9 (2) (a)
Direct fax: +64 9 (2) (a)
Email: 9 (2) (a)@russellmcveagh.com
9 (2) (a)@russellmcveagh.com