

Regulatory Impact Statement: National War Memorial Park

Regulatory Impact Statement

National War Memorial Park Bill

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Transport.

It provides an analysis of options to create an enduring National War Memorial Park by relocating State Highway 1 at Buckle Street, along with the status quo. The options have been informed by prior work done by the New Zealand Transport Agency and the Ministry for Culture and Heritage.

The costs and benefits of a number of options have been identified and assessed against criteria. The nature and extent of many of the benefits arising from the different options have been difficult to quantify, due to their intangible nature. Instead we have attempted to state the degree to which different options meet the goal of creating a National War Memorial Park worthy of New Zealand's national legacy.

Given the time available, consultation on the specific proposal relating to special legislation has been limited. Ideally, consultation will continue throughout the implementation of the government's preferred option.

The option of special legislation (the only option that would have the park, as envisaged, in place by the centenary of the Gallipoli landings on Anzac Day 2015) will impose social costs due to the removal of consultation and appeal rights. It will also impair some private property rights. The legislative option will create delegated legislation, and include provisions that depart from existing legislative norms for like issues.

None of the options will impair market competition or reduce the incentives on businesses to innovate or invest.

The enabling legislation would remove the ability for individuals to submit on statutory authorisations required for the project. It will remove rights of objection, although not rights to compensation, in relation to the compulsory acquisition of some property rights.

As such, consultation with key stakeholders will be needed to ensure that the views of groups and individuals concerned are taken into account to mitigate this if the legislative option is pursued.

Sonya van de Geer, Principal Adviser

Status quo and problem definition

1. The National War Memorial in Buckle St, Wellington, has State Highway 1 running between it and what is now a relatively bare space of Crown owned land which has been incorporated into designs for a National Memorial Park.
2. The traffic detracts from the amenity aspects of the Memorial and reduces the solemnity of the space.
3. Undergrounding part of Buckle Street would allow for the full development of the Memorial Park.
4. The Memorial will be the venue for commemorations across the centenary of the First World War, meaning it will face increased national and international exposure.
5. Anzac Day, April 2015, the centenary of the Gallipoli landings, will be the most significant day in a four year programme to mark the centenary of the First World War.
6. The government wishes to have a fully developed, high quality Memorial in place by April 2015.
7. This could only be achieved if works (including a temporary road diverting traffic from Buckle Street) began in September 2012. Following normal consenting processes would not allow this timetable to be met (the likely timetable would be completion in 2017).

Objectives

8. The public policy objectives are to:
 - a. Create a National War Memorial Park in Wellington worthy of New Zealand's war legacy
 - b. Ensure completion of the National War Memorial Park in time for the Gallipoli landings centenary in April 2015
9. The National War Memorial Park is intended to:
 - improve the setting of the National War Memorial
 - create a space in the capital city for the development of new Memorials from countries with which New Zealand has a close military relationship
 - provide a space for people to congregate on major ceremonial occasions such as Anzac Day
 - provide an opportunity to expand the scope of the National War Memorial to ensure it remains relevant
 - contribute to New Zealanders' sense of 'national identity'
 - recognise military conflicts currently not recognised in a 'national' Memorial, such as New Zealand's ongoing role in peace-keeping operations and the New Zealand Wars of the 1800's.

Regulatory impact analysis

10. Five options were considered for the development of the Memorial Park Precinct and the alignment of Buckle Street:

- Using standard authorisation procedures to create the park, including undergrounding Buckle Street
- Using project specific legislation to progress the park, including undergrounding Buckle Street which would permit completion by April 2015
- Developing a park with Buckle Street 'at grade' and on its current alignment (the status quo)
- Realignment of Buckle Street to the north at grade
- A land bridge over Buckle Street.

Description and Analysis of Options

Option 1: Undergrounding Buckle Street

11. Under this option part of Buckle Street (between Tory Street and Taranaki Street) will be put under a cut and cover trench. The Park will then be developed on top of the trench.

12. An artist's impression of the proposed park under this option is included in the annex.

13. This option would see the New Zealand Transport Agency (NZ Transport Agency) take responsibility for providing the necessary roading infrastructure to enable the park, while the Ministry for Culture and Heritage would take responsibility for the park design, construction, implementation, operation, management, and maintenance.

14. If the project is developed in conjunction with other parts of the Wellington Northern Corridor the New Zealand Transport Agency will require \$50 million additional funding, while the Ministry for Culture and Heritage requires \$10 million funding (Wellington City Council will contribute \$2.112 million towards the Park).

15. There would be temporary disruption to Mt Cook School while Buckle Street is diverted north during construction.

16. This is the option that would provide the highest amenity values for the Memorial Precinct.

17. The development of Memorial Park and the undergrounding of Buckle Street require authorisations and the obtaining of some property rights under a range of legislation including, but not limited to, the Resource Management Act 1991, the Historic Places Act 1993, the Public Works Act 1981, and the Building Act 2004.

18. It is not possible for the necessary statutory authorisations and property rights to be guaranteed within a timeframe that would enable the project to be completed by April 2015 using existing available statutory processes. This is true even if the streamlined consenting process available through the Resource Management Act was used, and if consents were also obtained in parallel rather than in sequence. Following these normal processes would mean that the park would not be expected to be completed until 2017.

Option 1b: Special Legislation

19. For the park to be completed by April 2015, it is necessary that the New Zealand Transport Agency begin roading work by September 2012. To achieve this, enabling legislation would need to be enacted granting all necessary statutory authorisations and property rights to the NZ Transport Agency, the Minister for Arts, Culture and Heritage, and the Minister for Land Information, as appropriate.
20. The suggested legislation would grant the necessary statutory authorisations and incidental property rights for the project, subject to appropriate conditions, with residual powers for the Governor-General to grant additional authorisations by Order in Council and the relevant Ministers to obtain additional property rights in the event that any unforeseen authorisations/rights are legally required in order to complete the project by April 2015.
21. If this option is pursued legislation would also establish a statutory authority to certify/comment on plans/protocols
22. The legislation is likely to be controversial as it would override normal statutory processes and remove rights of appeal.
23. The parts of the legislation that would empower the Governor-General, by Order in Council, to grant additional consents or rights almost certainly will be controversial. This is because using regulations to overcome the stipulations contained in an Act of Parliament is potentially at odds with maintaining the principles of the rule of law.
24. The likely effect of any Orders in Council is that they will reduce the usual opportunities for land owners and affected parties to participate in statutory approval processes and to further remove, or restrict, any rights of appeal.
25. We note the comments of the Ministry of Justice that the proposals engage the rule of law by undermining the principles that:
 - the Crown is subject to the same rules and liabilities as general citizen when it acts as citizens do (in this cases acting as a developer)
 - there should not be a concentration of power in one person or branch of state (enabling the Governor-General to be able to issue further consents by Order in Council makes the Executive the judge in its own case)
 - there should always be an avenue of appeal from decisions made by public bodies.
26. The proposal to enable authorised persons to enter onto private land for specified purposes appears to engage the right to be free from unreasonable search and seizure affirmed in section 21 of the New Zealand Bill of Rights Act 1990. However, a final view about the consistency of the proposals with the New Zealand Bill of Rights Act 1990 will be possible once the legislation has been drafted.
27. The necessary legislation includes provisions that have been used in the past in times of emergency. During departmental consultation the view was put forward that the desire to speed up the building of a Memorial Park which has been envisaged for some time (so as to allow it to be completed by Anzac Day 2015) does not constitute a sufficiently strong case for the use of such legislation.
28. Measures can be put in place that will partially, but not fully mitigate these concerns.

29. The Gallipoli campaign has great significance for New Zealand's history and has become an important symbol of its national identity. Great suffering was caused to a small country by the loss of so many of its young men. The National War Memorial is the principal place for New Zealanders to remember the sacrifices made in wartime, and the Memorial Park is to be the centrepiece of the entire, four year, First World War Centenary programme. Anzac Day 2015 – the centenary of the Gallipoli landings – marks the peak of the First World War centenary commemorations for Australia and New Zealand.
30. On this day, the public will gather in the Memorial Park to participate in the Anzac Day service at the National War Memorial. It is important that New Zealanders can commemorate the Gallipoli anniversary in a place that symbolises our sense of who we are. By that date, the Australian memorial will be finished, and having the park ready by this important date has great significance for New Zealand's relationship with Australia, as well as New Zealand's own sense of national pride.
31. Neither the majority of the additional benefits from having the Memorial Park in place by April 2015 compared to a later date, nor the disadvantage to the community from having its ability to participate in the planning and approval processes removed are quantifiable. This makes a final judgement on this point difficult.

Option 2: Realignment of Buckle Street at grade

32. Under this option Buckle Street would remain at-grade, but would be moved ten metres to the north. This would create a wide pedestrian boulevard on the southern side of Buckle Street, and allow for it to be lined with trees, making it a more attractive ceremonial avenue. If Buckle Street is retained at-grade, a high standard of landscaping would be necessary on both sides of Buckle Street to compensate for the presence of the traffic.
33. To further mitigate the effects of traffic experienced by visitors to the Park, an extended plaza at the fountain level of the National War Memorial could be built. The estimated cost of this option is \$15 million plus the cost of the plaza, which is unlikely to cost more than \$2 million.
34. This would allow for a cohesive park and Memorial area, albeit one impacted by the cars travelling along State Highway 1. Mt Cook School would suffer some increased noise and pollution as a result of the realignment of Buckle St bringing traffic 10 metres closer to the school.
35. This option should be able to be completed by April 2015 (as it is anticipated the works necessary would be contained within the current State Highway roading designation for this section of Buckle Street).

Option 3: Status Quo for Buckle Street

36. Under the status quo Buckle Street would remain on its current alignment and 'at grade' (at ground level). A Park space could be created on land separated from the rest of the Memorial. As is currently the case, Buckle Street could be closed on significant occasions such as ANZAC Day (not ideal given that it is part of State Highway 1).
37. This is the least cost option.
38. However it leaves New Zealand with a National War Memorial Park ill-befitting the nature of New Zealand's war legacy and ill-equipped to serve as a focus for large commemorations in 2015 and beyond. A comparative assessment of the current park

with international equivalents (including Australia) shows New Zealand's park to be lacking. A photo of the existing Memorial is included in the annex.

Option 4: Land -Bridge over Buckle Street

39. A land-bridge over Buckle Street as an option for Memorial Park has been identified but not extensively investigated. A land-bridge would be similar to a cut and cover trench however it would contain ventilation openings every 90 metres removing the need for mechanical ventilation equipment. A land-bridge option was estimated to cost in the order of 5 – 15% less than the undergrounding of Buckle Street but would deliver an inferior design and amenity outcome for Memorial Park. It could not be delivered by April 2015 without enabling legislation.

Analysis

40. An analysis of the options against amenity, timing, cost and process criteria is set out below.

Criteria	Option 1 - undergrounding of Buckle Street through standard consent process	Option 1b - undergrounding of Buckle Street through expedited legislation	Option 2 - Realignment of Buckle Street	Option 3 - Park Bisected by Buckle Street - Status quo for Buckle Street	Option 4 - bridge over Buckle Street
Creates a high amenity value Memorial Park	High	High	Medium The presence of traffic, and associated fumes and noise within the park environ may mean there are continued calls for park redevelopment.	Low The park in its current form is bisected by State Highway 1	Medium Park would be inferior to that provided by undergrounding Buckle Street.
Park In Place by April 2015	No	Yes	Yes	Yes	No
Cost	\$50 million additional funding would required for the undergrounding of Buckle Street. \$10 million additional funding would be required for the park.	As for option 1.	\$16 million for roadworks. \$10 million for the park.	No additional roadwork costs. \$10 million additional Crown funding required for the park.	Not fully assessed but in the order of 5 - 15% less than undergrounding plus the cost of the park.
Procedural Integrity/Rule of Law	Medium/High Normal safeguards and rights would be preserved	Low Bypassing standard statutory approval and property processes is highly unusual and minimises opportunity for stakeholder input.	Medium/High Normal safeguards and rights would be preserved.	Not strictly applicable as no works would be undertaken.	Low Legislation bypassing standard statutory approval processes would be required as with option 1b if it is to be in place by 2015.

Risks	Medium	Medium. Despite the use of legislation, unexpected issues arising during construction may arise, preventing completion of the park by 2015	Medium/Low	Low	Not fully assessed
Other		Would enhance links with Australia as an Australian Memorial will be in place in the park by April 2015	Would cause long term negative impact on Mt Cook School		
Net Impact	This option would deliver a high amenity Memorial park at an additional cost of \$60 million without impinging on the rule of law. However it would not meet the objective of having the park in place by April 2015.	This option would deliver both the public policy objectives (a high amenity Memorial park in place by April 2015) at an additional cost of \$60 million. In this way it will maximise the benefits of the Memorial precinct. However it would involve impinging on the rule of law.	This option would deliver a moderate quality park, at a lower cost (\$28 million) than options 1, 1b and 4 without impinging on the rule of law.		This option has not been fully assessed. It would deliver a moderate quality park at a lower cost. It would require legislation to be in place by April 2015.

Conclusions and recommendations

41. An expanded National War Memorial would
 - Complete the War Memorial precinct as the national focal point to commemorate the war sacrifices of New Zealand and those nations with which New Zealand has close military ties
 - Contribute to New Zealanders' sense of national identity
 - Enhance Wellington's urban landscape
42. If completed by 2015 the National Memorial Park would provide the highest amenity gathering place, appropriate to the occasion for veterans, dignitaries and the public to commemorate 100 years since the landings at Gallipoli
43. The Ministry of Transport notes that a high amenity park, well integrated with the existing Memorial and with Buckle Street undergrounded, providing many of the long term benefits from the Memorial Precinct could be completed by 2017 following normal approval processes. This would be most consistent with a high quality and consistent regulatory regime.
44. Passing project specific legislation of the nature required to have the project completed by April 2015 (even with mitigation measures in place) risks impinging on the rule of law and the New Zealand Bill of Rights Act.
45. However only the option of special legislation would allow the project to be completed by the significant date of April 2015.

Consultation

46. As yet there has been no public consultation on the proposal to use legislation to expedite the National Memorial Park.
47. The New Zealand Transport Agency, the Ministry for Culture and Heritage, the Treasury, the Department of Building and Housing, the Department of Internal Affairs, Land Information New Zealand, the Ministry of Education, the Ministry for the Environment, the Ministry of Justice, the New Zealand Defence Force and Te Puni Kokiri have been consulted on the proposal for legislation that would allow the Memorial Park to be completed by Anzac Day 2015. The Department of Prime Minister and Cabinet has been informed.
48. The Department of Building and Housing and the Ministry for the Environment have pointed out their concerns with bypassing normal processes for approvals and community involvement.
49. There has been extensive consultation in the Wellington area on proposals for the Wellington Northern Corridor Road of National Significance. Consultation to date on options for the Memorial Park has revealed widespread public and stakeholder support for development of the park in conjunction with the undergrounding of Buckle Street.
50. In 2007, the Ministry for Culture and Heritage appointed an independent panel to select a short-list of designers and ultimately to recommend a final design for the Memorial Park. The competition was open to New Zealand designers based anywhere in the world. Eight teams were short-listed to provide designs. In October 2008 a final design was selected by the panel and recommended for approval.

51. NZTA undertook community engagement on the Wellington Northern Corridor Road of National Significance in July and August 2011. That consultation was predicated on Buckle Street being 'at grade' and on its current alignment. 1,300 comments were received about Buckle Street and the Memorial Park precinct. Among the 550 comments that suggested or referred to alternative design proposals for the area most, including Wellington City Council preferred undergrounding in front of the War Memorial. At that time Greater Wellington Regional Council supported future proofing the design to allow for the future possibility of undergrounding.
52. A recurring theme in comments on the Memorial Park precinct was the effect the road at grade would have on the Memorial Park and the surrounding precinct.
Issues raised included:
1. The severance of the proposed park from the National War Memorial
 2. Noise and air pollution associated with State Highway 1 traffic
 3. The proposal not ensuring that the War Memorial was given the respect it was due;
and
 4. The loss of opportunity to create a suitable War Memorial atmosphere
53. The Royal New Zealand Returned and Services' Association commented, supporting trenching or a cut and cover tunnel to create a Memorial Park of national significance for all time.
54. Mt Cook School also commented that trenching Buckle Street would obviate the need for a pedestrian overpass or footbridge at the Tory/Tasman St intersection as well as meet Mt Cook School's requirements for a quiet and low pollution environment.
55. The beneficiaries of the Wellington Tenth Trust are joint owner of the Massey University site on Buckle Street, and have been involved in the planning for the Memorial Park. The formation of the park will require the use of part of this jointly owned land.
56. The site is significant to local Maori, and a local Iwi representative was on the selection panel for the Park's design. The Tenth Trust supports the plan to underground Buckle Street as part of the Memorial Park development.

Implementation

57. The proposed legislation would grant the necessary statutory authorisations and incidental property rights for the project, subject to appropriate conditions, with residual powers for the Governor-General to grant additional authorisations by Order in Council and the relevant Ministers to obtain additional property rights in the event that any unforeseen authorisations/rights are legally required in order to complete the project by April 2015.
58. Such legislation is not intended to forgo existing environmental and social responsibilities of the NZ Transport Agency or Ministry for Culture and Heritage. It will require demonstration of the practicable ability of these agencies to comply with relevant standards in advance of construction commencing, in contrast to current legislation which requires such demonstration before consent is granted. A process for certifying that the standards have been met would be included in the legislation.
59. In addition, the legislation would remove any appeal and objection rights under the Resource Management Act, Public Works Act, and Historic Places Act in relation to the grant of, and conditions imposed on, the statutory authorisations and incidental property rights under those Acts.

60. Given the significance of the First World War commemorations, and the role that the Memorial Park would play in these, it is proposed to establish a high level parliamentary committee, chaired by the Prime Minister to oversee its development.
61. The responsibility for the roading aspect would lie with the NZ Transport Agency, and the park would be a collaboration between the Ministry for Culture and Heritage, and the NZ Transport Agency.
62. Whilst the tunnel is being completed a temporary road would be established, allowing cars to continue using State Highway 1. This temporary road will be constructed to the north of where Buckle Street currently sits, adjacent to the boundary of Mount Cook School. The school is thus likely to be affected by noise and air pollution while the road-works are being completed.
63. Inherent in the implementation are several risks, including the possibility of cost or time increases. In this regard the Ministry notes that Mount Cook (Pukeahu) has a long association with the Te Atiawa/Taranaki Whanui tangata whenua, and there may be items of historical significance found whilst undergrounding Buckle Street.
64. NZ Transport Agency has agreed to absorb any unexpected cost increases and will accidental discovery protocol in place during the period of the project.
65. As noted above, the New Zealand Transport Agency has undertaken a programme of consultation on the Wellington Northern Corridor Road of National Significance (specifically State Highway 1 between the Mount Victoria Tunnel and the Terrace Tunnel) and will continue with its community engagement following any announcements.
66. As the legislation is finalised and the proposal is developed, the Ministry of Transport will consult with Land Information New Zealand, the Ministry of Education and the Ministry of Justice. Discussions are proposed with the Wellington City Council regarding on-going maintenance of the park.

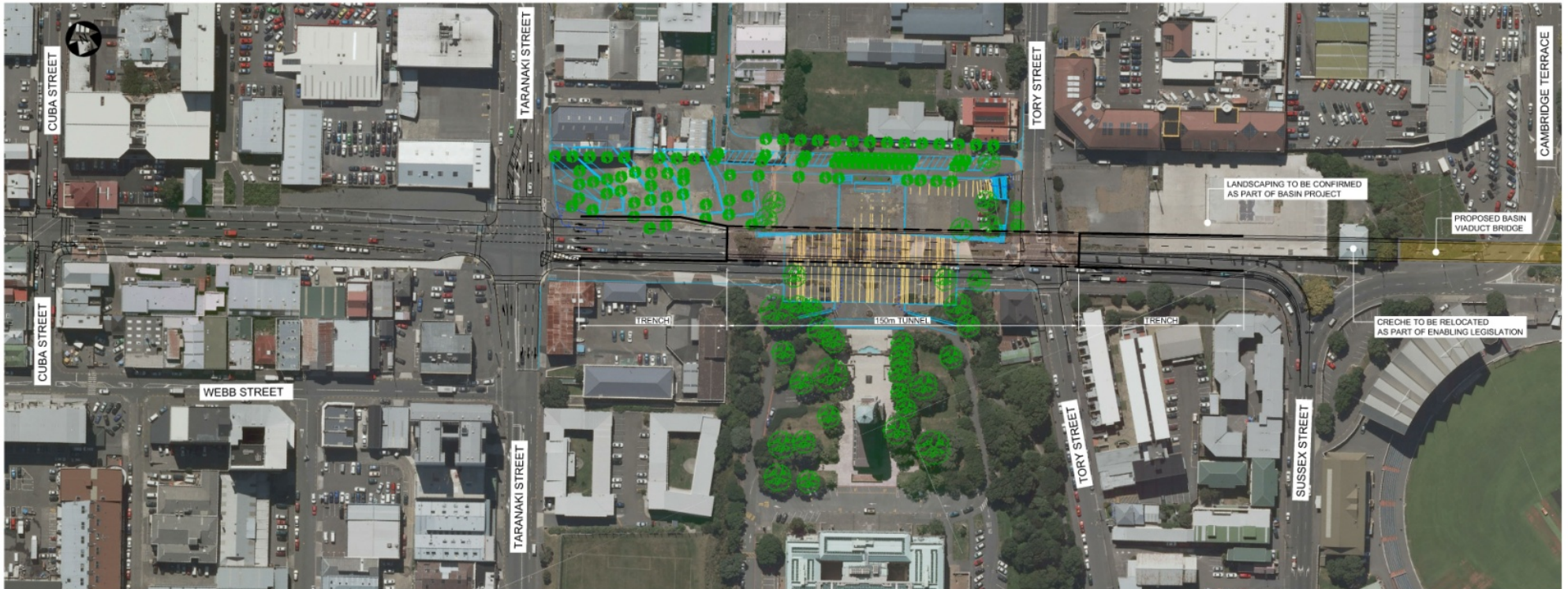
Monitoring, evaluation and review

67. Under the legislative option either a statutory authority would be put in place to certify plans and protocols prepared by the New Zealand Transport Agency or the Ministry for Culture and Heritage or that role would sit with the usual consenting authorities.
68. In order to ensure an integrated approach through the co-ordination of the roading, tunnelling and Park projects, the Ministry for Culture and Heritage has joined the NZ Transport Agency, Wellington City Council and the Greater Wellington Regional Council on a steering group for transport improvements around the Basin Reserve project. Likewise, Wellington City Council and the NZ Transport Agency are also on the steering group for the development of the Memorial Park.
69. The enabling legislation will lapse once the project has been completed.

Appendix
Artist's Impression of the Recommended Park Design



Plan for the Undergrounding of Buckle Street



LAYOUT PLAN
SCALE 1: 1000 (A1); 1:2000 (A3)

DRAFT ENABLING WORKS FOR MEMORIAL PARK

DATE: 12.06.2012
DRAWING NO: SK1
PROJECT NO: 5C1617.95

Artist's Impression Option 2 - Potential Plaza realigning Buckle Street to the north (not the preferred option)

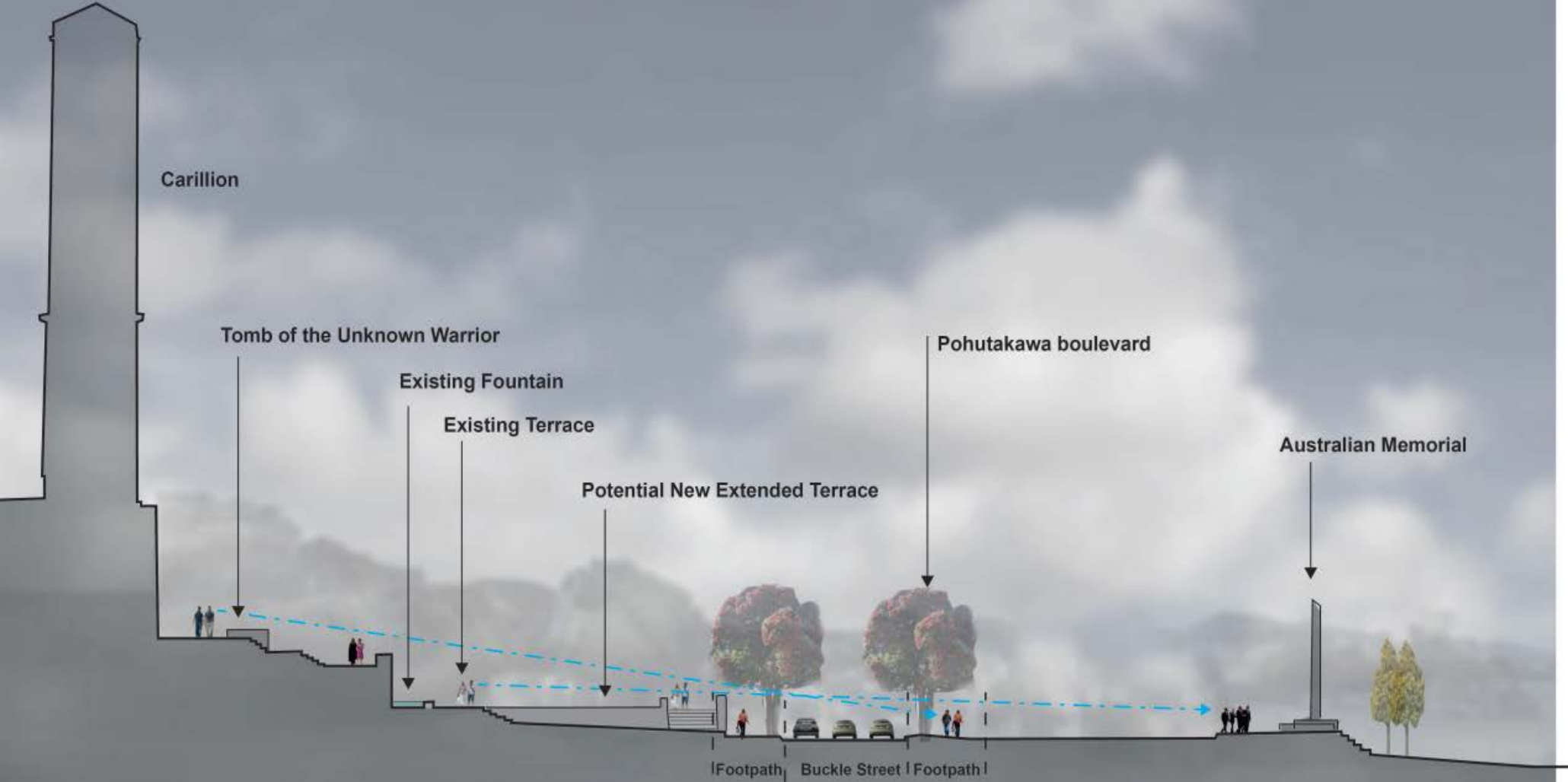


Photo A of the Current National War Memorial



Photo B of the Current National War Memorial Park

