

21 June 2018

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: America's Cup Road Stopping Bill

Purpose

1. We have considered whether the America's Cup Road Stopping Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 21458/3.3). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 18 (freedom of movement). Our analysis is set out below.

The Bill

4. The purpose of the Bill is to support construction relating to and necessary for the operation of the 36th America's Cup in Auckland. The Bill permanently stops a portion of road directly abutting the water.
5. Clause 7 of the Bill removes the road status of a portion of Brigham Street at Wynyard Point and confirms that an esplanade reserve will not be created when the road is stopped. Clause 8 provides that the Auckland Council, as the owner, may apply for a record of title for the stopped road.

Consistency of the Bill with the Bill of Rights Act

Section 18 – Freedom of movement

6. Section 18 of the Bill of Rights Act affirms that everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand. Freedom of movement encompasses the right to be able to go where one pleases and along a route of one's choosing.¹
7. As cl 7 would affect the ability of the public to use Brigham Street, we consider it may be seen to limit the freedom of movement.
8. A provision found to limit a particular right or freedom may nevertheless be consistent with the Bill of Rights Act if it can be considered reasonably justified in terms of s 5 of that Act. The s 5 inquiry asks whether the objective of the provision is sufficiently

¹ *Kerr v Attorney-General* [1996] DCR 951 (DC) at 955.

important to justify some limitation on the freedom of movement; and if so, whether the limitation is rationally connected and proportionate to that objective and limits the freedom of movement no more than reasonably necessary to achieve that objective.²

9. We consider that the objective of the Bill is sufficiently important to justify some limitation on the freedom of movement. The purpose of cl 7 is to enable the development of the America's Cup infrastructure and operation. The Bill's General Policy Statement notes that this would bring material benefits to New Zealand and reputational, cultural and national pride effects for all New Zealanders.
10. The limitations are rationally connected to, and go no further than reasonably necessary to sufficiently achieve, the objective, and are proportionate to its importance. We understand the option of stopping the road provides the least encroachment into the Waitematā Harbour. Impacts of the road closure have been minimised, including by a proposed new road alongside America's Cup bases to be built on the portion of stopped road. We also note that while the Public Works Act 1981 and the Local Government Act 1974 provide an alternative process to achieve the objectives of the Bill, that process is not feasible due to timeframe constraints.

Conclusion

11. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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² *Hansen v R* [2007] NZSC 7 [123].