

27 November 2017

Memorandum

To: Regulatory Committee Members

Subject: **Appeals to the Amended Provisional Local Alcohol Policy**

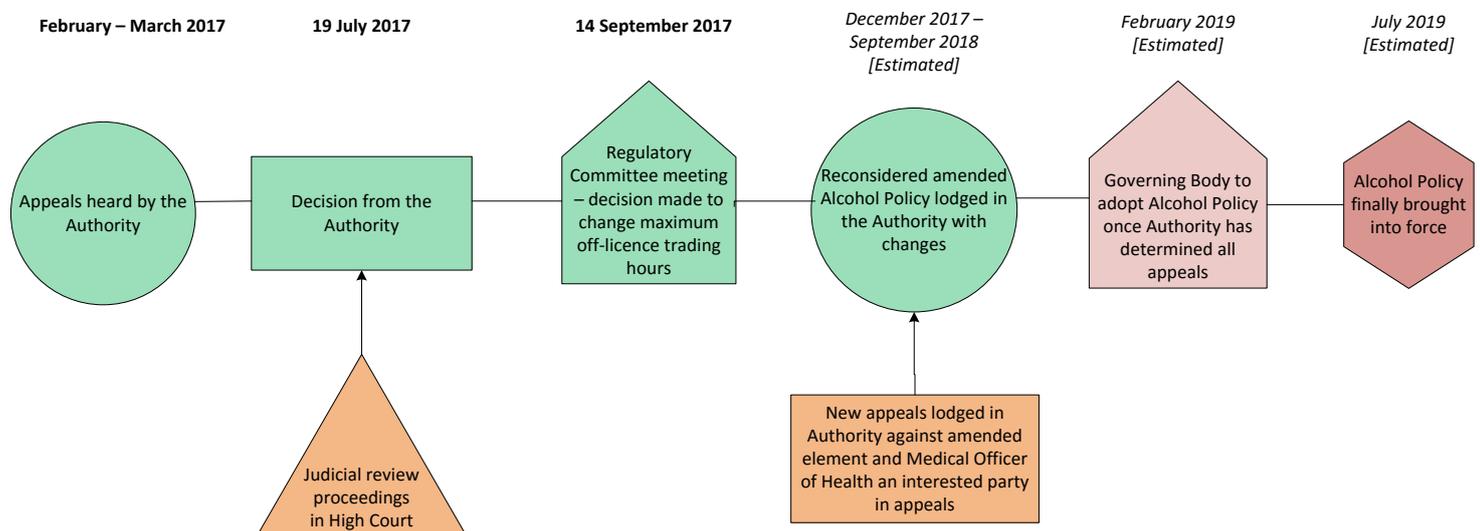
From: Kataraina Maki, General Manager, Community & Social Policy

1. To provide an update on appeals to council’s Provisional Local Alcohol Policy (Alcohol Policy).

Key Messages

- On 12 October 2017, council provided its amended Alcohol Policy to the Alcohol Regulatory and Licensing Authority (Authority) for consideration.
- The changes council made to the Alcohol Policy addressed the Authority’s decision on appeals.
- The significant amendment was to change the maximum off-licence trading hours from 9.00am to 9.00pm to 7.00am to 9.00pm, Monday to Sunday.
- Previous submitters on off-licence trading hours can appeal this change.
- Two appeals to the Authority have been lodged against the change to the off-licence trading hours, by Progressive Enterprises Limited and Foodstuffs North Island Limited.
- Redwood Corporation Limited has lodged a ‘precautionary appeal’ with no detail about their concerns on the changes.
- The Medical Officer of Health and NZ Police are recognised as interested parties in the appeals.
- Redwood Corporation Limited have also started judicial review proceedings in the High Court.
- Redwood operates the Pelican Club, a licensed brothel located in Eden Terrace. The judicial review proceedings are against the Authority’s decision on the definition of City Centre in the Alcohol Policy and maximum trading hours for on-licences. The council is included as a respondent.
- These proceedings may delay the progress of the Alcohol Policy as they need to be heard.
- Council legal advisors are working on the timeframes and next steps for appeals to the Authority. A case management meeting will be held on 7 December 2017 on the judicial review proceedings.

Progress Timeline



Context

Amendment made to maximum trading hours for off-licences in Alcohol Policy

2. The original Alcohol Policy provided for maximum trading hours for off-licences as 9.00am to 9.00pm, Monday to Sunday. The Authority found the 9.00am opening hour restriction was unreasonable.
3. The Authority indicated that it did not consider the closing hour restriction of 9.00pm was unreasonable.
4. The Authority directed council to reconsider the maximum trading hours for off-licences in its entirety.
5. Changes to the Alcohol Policy were approved by the Regulatory Committee. The changes council made to the Alcohol Policy implemented the Authority's decisions on appeals.
6. The significant change was to the maximum off-licence trading hours from 9.00am to 9.00pm to 7.00am to 9.00pm, Monday to Sunday.
7. The amended Alcohol Policy was submitted to Authority on 12 October 2017.

Three appeals filed in the Authority

8. The timeframe for appeals on the amended Alcohol Policy closed on 11 November 2017. Two appeals have been lodged in the Authority against the amended maximum trading hours for off-licences as follows:
 - Progressive Enterprises Limited (Countdown, Fresh Choice, Super Value)
 - Foodstuffs North Island Limited (Pak 'n Save, New World).
9. Redwood Corporation Limited (which operates the Pelican Club) has filed a 'precautionary appeal'. This appeal does not specifically detail concerns about any of the changes to the Alcohol Policy.
10. The Medical Officer of Health and NZ Police have obtained recognition as interested parties in the appeals.
11. The appeals will be heard by the Authority.

Application for Judicial Review of Authority's decision filed by owner of the Pelican Club

12. Redwood Corporation Limited (Redwood) has started a judicial review in the High Court against the Authority's decision on the Alcohol Policy. The judicial review proceedings are against the Authority's decision on the definition of City Centre in the Alcohol Policy and maximum trading hours for on-licences.
13. The Authority and council are the respondents.
14. Redwood operates the Pelican Club, a licensed brothel located at 101 Newton Road, Eden Terrace. Redwood holds an on-licence to serve alcohol.
15. Redwood's premises are located outside the City Centre and would have maximum trading hours of 8am to 3am. Premises located within the City Centre would have maximum trading hours of 8am to 4am. Redwood strongly prefers the City Centre trading hours.
16. Redwood originally appealed against the definition of City Centre and the different opening hours for on-licences. All appeals originally brought by Redwood were dismissed by the Authority.
17. A summary of Redwood's claims are:
 - the Authority or decision was wrong in law
 - the decision was unequal in its application between licence holders as it treated Redwood like other on-licences
 - there was no evidence that the operation of the brothel gave rise to any alcohol-related harm
 - the decision is either: irrational, results in an oppressive or unreasonable restriction on Redwood

Next Steps

18. Council legal advisors are working on the timeframes and next steps for appeals to the Authority and on the judicial review proceedings. A case management conference for the judicial review will be held on 7 December 2017 to address administrative matters to progress the case.