

Date: Tuesday 10 May 2022
Time: 10.00am
Meeting Room: Reception Lounge, Auckland Town Hall
Venue: 301-305 Queen Street
Auckland

Komiti Whakahaere ā-Ture / Regulatory Committee

OPEN ATTACHMENTS

**ADDITIONAL ATTACHMENTS
UNDER SEPARATE COVER**

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Memorandum

22 April 2022

To: The Chair and members of the Regulatory Committee
Local Board Members

Subject: Application to the Supreme Court regarding Court of Appeal's decision on council's Proposed Local Alcohol Policy

From: Ben Brooks, A/General Manager, Community and Social Policy

Contact information: ben.brooks@aucklandcouncil.govt.nz

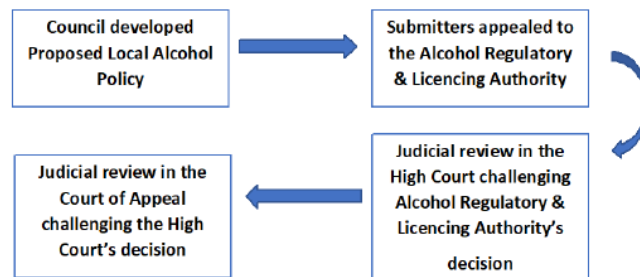
Purpose

1. To brief you on the application to the Supreme Court regarding Court of Appeal's decision on council's Proposed Local Alcohol Policy.

Context

2. Council adopted a Proposed Local Alcohol Policy (the Policy) in 2015. Since then, the Policy has been subject to various appeals. The Policy does not become operative until all appeals have been resolved.
3. The process to date is illustrated in the chart below.

Chart 1: Proposed Local Alcohol Policy development process



Discussion

Supreme Court Decision

4. In September 2021 the Court of Appeal issued its decision on the judicial review of the High Court's decision on the Policy. This decision is summarised in Appendix 1.
5. In October 2021 Woolworths and Foodstuffs applied to the Supreme Court to appeal the Court of Appeal decision. The Supreme Court has now granted leave to appeal. The Supreme Court has indicated it is primarily focussed on the issue of what standard of evidence is required to justify elements of the Policy.

Next steps

6. The timing of the hearing and subsequent decision is unclear but is estimated to be around 12 to 18 months. Next steps after the decision will depend on the details of the judgement. However, there are some outstanding matters that are not subject to the appeal, meaning that even if the decision is favourable to council it will be necessary to return to the Alcohol Regulatory & Licencing Authority before the Policy can become operative.



7. Staff will continue to provide briefings as this matter progresses.

Item 10

Attachment B



Appendix 1: Summary of Court of Appeal Decision

8. Three elements of the High Court's decision were appealed to the Court of Appeal. As part of its decision on these three elements the Court of Appeal also made a more general finding on the appropriate standard of evidence required to justify elements of the Policy.
9. The elements under appeal are shown in the table below.

Table 1: Elements of the Policy under appeal

Element	Position in the Policy
Off-licence trading hours	Maximum trading hours of 7am to 9pm (compared to 7am to 11pm as the default in the Sale and Supply of Alcohol Act)
Temporary freeze and rebuttable presumption against new off-licences in certain areas	24-month freeze in the City Centre and Priority Overlay areas and a rebuttable presumption against new off-licences in those areas (and in certain neighbourhood centres) following expiry of the freeze
Discretionary conditions	That any new or renewed off-licences should include a range of conditions

Council requires less evidence to justify elements of the Policy

10. The High Court found that elements of the Policy should be assessed 'on the balance of probabilities' to determine if they will reduce alcohol-related harm. This means council would need to demonstrate that it is more likely than not that a particular element would reduce harm.
11. The Court of Appeal overruled this and found that council must demonstrate that there is a 'real and appreciable possibility' that a given element would reduce harm. This standard recognises that there will be some uncertainty in introducing new measures, but that council is nonetheless justified in introducing them, at least in part to enable their effectiveness to be tested.

The Policy's provisions on off-licence trading hours are upheld

12. The High Court found that the Alcohol Regulatory & Licencing Authority failed to provide adequate reasons for its decision to uphold shorter off-licence hours than those in the Sale and Supply of Alcohol Act (the Act).
13. The Court of Appeal found that, based on the standard of evidence it required, the Alcohol Regulatory & Licencing Authority had provided adequate reasons for its decision.

The Policy's provision on a temporary freeze in issuing off-licences in certain areas, followed by a presumption against issuing are upheld

14. The High Court found that the Alcohol Regulatory & Licencing Authority failed to provide reasons for its finding that it was not unreasonable for the Policy not to differentiate between supermarkets and other off-licences or for there to be a temporary freeze on new licences.
15. The Court of Appeal overturned this finding, reinstating the Alcohol Regulatory & Licencing Authority's finding that this provision was allowed under the law and was reasonable.

The Policy may express a preference for issuing discretionary conditions

16. While council developed the Policy, the two key decision-makers regarding the Policy are the District Licencing Authority and the Alcohol Regulatory & Licencing Authority. The Court of Appeal was asked to find that the provisions of the Policy on discretionary conditions were removing the decision-makers discretion, and as such not allowed under the Act. The Court



instead found that the Policy should be interpreted as council expressing a preference that decision-makers could chose to ignore and as such is allowed under the Act.

Item 10

Attachment B



Memorandum

28 April 2022

To: Regulatory Committee
Craig Hobbs, Director Regulatory Services
John Duguid, GM Plans and Places

Subject: Appointment of panel members to the National Policy Statement – Urban Development plan changes Independent Hearing Panel

From: Julie McKee, Hearings Manager

Contact information: Julie.mckee@aucklandcouncil.govt.nz

Purpose

1. To: update the committee on the appointment of the chair and panel members to the National Policy Statement – Urban Development plan changes Independent Hearing Panel.

Summary

2. A delegation of the Regulatory Committee has appointed the chair and panel members to the National Policy Statement – Urban Development plan change Independent Hearing Panel. The appointed chair and panel members are:
 - Greg Hill, chair
 - Richard Knott
 - Karyn Kurzeja
 - Gavin Lister
 - Kitt Littlejohn
 - Sheena Tepania, deputy chair

Context

3. On 12 April 2022, the Regulatory Committee, under the confidential section, resolved:

That the Regulatory Committee:

 - a) **appoint independent hearings commissioner Greg Hill to the position of panel member on the independent hearings panel responsible for the hearing of submissions and making recommendations back to the Governing Body on plan changes and variations associated with giving effect to the National Policy Statement on Urban Development 2020.**
 - b) **note the delegation of the functions necessary to undertake hearings and make recommendations as set out in Schedule 2A to the Combined Auckland Councils**

Chief Executives Delegation register.

- c) **delegate authority to the chairperson, deputy chairperson of the Regulatory Committee and the chair of the Independent Māori Statutory Board to appoint the remaining panel members and then the chairperson for the National Policy Statement on Urban Development independent hearings panel.**

Restatement

- d) **agree that the report and its attachments and the decisions remain confidential until the reasons for confidentiality no longer apply.**

CARRIED

4. Cr Cooper, Cr Bartley and IMSB Chair David Taipari have met to discuss the appointment of the remaining panel members and the chairperson for the National Policy Statement on Urban Development independent hearings panel.

Discussion

5. The committee delegation considered the necessary skills of panel members required and concluded that panel members with the following expertise were necessary:
- Legal
 - Planning
 - Tikanga
 - Urban design
 - Special character.
6. The committee delegation also took into consideration the time commitment required by the panel members. It is anticipated that the chair and most panel members will be required for the majority of 2023 and into early 2024. A minority of the panel will be required for part of 2023 and early 2024.
7. The committee delegation appointed the following panel members to the National Policy Statement – Urban Development plan change Independent Hearing Panel

Panel Member	Expertise
Greg Hill (Chair)	Planning
Kitt Littlejohn	Legal
Karyn Kurzeja	Planning
Sheena Tepania (Deputy Chair)	Tikanga Maori
Gavin Lister	Urban Design and Landscape
Richard Knott	Special Character and Planning

8. The committee delegation appointed Greg Hill to be the independent hearing panel chair and Sheena Tepania to be deputy chair.
9. Additional Tikanga Maori commissioners, Reginald Proffit, James Whetu and Juliane Chetham were also appointed by the committee delegation. These commissioners will be utilised on a 'as required' basis.

Next steps

10. The council will be notifying the plan change in August 2022.
11. [Ministerial Directions have been issued](#) that reduces the timeframes for completing this plan change from the standard two years to 19 months. To provide time saving efficiencies, Greg Hill will commence preliminaries mid-2022 such as drafting Hearing Procedures.