

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 139/2021  
[2022] NZSC 46**

BETWEEN                      WOOLWORTHS NEW ZEALAND  
   LIMITED  
   Applicant

AND                              AUCKLAND COUNCIL  
   First Respondent

   ALCOHOL REGULATORY AND  
   LICENSING AUTHORITY  
   Second Respondent

   FOODSTUFFS NORTH ISLAND  
   LIMITED  
   Third Respondent

**SC 140/2021**

BETWEEN                      FOODSTUFFS NORTH ISLAND  
   LIMITED  
   Applicant

AND                              AUCKLAND COUNCIL  
   First Respondent

   WOOLWORTHS NEW ZEALAND  
   LIMITED  
   Second Respondent

   ALCOHOL REGULATORY AND  
   LICENSING AUTHORITY  
   Third Respondent

Court:                          William Young, Glazebrook and Ellen France JJ

Counsel:                      J S Cooper QC and A W Braggins for Woolworths NZ Ltd  
   I J Thain and I E Scorgie for Foodstuffs North Island Ltd  
   P M S McNamara and T R Fischer for Auckland Council  
   D R La Hood for Medical Officer of Health as Interested Party

Judgment:                    13 April 2022

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## JUDGMENT OF THE COURT

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- A Leave to appeal is granted (*Auckland Council v Woolworths New Zealand Ltd* [2021] NZCA 484).**
  - B Leave is granted to the Medical Officer of Health to appear as an interested party at the substantive hearing.**
  - C The approved question is whether the Court of Appeal was correct to allow the appeal and dismiss the cross-appeal.**
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## REASONS

[1] Although we grant leave to appeal in general terms, the Court is primarily interested in whether the Court of Appeal’s judgment proceeded on the basis that an appeal will only succeed if there is not a “real and appreciable possibility”<sup>1</sup> that the element of the provisional policy challenged will minimise alcohol-related harm (so that proportionality considerations are not material) and, if so, whether this is correct.

[2] The parties agreed that the Medical Officer of Health should be granted leave to appear and be heard as an interested party at the substantive appeal, should leave to appeal be granted. Leave is accordingly granted to the Medical Officer of Health to appear as an interested party at the substantive hearing.

### Solicitors:

Berry Simons, Auckland for Woolworths New Zealand Ltd

DLA Piper, Auckland for Foodstuffs North Island Ltd

Simpson Grierson, Auckland for Auckland Council

Luke Cunningham Clere, Wellington for Auckland Medical Officer of Health

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<sup>1</sup> *Auckland Council v Woolworths New Zealand Ltd* [2021] NZCA 484 (Kós P, Miller and Goddard JJ) at [53], [62] and [109].