



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

6 JULY 2022

MEDIA RELEASE

AUCKLAND COUNCIL v C P GROUP LIMITED AND OTHERS

(SC 158/2021)

Hearing in the Supreme Court Wednesday 20 July – Thursday 21 July

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

Background

For the rating years of 2017/2018 and 2018/2019, Auckland Council (Council) introduced an Accommodation Provider Targeted Rate (APTR) on the properties of commercial accommodation providers to help fund Auckland Tourism, Events and Economic Development Limited (ATEED). The Council made this decision under s 101(3) of the Local Government Act 2002 (LGA).

Commercial accommodation businesses opposed the APTR in public consultations. Among other things, they contended that other industries receive a greater share of visitor spending, thus benefitting more significantly from ATEED's expenditure, and yet would not be subject to the APTR. Several other objections were raised, including the exclusion of online accommodation providers and the benefits that the whole Auckland community receives from events sponsored by ATEED.

The Council decided, after the consultation process, to maintain the APTR. It took the view that the accommodation sector benefits more directly from ATEED's expenditure than other sectors. After considering the benefits all Aucklanders receive from ATEED's work, however, the Council modified the policy so that the APTR would only fund half of ATEED's expenditure, with the other half funded from general rates. To recognise that some accommodation providers stand to benefit more significantly from ATEED's activities, the Council would apply the rate on a differential basis according to geographical zones and provider types. A rates remission scheme was also introduced.



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The Council imposed the APTR on informal accommodation for the 2018/2019 rating year. Informal providers were subject to different rates than commercial providers to account for their part-time residential status.

Procedural history

In 2020, C P Group Limited, Millennium & Copthorne Hotels New Zealand Limited, MLC Scenic Limited and T & T Clarry's Holdings Limited (now Katalyma Hotels & Hospitality Limited) sought judicial review of the Council's decision to impose the APTR in the 2017/2018 and 2018/2019 rating years. The High Court declined the application for judicial review.

In 2021, the Court of Appeal overturned the High Court's decision. The Court of Appeal held that the Council did not comply with s 101(3)(a)(ii) of the LGA because it failed to undertake a meaningful assessment of the benefits of the APTR on the basis of the statutory criteria. The APTR proposal was instead driven by an assumption that the economic impact could be passed through to accommodation providers' customers. This was not a relevant consideration.

If it had been necessary to decide, the Court of Appeal would also have found that the Council's decision was unreasonable because of the Council's failure to adequately consider the distribution of benefits and the imposition of such a disproportionate burden on the targeted group. The Court of Appeal noted that *Wellington City Council v Woolworths New Zealand (No 2)* [1996] NZLR 537 continues to be the leading authority on reviewing the exercise of general and differential rating powers but said that the courts will more closely scrutinise a decision that disproportionately affects only a small group of ratepayers.

This appeal

The Supreme Court granted leave on the question of whether the Court of Appeal was correct to allow the appeal.

The issues to be determined include:

- (a) The correct interpretation of s 101(3) of the LGA; and
- (b) The scope and application of *Wellington City Council v Woolworths New Zealand (No 2)* [1996] NZLR 537.

Viewing of hearing

The Courtroom is open to the public in accordance with the [COVID 19 Protection Framework Protocol](#).

This hearing of the appeal will be live-streamed. Details about access to the livestream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.



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Court of Appeal decision: [\[2021\] NZCA 587](#) (10 November 2021)

Supreme Court leave decision: [\[2020\] NZHC 89](#) (5 February 2020)

