



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

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MEDIA RELEASE

WOOLWORTHS NEW ZEALAND LIMITED v AUCKLAND COUNCIL AND OTHERS

(SC 139/2021)

FOODSTUFFS NORTH ISLAND LIMITED v AUCKLAND COUNCIL AND OTHERS

(SC 140/2021)

Hearing in the Supreme Court Tuesday 13 September – Wednesday 14 September

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.

Background

In May 2015, Auckland Council produced a provisional local alcohol policy (PLAP) with general application across the Auckland district. Two elements of the PLAP require explanation. First, Auckland Council proposed that the maximum trading hours for off-licences was to be 9 am – 9 pm. Secondly, it proposed that in certain areas there was to be a temporary freeze on the issue of new off-licences for 24 months. On the expiry of that period, there was to be an ongoing rebuttable presumption against new off-licences in these areas.

Woolworths and Foodstuffs, who operate New Zealand's major supermarket chains and sell alcohol from those premises as off-licences, appealed, pursuant to s 81 of the Sale and Supply of Alcohol Act 2012 (the Act), to the Alcohol Regulatory and Licensing Authority (ARLA) on the ground that elements of the PLAP were unreasonable having regard to the object of the Act. The Act's object is that (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

In July 2017, ARLA held that it was not satisfied that some of the elements of the PLAP were unreasonable, pursuant to s 83 of the Act. In reaching this conclusion, ARLA adopted a



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precautionary approach which in practical terms meant that Auckland Council only had to be satisfied that there was a reasonable possibility that the PLAP would achieve the object of the Act. The maximum trading hours and temporary freeze/rebuttable presumption elements were largely upheld but the morning hour restriction (9 am) was considered unreasonable in light of the object of the Act.

Lower Court judgments

High Court

Woolworths and Foodstuffs brought judicial review proceedings against ARLA's decision in the High Court. In February 2020, Justice Duffy held that ARLA had made errors of law in, among other matters, failing to provide reasons on the evening trading hours and temporary freeze/rebuttable presumption elements. Other elements of the PLAP were held to be ultra vires (beyond the power). The Judge remitted the affected elements back to ARLA for reconsideration.

Court of Appeal

Auckland Council appealed and Woolworths cross-appealed. In September 2021, the Court of Appeal allowed the Council's appeal and dismissed Woolworths' cross-appeal. The Court determined that ARLA's reasons were adequate. It held that the appellate standard does not require that ARLA be sure a given element will reduce alcohol-related harm. It is enough that there is a real and appreciable possibility that the element will do so. The evidence was sufficient to justify the restriction on evening trading hours and the temporary freeze/rebuttable presumption.

This appeal

The Supreme Court granted Woolworths and Foodstuffs leave to appeal on the question of whether the Court of Appeal was correct to allow the appeal and dismiss the cross-appeal.

The main issue to be determined is whether the Court of Appeal's judgment proceeded on the basis that an appeal to ARLA will only succeed if there is not a real and appreciable possibility 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.

Viewing of hearing

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



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The hearing will be live-streamed. Details about access to the live-stream 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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Supreme Court leave decision: [\[2022\] NZSC 46](#) (13 April 2022)

