

**In the Supreme Court of New Zealand  
I Te Kōti Mana Nui  
SC 140/2021**

**In the matter of** of an application under the Judicial Review Procedure Act 2016 in respect of decisions made under section 83 of the Sale and Supply of Alcohol Act 2012 and on appeal from a decision of the Court of Appeal

**Between** **Foodstuffs North Island Limited**

**Appellant**

**And** **Auckland Council**

**First Respondent**

**And** **Woolworths New Zealand Limited**

**Second Respondent**

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**Joint chronology**

**Date:** 13 July 2022

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Counsel certify that this chronology is suitable for publication under clause 8 of the Supreme Court Submissions Practice Note 2021



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**And**                    **Alcohol Regulatory and Licensing Authority**  
**Third Respondent**

**SC 139/2021**

**Between**            **Woolworths New Zealand Limited**  
**Appellant**

**And**                    **Auckland Council**  
**First Respondent**

**And**                    **Alcohol Regulatory and Licensing Authority**  
**Second Respondent**

**And**                    **Foodstuffs North Island Limited**  
**Third Respondent**

## Chronology

### *Development of Auckland Council's Provisional Local Alcohol Policy*

- 1 The Sale of Liquor Act 1989 comes into force 1 Apr 1990
- 2 The Law Commission releases its report *Alcohol in our Lives: Curbing the Harm* (NZLC R114) 27 Apr 2010
- 3 Alcohol Reform Bill introduced to Parliament 8 Nov 2010
- 4 Auckland Council (**Council**) decides to develop a Local Alcohol Policy 24 May 2012
- 5 The Sale and Supply of Alcohol Bill receives royal assent 18 Dec 2012
- 6 The provisions of the Sale and Supply of Alcohol Act 2012 enabling territorial authorities to have a local alcohol policy and to prepare and consult on a draft local alcohol policy (ss 75-79) come into force 19 Dec 2012
- 7 The Council confirms its decision to develop a Local Alcohol Policy 31 Jan 2013
- 8 The remainder of the provisions of the Sale and Supply of Alcohol Act 2012 enabling the further development of a draft LAP into a PLAP and the adoption of a final LAP (ss 80-97) come into force 19 Dec 2013
- 9 Council produced its Draft Local Alcohol Policy (**DLAP**) and notified it for public consultation, using the special consultative procedure in section 83 of the Local Government Act 2002, pursuant to section 79 of the Sale and Supply of Alcohol Act 2012 (**Act**). Jun 2014
- 10 Foodstuffs North Island Limited (**Foodstuffs**), Woolworths New Zealand Limited (**Woolworths**), previously known as Progressive Enterprises Limited, and Jul 2014

Redwood Corporation Limited (**Redwood**)  
each filed submissions on the DLAP.

- |    |  |                |
|----|--|----------------|
| 11 | Auckland Council's Hearings Panel hears oral submissions on the Draft LAP  | Aug – Nov 2014 |
| 12 | Council produced and publicly notified its <b>Provisional Local Alcohol Policy (PLAP)</b> pursuant to <a href="#">section 80</a> of the Act. | May 2015       |

### *Appeals against the PLAP*

- |    |  |  |
|----|--|--|
| 13 | Appeals filed, pursuant to <a href="#">section 81</a> of the Act, with the Alcohol Regulatory and Licensing Authority ( <b>ARLA</b> ) against elements of the PLAP ( <b>Appeals</b> ), by various parties including Redwood, <a href="#">Woolworths</a> , <a href="#">Foodstuffs</a> , the Medical Officer of Health, the New Zealand Police, and the Takapuna Residents Group.  | Jun 2015   |
| 14 | Hearing of the Appeals before ARLA   | 13-17 Feb 2017,<br>27 Feb-10 Mar<br>2017 and 28-31<br>Mar 2017 |
| 15 | ARLA issued its decision on the Appeals, <i>Redwood Corporation Limited v Auckland Council</i> [2017] NZARLA 247( <b>ARLA Decision</b> ), and pursuant to <a href="#">section 83</a> of the Act: <ul style="list-style-type: none"><li>• Allowed the Appeals against, and referred back to Council for reconsideration, the following elements of the PLAP:<ul style="list-style-type: none"><li>○ <a href="#">Clause 4.3.1</a> (setting maximum off-licence trading hours);</li><li>○ <a href="#">Clauses 4.3.2 and 4.3.3</a> (setting the hours within which alcohol may be delivered from remote sellers);</li><li>○ <a href="#">Clauses 4.5.1(c) &amp; (d)</a> (relating to certain recommended discretionary conditions); and</li></ul></li></ul> | 19 Jul 2017  |

- Clauses 4.2.2 and 4.2.3  
(requiring decision-makers to have regard to local impacts reports); and
- Dismissed the remainder of the Appeals against elements of the PLAP.

***High Court judicial review proceedings***

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|----|---|-----------------------------------|
| 16 | Redwood filed its statement of claim seeking judicial review of aspects of the ARLA Decision ( <b>Redwood’s Review</b> )  | 20 Oct 2017                       |
| 17 | <a href="#">Woolworths</a> and <a href="#">Foodstuffs</a> each filed their statements of claim seeking judicial review of aspects of the ARLA Decision ( <b>Woolworths’ and Foodstuffs’ Reviews</b> ).  | 20 Nov 2017                       |
| 18 | Hearing of Redwood’s Review, Woolworths’ and Foodstuffs’ Reviews.<br><br>Woolworths filed an application to amend its <a href="#">statement of claim</a> on 12 February 2019. The application was heard and granted by Duffy J on <a href="#">14 February 2019</a> .<br><br>NB: Hearing of Redwood’s Review adjourned part-heard. | 11-15 Feb 2019<br>and 20 Feb 2019 |
| 19 | Redwood filed its second amended statement of claim seeking judicial review of aspects of the ARLA Decision ( <b>Redwood Review</b> ).  | 10 Apr 2019                       |
| 20 | Additional dates to complete the hearing of Redwood’s Review.   | 20-21 Jun 2019                    |
| 21 | High Court issued its decision granting Foodstuffs’ and Woolworths’ Reviews, <a href="#">Woolworths New Zealand Ltd v Alcohol Regulatory and Licensing Authority</a> [2020] NZHC 293 ( <b>HC Decision</b> ).  | 27 Feb 2020                       |
| 22 | High Court issued its reasons for its decision granting Woolworths’ application to amend its statement of claim, <a href="#">Woolworths New</a>   | 27 Feb 2020                       |

*Zealand Ltd v Alcohol Regulatory and Licensing Authority* [2020] NZHC 270.

NB: no appeal was filed against this decision

- 23 High Court issued its decision granting Redwood's Review, *Redwood Corporation Limited v Alcohol Regulatory and Licensing Authority* [2020] NZHC 971. 13 May 2020

NB: no appeal was filed against this decision

***Appeal of the HC Decision to the Court of Appeal on judicial review***

- 24 Council filed its notice of appeal against parts of the HC Decision (**Council's Appeal**). 25 Mar 2020

- 25 Woolworths filed its notice of cross-appeal and rule 33 memorandum and Foodstuffs filed its notice of appearance and rule 33 memorandum in respect of Council's Appeal. 8 Apr 2020

- 26 Court of Appeal hearing of Council's Appeal 15-16 Jun 2021

- 27 Court of Appeal issued its decision allowing Council's Appeal and dismissing Woolworth's cross-appeal, *Auckland Council v Woolworths New Zealand Limited* [2021] NZCA 484 (**CoA Decision**). 24 Sep 2021

***Leave to Appeal the CoA Decision to the Supreme Court on judicial review***

- 28 Woolworths and Foodstuffs each filed their applications for leave to appeal the CoA Decision (**Leave Applications**). 22 Oct 2021

- 29 Supreme Court granted the Leave Applications, *Woolworths New Zealand Limited v Auckland Council* [2022] NZSC 46. 13 Apr 2022

***Council's resubmission of the PLAP***

- 30 As requested in the ARLA Decision, the Council reconsidered its PLAP and then submitted an amended PLAP to ARLA (**Resubmitted PLAP**). 12 Oct 2017

- 31 Redwood, Foodstuffs and Woolworths filed appeals in respect of the Resubmitted PLAP. The only element appealed by Woolworths and Foodstuffs was the amended maximum off-licence hours element (clause 4.3.1), which the Council had amended by changing the opening hour from 9am to 7am. Nov 2017
- 32 Council applied to ARLA to have the Redwood appeal against the Resubmitted PLAP struck-out and for an order confining the submissions and evidence from Foodstuffs and Woolworths to only the amended, opening hour, aspect of the off-licence hours element on the grounds of alleged issue estoppel and abuse of process (**Council's Application**). Dec 2017
- 33 Redwood discontinued its appeal against the Resubmitted PLAP. July 2018
- 34 Hearing before ARLA of Council's Application. 3 Aug 2018
- 35 ARLA issued an interim interlocutory decision granting Council's Application in part (*Foodstuffs North Island Limited v Auckland Council* [2018] ARLA 249). 21 Aug 2018
- 36 ARLA issued its final interlocutory decision (*Foodstuffs North Island Limited v Auckland Council* [2018] NZARLA 255). 12 Sep 2019
- 37 Foodstuffs appealed ARLA's interlocutory decision to the High Court and a hearing was held. 5 Mar 2019
- 38 The High Court allowed Foodstuffs' appeal and reversed ARLA's interlocutory decisions, *Foodstuffs North Island Limited v Auckland Council* [2019] NZHC 1697. 19 Jul 2019
- NB: this High Court decision has not been appealed.
- 39 Woolworths and Foodstuffs' appeals against the Resubmitted PLAP are stayed by ARLA pending the determination of the judicial review proceedings, but remain on foot.