

**In Confidence**

Office of the Minister of Justice

Chair, Cabinet Social Wellbeing Committee

**Options to temporarily extend the physical area of alcohol licences under COVID-19 restrictions**

**Proposal**

- 1 This paper provides options to temporarily extend physical areas of alcohol licences under COVID-19 restrictions that require physical distancing.

**Relation to government priorities**

- 2 This paper relates to the Government's overarching priority of a COVID-19 recovery plan for all New Zealanders.

**Executive Summary**

- 3 COVID-19 lockdowns and subsequent restrictions have impacted the hospitality industry throughout the country.
- 4 Under section 120 of the Sale and Supply of Alcohol Act (the Act), alcohol licence holders can apply to their District Licensing Committee (DLC) to vary their licence conditions. A variation could include adding an outdoor area or increasing the size of a licensed area. The legislation requires at least 15 working days to allow the public, the Medical Officer of Health (Medical Officer) and/or the Police to raise an objection or report any matters in opposition to the application.
- 5 The hospitality industry is seeking an urgent temporary amendment to the Act to allow DLCs to grant extensions to the licensed area to allow a greater number of customers to drink alcohol while restrictions that require physical distancing are in place.
- 6 I have considered three options to address concerns raised by the hospitality industry and seek Cabinet's preference on which if any to progress. Two of these options require legislative change.
- 7 Legislative timeframes and the statutory shut-down period for District Licensing Committees mean that any change is very unlikely to be implemented in time to benefit the hospitality industry, as applications are very unlikely to be approved before the Christmas period. This is because there are only three working days between 15 December – the earliest applications could be received – and the DLC shutdown period.
- 8 I note that all options will have resourcing implications on Medical Officers of Health and Police, and delays in processing licensing applications will continue due to demand being diverted to the priority COVID-19 frontline response.

- 9 The options are:
- 9.1 **Option A:** encourage councils to work collaboratively with industry and regulatory officers to prioritise applications to vary alcohol licences over other application types, within the current regulatory parameters
  - 9.2 **Option B:** amend the Immediate Modification Order (IMO) to carve out applications that are solely to extend on-licence footprints from the IMO requirements
  - 9.3 **Option C:** temporarily amend the Sale and Supply of Alcohol Act to create a bespoke process for applications to extend on-licence footprints, setting out criteria for eligibility and conditions, as well as a process for managing objections and opposition.
- 10 These options were developed in short timeframes without in-depth analysis and have not been consulted extensively. No engagement with the hospitality industry or communities has been undertaken.

## Background

*Auckland Council has agreed to expedite applications for outdoor dining licences...*

- 11 COVID-19 lockdowns and subsequent restrictions have impacted the hospitality industry throughout the country.
- 12 From a public health perspective, outdoor dining and drinking is, in principle, preferable to indoor to limit the transmission of COVID-19.
- 13 In an effort to support businesses as they adhere to mandated physical distancing measures, Auckland Council has agreed to extend the footprint of outdoor dining licences when the region moves to Alert Level 2/the proposed 'Red' level of the COVID-19 Protection Framework. Outdoor dining licences are granted by the Council under the Trading and Events in Public Places Bylaw 2015. This extension will allow businesses to serve food and non-alcoholic beverages to up to 100 patrons in confined outdoor dining spaces.
- 14 While Auckland Council has agreed to fast track application requirements to use public land outside premises and waive application fees under their bylaw, different councils have different bylaws and conditions on outdoor dining and drinking areas, with some banning alcohol consumption in designated areas.

*...but Council powers do not extend to the sale of alcohol in these areas*

- 15 The objectives of the Sale and Supply of Alcohol Act 2012 are that the sale, supply and consumption of alcohol is undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.<sup>1</sup>

---

<sup>1</sup> Section 4 of the Sale and Supply of Alcohol Act 2012

- 16 A key feature of the Act is to facilitate the ability of communities to have a say about alcohol licensing in their local area and allow local-level decision-making for all licence applications. DLCs are responsible for making alcohol licensing decisions within each Territorial Authority. In determining applications, including for variations, the DLCs have commission of inquiry status. As such they may take account of a wide range of matters, including, for example, the suitability of the applicant, any relevant local alcohol policy, the object of the Act and matters the regulatory officers report on.
- 17 Under section 120 of the Act, alcohol licence holders can apply to their DLC to vary their licence conditions. A variation could include adding an outdoor area or increasing the size of a licensed area. The legislation requires at least 15 working days to allow the public, the Medical Officer of Health (Medical Officer) and/or the Police to raise an objection or report any matters in opposition to the application.

*There is currently an Immediate Modification Order in place that extends the timeframe Police and Medical Officers of Health have to report on applications*

- 18 In response to the 2020 COVID-19 outbreak, an IMO was introduced to amend requirements in the Act's licensing process. The IMO was introduced to reflect the role that Medical Officers and the Police play in our COVID-19 response, as these regulatory officers are redeployed to support the frontline response. Police and Medical Officers across the country are currently deployed away from their usual duties which has led to constraints on the ability to process applications.
- 19 Usually, the Police and Medical Officers would only report if they objected to the application. The current IMO requires Police and Medical Officers to report on all new and renewal licence applications (which includes variations to licence conditions) and removes the 15-day timeframe they have to report. The IMO also prevents District Licensing Committees from deciding on applications until they receive reports from both Police and Medical Officers. The IMO is necessary to ensure that applications receive adequate scrutiny from those who are aware of the potential for harm in the community and responsible for enforcement.
- 20 Despite the IMO (and current pressure on resourcing), I understand that Auckland Council is working with the regulatory agencies to prioritise applications to vary licences to extend outdoor areas over other application types. This means that applications will be expedited, as practicable, after the 15 working day public notification period has ceased.
- 21 I understand that the Auckland District Licensing Committee has received only a couple of applications to vary conditions of on-licences to-date.

*The hospitality industry is proposing a temporary legislative change to the Act*

- 22 The industry is requesting a temporary amendment to the Act to allow bars and restaurants to quickly and easily expand their footprints into public space or private land outside their business for customers to be able to drink alcohol.
- 23 The Restaurant Association has developed a proposal to amend the Act that is intended to remove barriers to extending outdoor alcohol licences. My officials have reviewed the proposal and consider that key elements of the alcohol licensing regime would be undermined if introduced as written. These include the public objection process, reporting and potential opposition by regulatory officers, appeal rights, and the DLC's discretion to consider a wide range of matters – rather than constrained to a narrow range of specific conditions and being required to grant a variation if these are met. Further, DLCs can refer matters to the Alcohol Regulatory Licensing Authority to decide in the first instance under the current parameters. As such, I have directed my officials to develop alternative solutions to the issues facing the hospitality industry.

**Three options that the government could take to support the hospitality industry**

- 24 I have considered three options to support the hospitality industry under COVID-19 restrictions. An assessment of these options is set out below. If Cabinet agrees support is justified, I seek Cabinet's preference on which option to pursue of the following:
- 24.1 **Option A:** maintain the status quo, which is to encourage councils to work collaboratively with industry and regulatory officers to prioritise applications that seek to vary licence conditions over other application types. This would maintain the parameters set out by the Sale and Supply of Alcohol Act and Immediate Modification Order currently in place.
- 24.2 **Option B:** amend the Epidemic Preparedness (Sale and Supply of Alcohol Act 2012 – Licence Application Inquiries) Immediate Modification Order 2020 by carving out an exemption for applications made to vary their conditions in order to extend the physical area of their licensed premises while under COVID-19 restrictions. This would mean applications would be processed under the original settings in the Act, within 15 working days after the public notice period.
- 24.3 **Option C:** amend the Sale and Supply of Alcohol Act by creating a bespoke process for applications to extend on-licence footprints, setting out criteria for eligibility and conditions, as well as a process for managing objections and opposition. This would retain many of the safeguards of the Act, but implement a tighter timeframe of 10 working days for the public and regulatory officers to oppose the application (where the IMO was put in place to extend this timeframe).

- 25 These options are not likely to fully address issues faced by the hospitality industry due to the impacts of COVID-19 restrictions. Further, all options will have resourcing implications on Medical Officers of Health and Police, and delays in processing licensing applications will continue due to demand being diverted to the priority COVID-19 frontline response.
- 26 I consider that the key criteria in considering the options are:
- 26.1 alignment with broader COVID-19 response (particularly the impact on Police and Medical Officers of Health)
  - 26.2 support for economic recovery of hospitality industry
  - 26.3 alignment with object of the Act - the sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised
  - 26.4 feasibility of implementation.
- 27 I also note that these options were developed in short timeframes without in-depth analysis and have not been consulted extensively. No engagement with the hospitality industry has been undertaken.

### Analysis of options to temporarily extend the physical area of alcohol licences during COVID-19 restrictions

<b>Option A: Maintain the status quo</b>	
Continue to encourage councils to work collaboratively with industry and regulatory officers to prioritise these applications over other application types within the current regulatory parameters.	
<i>Alignment with broader COVID-19 response</i>	<ul style="list-style-type: none"> <li>✓ Keeps regulatory officers largely available for the frontline response, prioritising these specific applications only as practicable</li> </ul>
<i>Support economic recovery of the hospitality industry</i>	<ul style="list-style-type: none"> <li>✓ Arrangements could be agreed and processes implemented relatively quickly</li> <li>✗ Guidance would not have a binding effect</li> </ul>
<i>Alignment with the object of the Sale and Supply of Alcohol Act</i>	<ul style="list-style-type: none"> <li>✓ Enables the safe sale, supply and consumption of alcohol</li> <li>✓ Allows for applications to be assessed with for harm/risk</li> </ul>
<i>Feasibility</i>	<ul style="list-style-type: none"> <li>✓ Could take effect relatively quickly</li> <li>✓ Provides flexibility and autonomy for councils and regulatory officers to manage applications in a way that works for them</li> <li>✗ Requires availability and agreement from regulatory officers who have reported being over-extended and may not have time to prioritise these applications</li> </ul>
<b>Option B: Amend the Immediate Modification Order</b>	
Amend the Epidemic Preparedness (Sale and Supply of Alcohol Act 2012 – Licence Application Inquiries) Immediate Modification Order 2020 by carving out an exemption for applications made to	

vary their conditions in order to extend the physical area of their licensed premises while under COVID-19 restrictions.	
<i>Alignment with broader COVID-19 response</i>	<ul style="list-style-type: none"> <li>✗ May divert regulatory officers from the frontline response to assess applications</li> <li>✗ Contradicts the intent of the current IMO</li> <li>✗ May not meet the threshold in s 14 of the Epidemic Preparedness Act</li> </ul>
<i>Support economic recovery of the hospitality industry</i>	<ul style="list-style-type: none"> <li>✓ Would provide a mandate for regulatory officers to assess applications within 15 working days of the public notice period</li> </ul>
<i>Alignment with the object of the Sale and Supply of Alcohol Act</i>	<ul style="list-style-type: none"> <li>✓ Reverts specific applications to the original process set out in the Act</li> <li>✗ May result in problematic applications being approved if regulatory officers do not have time to report any matters in opposition due to their frontline response obligations</li> </ul>
<i>Feasibility</i>	<ul style="list-style-type: none"> <li>✗ May not meet the threshold in s 14 of the Epidemic Preparedness Act</li> <li>✗ Would need to be passed under urgency by Order in Council the first week of December</li> <li>✗ Once the amendment takes effect, applications will not be processed before the Christmas period (beginning 20 Dec).</li> </ul>
<b>Option C: Amend the Sale and Supply of Alcohol Act</b> Amend the Sale and Supply of Alcohol Act by creating a bespoke process for applications to extend on-licence footprints, setting out additional criteria for eligibility and conditions to what is currently in the Act, as well as a process for managing objections and opposition.	
<i>Alignment with broader COVID-19 response</i>	<ul style="list-style-type: none"> <li>✗ May divert regulatory officers from the frontline response to assess applications</li> <li>✗ Contradicts the intent of the IMO</li> <li>✗ Could undermine the traffic light requirements for particular zones</li> </ul>
<i>Support economic recovery of the hospitality industry</i>	<ul style="list-style-type: none"> <li>✓ Would provide a mandate for regulatory officers to assess applications in an expedited process of 10 working days</li> </ul>
<i>Alignment with the object of the Sale and Supply of Alcohol Act</i>	<ul style="list-style-type: none"> <li>? Has potential enable the safe sale, supply and consumption of alcohol</li> <li>? Has potential to allow for applications to be assessed with a harm reduction lens</li> <li>✗ Gives preferential treatment to the hospitality industry while other stakeholders continue to lobby for changes to the Act</li> </ul>
<i>Feasibility</i>	<ul style="list-style-type: none"> <li>✗ Would need to be passed under urgency in early December in order to be of greatest benefit to the industry (and applications are very unlikely to be approved before Christmas). There are only three working days between the earliest date legislation could be passed and the statutory shut-down.</li> <li>✗ Once the law takes effect, DLCs may be inundated with applications which are very unlikely to be processed before 16 January 2022.</li> </ul>



*Option A is the most feasible, but is unlikely to benefit industry*

- 28 Option A recognises that the different councils across the country are under differing pressures from COVID-19 and may have different processes in place to manage outdoor dining licences. With this flexibility and autonomy, arrangements could be agreed and processes implemented relatively quickly, meaning businesses could benefit almost immediately.
- 29 This option also most aligns with our overall COVID-19 response, as it keeps regulatory officers largely available for their obligations on the frontline. It maintains the integrity of the IMO currently in place and retains the settings in the Act, ensuring the public have input into decisions and that applicants' and premises' suitability and public health considerations are adequately considered along with the other mandatory criteria in s 105 of the Act.
- 30 However, it puts the regulatory officers under considerable pressure, particularly when the COVID-19 Protection Framework is shortly to be implemented. Many COVID-19 cases are now isolating at home and requiring ongoing assessment and management, requiring regulatory officers to be on the frontline response to COVID-19. The Auckland border and MIQ facilities also require Police resource.
- 31 Even if outdoor licence variations are prioritised over other applications, there is still no guarantee this could be done promptly. A conservative estimate from Police is that each application may take 4+ hours to complete due diligence (to meet with licensee to discuss amenity and good order, training etc).
- 32 In order to be effective, this approach requires availability and agreement from all parties involved. With regulatory officers stretched thin, they may not be able to prioritise applications quickly enough to satisfy the hospitality industry's concerns. It is also unclear how this process could work if the DLC receives many applications at the same time, given there have been low numbers of applications to date.

*Option B will only be of some benefit to industry, but not before Christmas*

- 33 Option B would provide some certainty to businesses as they can expect decisions to be made on their applications within a timely manner.
- 34 Amending the IMO may not align with our broader COVID-19 response. There is a question of whether this exemption would meet the threshold for eligibility of an Immediate Modification Order under the Epidemic Preparedness Act.<sup>2</sup> If it does, its addition could undermine the original intent of the IMO, which was to relieve pressure from regulatory officers while their efforts are reprioritised to the frontline response of COVID-19.
- 35 I understand Police and Medical Officers of Health have limited capacity to extend their efforts further than obligations to the frontline response.

---

<sup>2</sup> Under s 15 of the Act, the Justice Chief Executive must first recommend the making of an order, stating the opinion that the modifications make or are likely to be necessary to enable the effective management of quarantinable diseases stated in the epidemic notice or its effects (or both).

Amending the IMO could result in problematic applications being approved simply because regulatory officers may not have time to report any matters in opposition. This could compromise the harm reduction object of the Act.

- 36 Applications assessed under this option would still be subject to the 15 working day public notification period. This appears to replicate the status quo as Council and the regulatory agencies are already prioritising these applications.

*Option C may be of the most benefit to the industry, but not before Christmas*

- 37 The specific parameters of my proposal to amend the Act are set out in Appendix 1. I have aimed to balance expediency with protecting key safeguards in the licensing regime.
- 38 Amending the Act is likely to benefit the hospitality industry. The proposal prioritises expediency, while still preserving key elements of the alcohol licensing regime, such as community input and assessment by Police and Medical Officers of Health.
- 39 As the regulatory agencies and the public will have less time to consider and report on applications, this proposal seeks to enhance safeguards by requiring several conditions are included in the temporary licence extension, such as including an outdoor management plan. It also ensures that the DLC can make decisions to revoke or suspend a temporary extension rather than having to refer the decision to the Alcohol Regulatory Licensing Authority.
- 40 Auckland Council has advised that there are 2,100 on-licences across the city and that, as a rough estimate, approximately 105-315 venues could benefit from this change (although it could be many more – Police estimate up to 500 licensees in Auckland may initially apply). To date there have been a handful of applications to extend the area covered by a licence under their Trading and Events in Public Places Bylaw, and two applications to vary the conditions of on-licences.
- 41 However, this change will put considerable pressure on Police resources and would be at odds with the objective of the current IMO, which is necessary to provide Police and Medical Officers of Health more time to consider and scrutinise alcohol licensing applications.
- 42 The reduction to 10 working days for public notification would have significant resourcing implications for Police. Police's capacity to meet the 15-day timeframe is already strained with current resourcing, therefore reducing this would further impair Police's ability review applications. This would almost certainly result in an inability to report any matters in opposition for all applications, rendering the safeguard of the public notification process less effective. The impact of this could result in harm to communities in contradiction with the Act. It may also result in Police needing to reactively address issues as they arise once revised licenses are approved, creating further demand for Police.



- 43 Further, the COVID Protection Framework is likely to come into force on 29 November 2021 and even if Auckland is initially in the 'red' setting, up to 100 vaccinated people can attend hospitality venues with mask-wearing and one metre distancing. Extended outdoor areas may be difficult to contain in terms of ensuring numbers keep within the new framework restrictions.
- 44 Legislative change before Christmas will be of greatest benefit to the industry. However, even if legislative change occurs as a matter of priority, it is very unlikely any applications would be approved before Christmas. The Act states that working days do not include the period of 20 December until 15 January. This means there are only three working days between 15 December – the earliest applications could be received – and the DLC shutdown period.

### Implications for the legislative programme and next steps

- 45 If Cabinet agrees to option A, there are no implications for the legislative programme. My officials will work with councils, and others, as required to support prioritisation of these applications.
- 46 If Cabinet agrees to amend the IMO, I will provide amended regulations for Cabinet's consideration by 13 December.

Urgent change to IMO: indicative timeframe	
Cabinet approves decisions in this paper	29 November
PCO drafting	23-26 November
Chief Executive of the responsible department makes a written recommendation to the responsible Minister on the effect of the epidemic and the modification(s) required	26 November
LEG	9 December
Minister (via Cabinet) makes a recommendation to the Governor-General	13 December
Governor-General by Order in Council modifies the IMO	14 December
Applicants received from industry	From 15 December (earliest)
DLC statutory closedown (no applications processed)	20 December – 15 January
Processing of applications and workings days resume	16 January

- 47 If Cabinet agrees to legislative change, I will provide a draft Bill and LEG paper for Cabinet's consideration by 29 November.

Urgent legislative change: indicative timeframe	
Cabinet approves decisions in this paper	29 November
PCO drafting	30 November – 2 December

Crown Law to vet proposed legislation for compliance with the Bill of Rights Act	30 November – 2 Dec
LEG	9 December
Cabinet	13 December
Legislation introduced	14 December
Applications received from industry	From 15 December (earliest)
DLC statutory closedown (no applications processed)	20 December – 15 January
Processing of applications and working days resume	16 January

### Financial Implications

48 Nil

### Legislative Implications

49 If Cabinet agrees to legislative change, a Bill will need to be passed under urgency while COVID-19 restrictions still apply to be most effective at achieving the objective, and any change can be in place for the summer period.

### Regulatory Impact Statement

50 Treasury's Regulatory Impact Analysis team has determined that the proposals in this paper to temporarily amend the process for extending the footprint of alcohol licence during COVID-19 restrictions are exempt from the requirement to provide a Regulatory Impact Statement. Option A does not involve regulatory change so is outside regulatory impact analysis requirements. Options B and C are exempt on the basis that the proposals are intended to provide limited temporary modifications to existing legislative requirements, since the COVID-19 emergency has made compliance with the requirements unreasonably burdensome.

### Human Rights

51 Elements of the proposal for legislative change, such as requiring public notification, may engage section 14 of the Bill of Rights Act (freedom of expression). I consider this limitation is likely to be justified.

### Consultation

52 This paper has been prepared within short timeframes meaning engagement on the proposals has been limited. The following agencies have been consulted on the proposals in this paper: Ministry of Health, New Zealand Police, Treasury (RIA team), and the Department of Internal Affairs. Ministry for Business and Innovation and Employment and Parliamentary Counsel Office have been informed.

## Communications

- 53 If Cabinet agrees to any changes, I will make an announcement in due course.

## Proactive Release

- 54 This paper will be proactively released within 30 business days of Cabinet confirmation.

## Recommendations

The Minister of Justice recommends that Cabinet:

- 1 **note** that COVID-19 lockdowns and subsequent restrictions have impacted the hospitality industry throughout the country;
- 2 **note** that in an effort to support businesses as they adhere to mandated physical distancing measures, Auckland Council has agreed to extend the footprint of outdoor dining licences when the region moves to Alert Level 2/the proposed 'Red' level of the COVID-19 Protection Framework;
- 3 **note** that outdoor dining and drinking is desirable from a public health perspective to limit the transmission of COVID-19;
- 4 **note** that under section 120 of the Sale and Supply of Alcohol Act 2012, alcohol licence holders can apply to their District Licensing Committee (DLC) to vary their licence conditions;
- 5 **note** that the Act requires at least 15 working days to allow the public, the Medical Officer of Health (Medical Officer) and/or the Police to raise an objection or report any matters in opposition to the application;
- 6 **note** that the hospitality industry is seeking an urgent temporary amendment to the Act to allow DLCs to grant extensions to the licensed area to allow a greater number of customers to drink alcohol under COVID-19 restrictions that require physical distancing;
- 7 **note** that we do not yet fully know the effect the introduction of the COVID-19 Protection Framework will have on this issue but it is likely that on 29 November 2021 the entire country will move to a less restrictive traffic light system;
- 8 **note** that even if Auckland moves into the 'red' level of that system, on-licence premises will be able to accommodate up to 100 vaccinated people at any one time;
- 9 **agree** to

**EITHER**

**Option A:** encourage councils to work collaboratively with industry and regulatory officers to prioritise applications within the current regulatory parameters

OR

**Option B:** amend the Immediate Modification Order to carve out applications to extend on-licence footprints to ensure that applications of this nature are considered under usual statutory timeframes

OR

**Option C:** Amend the Sale and Supply of Alcohol Act 2012 to create a bespoke process for applications to extend on-licence footprints, with the parameters set out in Appendix 1;

- 10 **note** that options B and C will have resourcing implications for the Police and Medical Officers of Health;

*if option B or C is agreed*

- 11 **invite** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office for either primary or secondary legislation giving effect to the decisions in this paper;
- 12 **note** that if Cabinet agrees to options B or C above, I will report back to Cabinet as appropriate on next steps to progress the option.

Authorised for lodgement

Hon Kris Faafoi

Minister of Justice

**Appendix 1: *Proposed policy settings for legislative change***

- an existing licence holder can apply to the District Licensing Committee to temporarily amend the footprint of its on-licence
- an application must include an outdoor management plan with the application that includes (at a minimum): the management of noise, general management of the outdoor space; management of queuing, exiting and entering the premises and of numbers, distancing, mask wearing and vaccination requirements under the applicable traffic light system, management of tidiness, amenity, and good order; how to manage closing time; and compliance with COVID-19 requirements
- once the application is received, the applicant must notify the public, as per the existing requirements in the Act, for period of at least **10 working days**
- Police and Medical Officers of Health will also have **10 working days** to consider the application and report matters in opposition (if no report is received in this timeframe the DLC can consider this to mean no opposition)
- after 10 working days, the DLC will consider the application and may convene a public hearing if any objections or reports in opposition are received
- the DLC can issue a temporary extension to the licensed area, but must impose the following conditions (and any other the DLC considers appropriate):
  - i. The new outdoor area must have a maximum capacity that is either tied to the maximum area specified in building consents OR is based on the number of people that could be seated at tables with 1 metre physical distancing between seated customers
  - ii. The licensee must comply with an outdoor management plan submitted with the application to extend their premises outdoor footprint
  - iii. Any conditions it thinks fit so that the variation is compatible with any Local Alcohol Policy in force
- if a licensee does not comply with the conditions of the temporary licence or for any other reasons set out in s 280 of the Act, Police or a Licensing Inspector can apply to the DLC to have the extension suspended or cancelled
- if satisfied on the balance of probabilities that the conditions of the license applicable to the premises extend outdoor footprint, the DLC may vary the license to remove the premises' extended outdoor footprint
- the extension would cease to apply when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked



*To be eligible for this expedited process (but not automatically entitled to the grant of an application):*

- applicants must not have had their licence suspended or cancelled in the last 3 years or have been subject to any successful enforcement application within the last 12 months
- the licensee must hold a current outdoor dining authorisation approved by the relevant territorial authority for the new area if on public land OR
- if on private land, the licensee must hold a written approval from the landowner describing the varied or new outdoor area and can demonstrate how the new proposed area complies with requirements in the Resource Management Act and Building Act/Code.

Proactive Release



# Cabinet Social Wellbeing Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Options to Temporarily Extend the Physical Area of Alcohol Licences under COVID-19 Restrictions

Portfolio Justice

On 24 November 2021, the Cabinet Social Wellbeing Committee:

- 1 **noted** that COVID-19 lockdowns and subsequent restrictions have impacted the hospitality industry throughout the country;
- 2 **noted** that in an effort to support businesses as they adhere to mandated physical distancing measures, Auckland Council has agreed to extend the footprint of outdoor dining licences when the region moves to Alert Level 2/the proposed 'Red' level of the COVID-19 Protection Framework (CPF);
- 3 **noted** that outdoor dining and drinking is desirable from a public health perspective to limit the transmission of COVID-19;
- 4 **noted** that under section 120 of the Sale and Supply of Alcohol Act 2012 (the Act), alcohol licence holders can apply to their District Licensing Committee (DLC) to vary their licence conditions;
- 5 **noted** that the Act requires at least 15 working days to allow the public, the Medical Officer of Health (Medical Officer) and/or the Police to raise an objection or report any matters in opposition to the application;
- 6 **noted** that the hospitality industry is seeking an urgent temporary amendment to the Act to allow DLCs to grant extensions to the licensed area to allow a greater number of customers to drink alcohol under COVID-19 restrictions that require physical distancing;
- 7 **noted** that the effect the introduction of the CPF will have on the above issue is not yet known, but it is likely that on 29 November 2021 the entire country will move to a less restrictive traffic light system;
- 8 **noted** that even if Auckland moves into the 'red' level of that system, on-licence premises will be able to accommodate up to 100 vaccinated people at any one time;
- 9 **agreed** to encourage councils to work collaboratively with industry and regulatory officers to prioritise applications within the current regulatory parameters.

Rachel Clarke  
Committee Secretary

**Attendees: (See over)**

**Present:**

Rt Hon Jacinda Ardern  
Hon Grant Robertson  
Hon Kelvin Davis  
Hon Carmel Sepuloni (Chair)  
Hon Andrew Little  
Hon Poto Williams  
Hon Kris Faafoi  
Hon Peeni Henare  
Hon Willie Jackson  
Hon Dr Ayesha Verrall  
Hon Aupito William Sio  
Hon Meka Whaitiri  
Hon Priyanca Radhakrishnan

**Officials present from:**

Office of the Prime Minister  
Office of the Chair  
Officials Committee for SWC

Proactive Release

## Approval to proactively release documents

---

**To** Hon Kris Faafoi, Minister of Justice

**From** Sally Wheeler, Manager, Harm Reduction and Public Safety Policy, Criminal Justice

**Date** 17 January 2022

**Subject** Proactive release of documents relating to *Options to temporarily extend the physical area of alcohol licences under COVID-19 restrictions*

---

### Purpose

---

1. This paper seeks your approval to publish documents relating to the Cabinet paper titled *Options to temporarily extend the physical area of alcohol licences under COVID-19 restrictions* on the Ministry's website by 1 February 2022 in accordance with the Government's policy on proactive release of Cabinet and related material [CO (18) 4].

### Information to be released

---

2. The Cabinet paper indicated you would proactively release it 30 business days after Cabinet confirmation.
3. we recommend releasing that paper, along with:  
SWC minute confirming Cabinet's decision [SWC-21-MIN-0196]
4. We are not recommending any related advice proactively at this time.
5. We do not recommend any information is withheld.

### Issues

---

6. The Paper contains information that attracted a reasonable amount of media attention at that time. The content in the Paper is unlikely to continue to be controversial as we understand Cabinet's decision has been communicated to key stakeholders with an interest in the issue.

### Timing

---

7. The 30-day deadline for publishing papers is 1 February 2022.

### Consultation

---

8. No consultation was required for the release of these documents.

### Publication details

---

9. The proposed publication details are set out in the **appendix**.

## Recommendations

10. It is recommended that you **approve publication** of the following documents on the Ministry's website on 1 February 2022:

No.	Document	Comments	Approval
1	Cabinet Paper: Options to temporarily extend the physical area of alcohol licences under COVID-19 restrictions	N/A	Yes / No
2	SWC-21-MIN-0196: Options to temporarily extend the physical area of alcohol licences under COVID-19 restrictions	N/A	Yes / No

PP JCH

Sally Wheeler  
Policy Manager, Harm Reduction and Public Safety

APPROVED      SEEN      NOT AGREED

Hon Kris Faafoi  
Minister of Justice

Date   /   /

### Attachments:

Draft pack for publication



## Appendix – publication details

---

11. The documents will be published on 1 February 2022.
12. The following table outlines the details for loading the documents onto the external website.

<b>Topic</b> <i>The “topic” is the top-level tag for material in the <a href="#">publications finder</a> on the website</i>	Cabinet and related material Policy
<b>Category</b> <i>The “category” is the second-level tag for material in the <a href="#">publications finder</a></i>	Cabinet paper
<b>Title</b>	<i>Options to temporarily extend the physical area of alcohol licences under COVID-19 restrictions</i>
<b>Description</b> <i>This is different from the title – it’s what appears in the search results, so it needs to be meaningful.</i>	This paper provided Cabinet with options to temporarily extend physical areas of alcohol licences under COVID-19 restrictions that require physical distancing.
<b>Key words</b> <i>Any additional keywords to be tagged – you don’t need to include any words already mentioned in the <b>title</b> or <b>description</b></i>	Proactive release
<b>Content owner</b> <i>This must be a person</i>	Sally Wheeler, Manager Harm Reduction and Public Safety Policy
<b>Business unit and group</b>	Criminal Justice, Policy Group
<b>Owner’s email address</b> <i>Use a generic team address if you have one – eg, teamname@justice.govt.nz</i>	<a href="mailto:Sally.Wheeler@justice.govt.nz">Sally.Wheeler@justice.govt.nz</a>

Proactive Release