



Storm clouds return for tourism workers. Auckland Council refuses to accept Court of Appeal's APTR decision

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Hotel Council Aotearoa is disappointed to learn that Auckland Council is throwing more public money at unnecessary litigation. On 8 December, Auckland Council sought leave to challenge the [Court of Appeal's ruling](#) that the Accommodation Provider Targeted Rate (APTR) was invalid and unreasonable. This latest decision is a missed opportunity for Auckland Council to show real support for the city's struggling tourism and hospitality sector.

It is a matter of public record that Mayor Goff campaigned in 2016 for the Auckland mayoralty on a platform that included "a fair level of user-pays" targeted at specific industries, such as tourism and hospitality. As a former central government politician, he may not have realised that local authorities are largely confined to levying rates on property values – only Parliament can impose taxes on revenue. The Parliamentary process contains checks and balances designed to ensure fairness and transparency when our politicians raise new taxes.

Mayor Goff could not convince central government to introduce his preferred bed tax. As a work-around, and seemingly in order to force the hand of central government and industry, Auckland Council created a rate on hotel and motel capital values intended to mimic a revenue tax. The APTR was built upon a misguided assumption that it could be "passed through" by accommodation providers to non-voting tourists from out-of-town.

The resulting Accommodation Provider Targeted Rate has a number of flaws and weaknesses. These flaws and weaknesses were highlighted by industry during an imperfect consultation process. In particular, industry repeatedly warned Auckland Council that the APTR could not be easily passed through to guests in the highly fragmented and competitive accommodation sector.

The APTR is poorly-design and almost comically unfair. It is a quasi-tax that massively increases rates for a small minority of tourism industry businesses. COVID-19 has proven beyond all doubt that the APTR does not work as intended, yet Auckland Council refuses to adjust to new circumstances and simply end this good times tax once and for all.

Auckland Council appears to no longer care whether or not the APTR is *fair* on ratepayers. That's an extraordinary state of affairs and has implications well beyond the immediate impact on struggling accommodation providers.

Auckland Council would have you believe that the Court of Appeal's decision was an aberration and that the APTR would be vindicated if this new appeal is successful. However, both the High Court and Court of Appeal accepted evidence that the accommodation sector receives just ten cents out of every dollar spent by visitors to Auckland. When other ratepayers receive 90% of the claimed benefits of Council's spending, why is it fair for accommodation providers to be relentlessly targeted as the only business sector liable to pay the rate?

Airlines, airports, hotels and transport networks are high-cost tourism infrastructure without which no visitor economy is possible. Without this tourism backbone, smaller businesses miss out on high-value customers on the trip of a lifetime from overseas.

Against the backdrop of COVID-19, the APTR will do real damage to the overall tourism sector's recovery once international borders eventually re-open. Tamaki Mākaurau's hotels and motels should be allowed to make hiring, renovation and maintenance decisions without the looming presence of an excessive and unfair APTR. It is wrong for the accommodation sector to be forced to fund Auckland Council spending that has questionable direct relevance to the sector's post-COVID survival and recovery.

Hotel Council Aotearoa has made repeated offers to Auckland Council to work collaboratively on agreeing principles for a fair, reasonable and nationally-endorsed funding model for the tourism economy that draws upon international best-practice and robust research. Even though we are deeply disappointed by this latest legal manoeuvring, we once again repeat our offer to work with Council on solutions that are fair and reasonable.

However, as we enter a local authority election year, ratepayers will want to know which side of the APTR fence their elected representatives sit on, especially when 54% of accommodation sector workers are estimated to have lost their jobs in the year ended March 2021¹. Is now the time to be beating up on one of the worst-affected business sectors after COVID-19? Is it right that Auckland Council wants to levy "targeted" rates where just 10% of the claimed benefits can expose you to a hugely disproportionate share of the liability? In light of Auckland Council's decision to appeal, Hotel Council Aotearoa will reach out to individual councillors and ward representatives to further explain the unintended consequences of the APTR and why it is has never been fair, reasonable or the best solution for Auckland.

Ultimately, all councillors now have the opportunity to revisit the APTR in light of circumstances as they exist today, including COVID-19 and the two court judgments issued so far. Two different courts have now delivered commentary on the APTR that should make it almost impossible for individual

¹ [Tourism Satellite Account](#), Table 7, p. 24

councillors to continue supporting it, even if the Mayor wishes them to do so. The APTR is not a policy anyone should want on their political CV.

In a judgment delivered in February 2020 just before New Zealand's borders were closed in response to COVID-19, [the High Court said](#):

"Some providers with particularly tight trading margins may fail."

"[...] while some of the Council's communications, particularly at the early stages, were overly simplistic and carried the potential to mislead, it is plain that by the time of public consultation the Council understood that pass-through was not an inevitable or automatic consequence of imposing the APTR. Instead, it was up to the provider whether to absorb the cost or not."

"There is no requirement to demonstrate a proportionate relationship between a ratepayer's liability and the benefit they receive from the rate itself."

"There will likely be a degree of financial hardship for the sector; but in time this will fade as accommodation providers adjust their business models."

"The fact that accommodation providers already contribute to destination marketing was not taken into account by the Council, but it did not need to be."

In its judgment delivered in November 2021, [the Court of Appeal said](#):

"Rating decisions are expected to be made in a transparent and consultative manner."

"The pass through assumption is the reason why this small group of ratepayers (0.5 per cent), who benefited far less from the funded expenditure than four other categories of ratepayer, were singled out."

"Absent pass through, there could be no proper justification for targeting this small group to shoulder the burden of funding an activity that provides greater benefits to four other larger groups as well as benefiting the wider Auckland community as well."

"The benefit was asserted, but there was no real attempt to assess it."

"[...] Council did not adequately consider the benefit of the funded activity to the targeted group, nor the distribution of benefits across the community including the other identifiable groups. Fundamentally, this was because the assessment was carried out at the end of the process to reverse engineer a justification for a scheme that had been formulated without regard to these criteria in an attempt to achieve an outcome that was beyond the scope of a rating mechanism, namely to obtain an additional source of revenue from non-ratepayers, being visitors to Auckland."

As the hotel sector's representative voice in New Zealand, Hotel Council Aotearoa will continue to oppose the APTR in the strongest terms possible because it is unfair, ill-informed and slap-dash. The APTR sets a terrible precedent in Aotearoa because it circumvents the Parliamentary processes that should always be followed whenever new revenue-based taxes are created. It is not right that Auckland Council introduced an unfair and poorly-targeted rate on accommodation providers in Auckland, while simultaneously lobbying for central government to impose bed taxes.

Our local government rating system should not be used as a means to a political ends. Damaging and unfair policymaking is the consequence.