

“I feel it’s unsafe to walk”:
Impacts of alcohol supply
on public space in eight
neighbourhoods, and
residents’ input to alcohol
licensing decisions

Final report

Steve Randerson, Liz Gordon, Sally Casswell, Judy Lin,
Belinda Borell, Marta Rychert and Taisia Huckle

Prepared for Te Whatu Ora – Health New Zealand’s Health Promotion Unit (previously Te Hiringa Hauora | Health Promotion Agency) by Steve Randerson, Liz Gordon, Sally Casswell, Judy Lin, Belinda Borell, Marta Rychert and Taisia Huckle (SHORE & Whariki Research Centre, Massey University)

Citation: Randerson, S., Gordon, L., Casswell, S., Lin, J., Borell, B., Rychert, M., & Huckle, T. (2022) “I feel it’s unsafe to walk”: Impacts of alcohol supply on public space in eight neighbourhoods, and residents’ input to alcohol licensing decisions. Wellington: Te Whatu Ora.

Acknowledgements

Te Whatu Ora would like to thank those respondents who took the time to participate in this research.

Copyright

The copyright owner of this publication is Te Whatu Ora. Te Whatu Ora permits the reproduction of material from this publication without prior notification, provided that fair representation is made of the material and Te Whatu Ora is acknowledged as the source.

Disclaimer

This research has been carried out by an independent party under contract to Te Whatu Ora. The views, observations and analysis expressed in this report are those of the authors and are not to be attributed to Te Whatu Ora.

This document has not been externally peer reviewed.

The document is available at: www.hpa.org.nz/our-work/research/publications

Any queries regarding this report should be directed to Te Whatu Ora at the following address:

Te Whatu Ora (Health Promotion)

PO Box 2142

Wellington 6140

New Zealand

www.hpa.org.nz

enquiries@hpa.org.nz

NZBN 9429041905333

November 2022

“I feel it’s unsafe to walk”: Impacts of alcohol supply on public space in eight neighbourhoods, and residents’ input to alcohol licensing decisions.

Final Report

Steve Randerson, Liz Gordon, Sally Casswell, Judy Lin, Belinda Borell, Marta Rychert and Taisia Huckle



Table of contents

Executive summary	1
Background and aims	1
Summary of findings	1
Conclusions	3
Introduction	5
Research objectives	7
Method	7
Literature review	8
Legal analysis	8
Neighbourhood case studies	8
Analysis	10
Part 1: In what ways does alcohol supply and drinking in public places affect residents' use and enjoyment of their neighbourhood?	13
Introduction	13
Features of the case study neighbourhoods	13
Alcohol-related issues observed in public spaces	14
Alcohol and inclusivity of public places	17
Consequences of diminished inclusivity related to alcohol	20
Other consequences of neighbourhood alcohol stores and public drinking	22
Perceived role of bottle stores in alcohol-related harm	24
Part 2: Key factors affecting the outcome of community objections to bottle store licences, before and after Lion Liquor Retail	26
Introduction	26
The Treaty of Waitangi and Māori engagement in licence decisions	28
Opportunity to object to licence applications	33
Amenity and good order	36
Alcohol-related harm and the influence of Lion Liquor Retail	41
The suitability of the applicant	45

Part 3: Discussion	47
In what ways is the community benefit of public space reduced by local supply and use of alcohol?	47
What contributed to the outcome of community objections to bottle store licences?	48
Has the 2018 Lion Liquor Retail ruling – that objectors do not need to demonstrate that alcohol-related harm in the community has come from a specific bottle store – allowed community voices to be taken into account to a greater extent in the licensing process?	50
Strengths and limitations	51
Conclusions	51
Appendix A: Diminished inclusivity as a factor in alcohol off-licence applications to District Licensing Committees: An analysis of legal processes	53
References	73

Acknowledgements

The authors wish to thank the community members and people working in alcohol regulation who shared their stories in this project, and the community organisations and interviewers involved in the research for their guidance and support. Lisa Morice provided invaluable assistance by conducting literature searches and editing.

This project was funded by Te Whatu Ora – Health Promotion (previously Te Hiringa Hauora | Health Promotion Agency) as part of their 2018-2019 Research Investment for Priorities in Alcohol for research addressing ‘The impact of alcohol on others’. We thank them and the other external reviewers for their comments.

Executive summary

Background and aims

The concentration of bottle stores in poorer parts of Aotearoa is linked with a range of harm and considerable public concern.¹ Although the Sale and Supply of Alcohol Act 2012 (the Act) intended to give communities more say in where and when alcohol can be sold, when community members object to alcohol licences they seldom succeed.² This research considers both issues.

The study first explores the effects of alcohol in public spaces around bottle stores in suburban residential areas. A key focus is neighbourhood 'inclusivity' (how comfortable people feel in the area), as this is one of the most widely reported impacts of alcohol on others. Inclusivity is also important in alcohol licensing decisions, which must consider effects on 'amenity and good order'.

Second, the study assesses factors impacting the success and failure of community objections to bottle store licences. An additional focus is whether a 2018 decision by the High Court (the *Lion Liquor Retail* decision) gave community objectors more say by broadening the range of evidence considered relevant in decisions. In relation to community involvement, factors in Māori engagement are assessed with respect to Te Tiriti o Waitangi and the Treaty of Waitangi.ⁱ The research asks:

1. In what ways is the community benefit of public space reduced by local supply and use of alcohol?
2. What contributes to the outcome of community objections to bottle store licences, including concerns raised about alcohol's impacts on public spaces?
3. Has the 2018 *Lion Liquor Retail* ruling that objectors do not need to directly link alcohol-related harm to a specific bottle store allowed community voices to be taken into account to a greater extent in the licensing process?

The study began with a **literature review** of the ways bottle stores affect neighbourhood inclusivity to inform the research design and analysis.³ A **legal analysis** of influential licensing decisions (Appendix A) then identified factors in successful and unsuccessful objections, with a focus on amenity, inclusivity and the impact of *Lion Liquor Retail*. A similar analysis was applied to decisions in eight **case study** neighbourhoods where a bottle store licence was *granted or renewed* despite community objections. Local residents and participants in the recent licence hearing were interviewed. The final stage was **synthesis and comparison of findings** from the case study sites, legal analysis and literature review.

Summary of findings

(1) In what ways is the community benefit of public space reduced by local supply and use of alcohol?

Most residents felt alcohol supply, public drinking and intoxication negatively impacted their neighbourhoods, detracting from their positive features and making them feel less safe. In each neighbourhood this caused several people (in three locations, a majority of interviewees) to avoid parts of the area some or all of the time. People of varying ages and genders were troubled by alcohol, although families and young people were commonly affected, consistent with survey data showing women and young people avoid drinking locations more than men do. More specifically:

ⁱ In this report use of *Te Tiriti o Waitangi* refers to the Māori text and *the Treaty of Waitangi* to the English text, recognising their differing content and implications. References to the 'the Treaty' relate to the Treaty generally rather than either of the two versions. Further discussion is on p.28.

- Locations avoided included shops, parks, recreation areas, playgrounds, certain streets and alleys.
- Some residents avoided local spaces for other reasons than alcohol, or in addition to it, such as antisocial people and poor lighting. They said alcohol also played a part by making antisocial people less predictable and more likely to harass, intimidate or attack others.
- Restriction of young people's activities was common; several parents would not let their children walk to school, the park or take part in other activities due to safety concerns linked to alcohol. This reduced children's opportunities for walking, play, socialising with friends and independence.
- Those who preferred to drive to other neighbourhoods to shop or exercise (to avoid drinking locations) faced additional transport costs and reduced opportunities for exercise.
- Drinking near local shops was believed to affect the vitality of neighbourhood centres as it drove away some customers, particularly those with children.
- Residents felt the visibility of alcohol outlets close to schools and food outlets visited by children, alongside public drinking, normalised alcohol and contributed to underage drinking.
- Groups of drinkers and noise from drinkers annoyed residents in all eight neighbourhoods.
- Littering of cans and bottles from bottle stores was a common problem and broken glass a safety risk. Residents regularly removed this rubbish from their front gardens, parks and carparks.
- Residents in six of the eight neighbourhoods said there were too many bottle stores in the area and that the easy access contributed to alcohol-related harm in the neighbourhood.

(2) What contributed to the outcome of community objections to bottle store licences?

Te Tiriti o Waitangi and Māori engagement in licence decisions

Institutional racism was evident in the design of the licensing system and its operation in practice. Rather than meeting Crown obligations to work alongside Māori in decision-making as established in Te Tiriti o Waitangi, The Treaty of Waitangi and guidance in the Local Government Act, the system discouraged Māori from participating and minimised Māori input in a range of ways:

- There is no recognition of either treaty text in the Act and current licensing processes do not support active partnership and engagement with Māori interests in licence decisions.
- Licence decisions and hearings did not recognise elements of Māori culture protected under Te Tiriti o Waitangi such as whakapapa (ancestral connections) or being a māngai kōrero (authoritative spokesperson) when assessing the right to give evidence. This meant opportunities to set precedents facilitating Māori input were missed and evidence excluded.
- Māori objectors described the legalistic nature of the hearing environment as an entirely inappropriate way to engage with Māori and one which excluded many from participating.
- A lack of recognition of Māori authority and leadership roles offended the mana of Māori objectors.
- Precedents in case law prioritised the input of the Police, Licensing Inspectors or the Medical Officer of Health (the 'reporting agencies') ahead of Māori, including community leaders.

Factors influencing the outcomes of community objections to bottle stores

To successfully oppose a licence application, objectors must present a considerable amount of robust evidence, linked to criteria in the Act, to show that granting or renewing a licence would increase (or fail to minimise) the risk of alcohol-related harm near the store. This has been difficult for the public to achieve without considerable support and specialised knowledge.

Although the case study neighbourhoods reflected relevant risks (i.e. greater socioeconomic deprivation, alcohol-related problems and amenity issues) each licence was granted. A range of systemic barriers to building a strong case were identified, which were particularly challenging for people with limited resources, thus likely contributing to inequities in licence approvals and inaccuracies in assessing the risk of harm:

- Many potential community objectors were excluded from licence hearings due to (1) the highly ineffective processes used to notify open applications, (2) increasingly frequent challenges to their right to object, and (3) unsuitable hearing times and locations. The resulting loss of relevant information can make the remaining objections seem isolated or minor.
- Applicants more often have legal representation than community objectors, creating an imbalance in important procedural and legal knowledge such as awareness of case law.
- The legalistic and adversarial nature of hearings was unsettling and disrupted people's ability to provide an effective objection; problems included challenges made to objector status, cross-examination by lawyers and not knowing what type of evidence is needed.
- When the reporting agencies do not object (or provide limited supporting data), decision-makers set a higher bar for the information from community objectors. The case studies call this practice into question, as in some hearings the reporting agencies did not raise relevant local problems well known to residents. Agency staff acknowledged this can be due to insufficient records or insufficient capacity to collate local level data.
- Objectors felt the decision-making bodies did not represent the diversity of the community and were unfamiliar with local needs, which made it harder to make their case. This is important considering the Act requires decision-makers to 'form an opinion' as to whether granting a licence is likely to reduce amenity and good order in the locality by more than a minor extent.
- The law regarding amenity and good order is complex and decisions have been inconsistent.
- In the case study licence decisions, objectors' evidence was sometimes too general or not well linked to the licence application, potentially reflecting the issues above.

In other hearings (beyond the eight case studies), community objections have succeeded where: many objectors provided specific, relevant evidence of harm, assisted by legal advice and coordination; the reporting agencies also supplied relevant evidence; the application was for a new outlet (not a licence renewal); in locations at greater risk of harm (e.g., with high socioeconomic deprivation); and the ability of the licence applicant to minimise harm was challenged. At least three of these factors were typically present when licences were declined.

(3) Did the 2018 Lion Liquor Retail ruling allow community voices to be taken into account to a greater extent in the licensing process?

The *Lion Liquor Retail* decision removed the requirement for objectors to demonstrate that local alcohol problems are directly connected to a specific bottle store, but this does not appear to have made a meaningful difference to the extent to which community voices are taken into account – largely due to the many other barriers facing community objectors.

Conclusions

Alcohol supply, public drinking and related noise and rubbish consistently reduced amenity (attractiveness) and perceptions of safety in the suburban neighbourhoods in this study, detracting from their positive aspects. This limited residents' activities such as walking and use of local shops and

parks, which carries financial costs and may affect physical and mental health. Residents felt the visibility of bottle stores and alcohol in the community also encouraged young people to drink.

Although the Sale and Supply of Alcohol Act was intended to assist community members to address such harms, alcohol licensing applications can still remain largely unseen and the licensing process presents other barriers to successful public engagement, particularly for people with limited resources. The process discourages and undermines Māori input and engagement, indicating institutional racism in the licensing system. The loss of relevant local knowledge increases the risk of licences being granted in communities at higher risk of alcohol-related harm and is likely to contribute to inequities in health. For the Act to achieve its aims, these important failings in the licensing system should be addressed in future changes to the law and its implementation, with an appropriate process to enact recent calls for the legislation to protect Māori rights and address Crown obligations to Te Tiriti o Waitangi.

Introduction

More than two-thirds of New Zealanders and Australians have experienced at least one harm from someone else's drinking in the last year. Two of the most prevalent are amenity issues such as noise, rubbish and disorderly behaviour, and reduced inclusivity – due to feeling uncomfortable or unsafe around drinkers or locations where drinkers often congregate. To date, research on the effects of alcohol in public places has mainly focused on town centres and nightlife precincts, with little documented about the ways residential neighbourhoods are affected.³

It is estimated that 75% of all alcohol consumed in Aotearoa is sold from off-licensed premises⁴ and there is a disproportionately high number of such premises (particularly bottle stores) in more socioeconomically deprived areas.⁵ People living closer to off-licensed premises are more likely to experience theft, property damage and disorder such as noise and nuisance.³ These premises are known to be a significant concern for many communities.⁶ Nationally, they are an important contributor to alcohol-related harm in Aotearoa, including the disproportionate impact of alcohol on the health of Māori.⁷

Consistent with the recommendations of Muriwai et al.,⁸ this study aims to be of practical benefit by focusing not only on the effects of alcohol, but also the contributing causes that may be addressed to reduce harm. Specifically, the research seeks to better understand neighbourhood issues relating to alcohol sold from off-licensed alcohol outlets and how they affect local residents, together with assessing how these neighbourhood concerns have been considered in the alcohol licensing process.

Factors affecting Māori engagement in the licensing process are considered with respect to Crown obligations under Te Tiriti o Waitangi and the Treaty of Waitangi, due to the obligations each text places on Crown-led public decision making.

The study's overall aims are to increase our understanding of the effects of alcohol in public spaces and of the factors that contribute to the outcomes of community objections to alcohol licences. The intention is to support potential improvements to the licensing process and policies aimed at reducing alcohol harm in the community.

The alcohol licensing system (Figure 1) is governed by the Sale and Supply of Alcohol Act 2012. During its passage through Parliament, then Minister of Justice, Judith Collins noted: *"At present, it is very difficult to successfully object to a licence application. Licence criteria are limited and licences are relatively easy to obtain. This can be frustrating and disheartening for communities concerned about alcohol-related harm in their areas. Under the bill, licences will be harder to get and easier to lose"*.⁹ Accordingly, the Act introduced new criteria for licensing bodies to consider, including effects on 'amenity and good order' where alcohol outlets are (or will be) located.

Figure One: Alcohol licensing overview

The Sale and Supply of Alcohol Act 2012 (the Act) sets out how to apply for alcohol licences, how to object and the criteria considered in licence decisions.

One criterion is the object of the Act: to ensure the sale, supply, and consumption of alcohol is undertaken safely and responsibly, and that harm caused by excessive or inappropriate alcohol use is minimised.

Local Authorities (Councils) may have a Local Alcohol Policy (LAP) with further restrictions on where and when alcohol outlets can trade.



To learn more about how the public can engage in licensing visit:
<https://www.alcohol.org.nz/in-your-community/take-action/object-to-an-alcohol-licence>

The research also explores the potential impacts of a significant legal decision by the High Court in 2018, *Medical Officer of Health v Lion Liquor Retail*ⁱⁱ (*'Lion Liquor Retail'*) – an appeal against a bottle store licence renewal near Wellington's central night life area. In this case the High Court specifically addressed whether evidence of alcohol-related harm near an alcohol outlet must be shown to be linked to that outlet in order to be relevant to the licensing decision, which had been a somewhat common requirement in DLC and ARLA decisions. The High Court concluded that asking objectors to show such a link was an unrealistic standard and legally incorrect. Instead, it emphasised that any nearby harm which the store is likely to be contributing towards should be considered when assessing the risk associated with issuing a licence. The DLC's original decision to move the bottle store's closing time from 11pm to 9pm on Friday and Saturday nights was reinstated.ⁱⁱⁱ The decision was expected to mean that a wider range of evidence of alcohol-related harm occurring near bottle stores would be accepted as relevant in future licence decisions.

Research objectives

1. To better understand the harms people experience from diminished public space inclusivity and amenity due to the local supply and use of alcohol.
2. To determine what contributed to the outcome of community objections to alcohol licences – with particular respect to diminished inclusivity and amenity – and whether this changed after the *Lion Liquor Retail* decision in 2018.

The primary research questions:

1. In what ways is the community benefit of public space reduced by local supply and use of alcohol?
2. What contributes to the outcome of community objections to bottle store licences, including concerns raised about alcohol's impacts on public spaces?
3. Did the 2018 *Lion Liquor Retail* ruling – that objectors did not need to demonstrate that alcohol-related harm in the community has come from a specific bottle store – allow community voices to be taken into account to a greater extent in the licensing process?

Method

The Massey University Human Ethics Committee approved the study, which has four parts:

1. A narrative literature review regarding inclusivity and its links to alcohol's harm to others.
2. Legal analysis of relevant DLC and ARLA decisions considering factors in the success and failure of community objections to bottle store licences. The analysis focused on inclusivity, amenity and good order issues, and the influence of the *Lion Liquor Retail* ruling on subsequent decisions.
3. Case studies based on community interviews with residents in eight suburban neighbourhoods and key informant interviews with participants in alcohol licence hearings for these neighbourhoods focusing on:

ⁱⁱ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd* [2018] NZHC 112.

ⁱⁱⁱ See Appendix A for further details of the decision and its significance.

- (a) alcohol-related issues in public spaces and their consequences for residents and the community
 - (b) factors contributing to the success of community objections to bottle store licences.
4. Synthesis and comparison of findings from the eight case study sites and the legal analysis to answer the main research questions.

Literature review

The narrative review of local and international literature focused on the question “*What is known about the extent and nature of reduced amenity and inclusivity in public spaces due to the local supply and use of alcohol?*”. Scopus and Medline were searched using related key terms. The review included articles from peer reviewed journals, published reports and relevant survey data. The findings were used in the development of the community interview questions and in the discussion of results in this report. A report of the findings is available online.³

Legal analysis

To assess factors in the success and failure of community objections to bottle store licences, the legal analysis focused on arguments and legal reasoning in a selection of bottle store licence hearings where community objectors raised issues relating to amenity and good order.

Written licence decisions by DLCs and ARLA were analysed, i.e. document review. ARLA decisions were a prominent focus as they provide guidance to DLCs. The decisions were drawn from before and after *Lion Liquor Retail* (June 2018) and were sourced from the New Zealand Legal Information Institute database and territorial authority websites. The full analysis is reported in Appendix A.

The analysis also considered patterns in the alcohol licensing process before and after *Lion Liquor Retail*, particularly the development of precedent forming decisions made and used under the Act. The absence of reference to the Treaty of Waitangi and Te Tiriti o Waitangi in the legislation is discussed as a factor that may affect Māori contributions to the licensing process, given the relevance to decision making processes administered by local government in Aotearoa,^{10,11} and the use of Treaty of Waitangi and Te Tiriti arguments in some licensing cases.

Neighbourhood case studies

Selection of case study neighbourhoods

Eight suburban residential neighbourhoods^{iv} were chosen where community members had objected to a central bottle store (off-licence) licence application because of amenity and good order issues, but the licence was subsequently granted. This excluded successful objections, however the selection process was important in assessing the store’s potential role in alcohol issues in each neighbourhood

^{iv} The neighbourhoods have not been named to avoid potential stigmatisation relating to alcohol harm.

and how this was assessed in the alcohol licence hearing.^v Four applications were for new licences and four were renewals for existing stores in different parts of the country.

Neighbourhoods with greater socioeconomic deprivation (as measured by NZDep 2018) were prioritised because they may face higher barriers to participation in the licensing process. Further, the stronger relationship between off-premises outlet density and harm in such locations¹² means there is a higher chance licensing bodies will need to consider how alcohol supply is affecting the neighbourhood.

A total of eight sites was considered sufficient to provide a spread of locations around the country. This enabled potential differences in alcohol-related harm and community participation in licensing across different locations to be captured, as well as potential variability in the actions of DLCs and regulatory staff.

Of the licence decisions selected for review, four were issued before and four after the June 2018 High Court decision on *Lion Liquor Retail* to allow assessment of any change following the decision.

The selection process began by asking licence inspectors and Medical Officers of Health to suggest cases that met the criteria. The Legal Information Institute database of licence cases was searched for alternative decisions. The final eight cases were agreed between the research team and staff from Te Hiringa Hauora based on coverage in the hearing of issues relevant to alcohol harm and amenity, socioeconomic deprivation in the area, and variety of geographical locations.

Community interviews

The community interviews were semi-structured, qualitative interviews focusing on views and experiences of public space inclusivity, including how alcohol affected the area, and awareness of the recent alcohol licensing application for a bottle store at the centre of the neighbourhood. Interviewers with familiarity with the neighbourhood or wider district were recruited. They were given training on the study protocol, ethics procedures, and interviewing skills.

Residents from households within a 500m radius of the central bottle store were invited to participate. The interviewers walked from randomly selected start points between 250m and 500m from the store and proceeded by road towards the store, calling on every second residence. If multiple people lived in the household, interviewers asked to speak with the person who had the next birthday. Residents were eligible if they were 16 or older and had lived in the area for at least two years before the last hearing for the bottle store licence took place.

All community interviews were conducted face to face, recorded and transcribed. As the interviews were branched (some sections could be skipped based on initial answers), they ranged in duration between 5 and 22 minutes, with a typical time close to 11 minutes. During the interview, respondents used a map of the neighbourhood to mark places they enjoy and places they avoid, and where alcohol issues were present.

^v Cases where community objections resulted in licences being declined are considered in the legal analysis component of the study (Appendix A) and in the discussion.

Approximately 20 people were interviewed in each neighbourhood, 155 in total, between 2019 and 2021. Participants were relatively evenly divided between female (56%) and male (44%); other demographics are supplied in Figure 2 and Table 1.

Figure 2: Age distribution of respondents

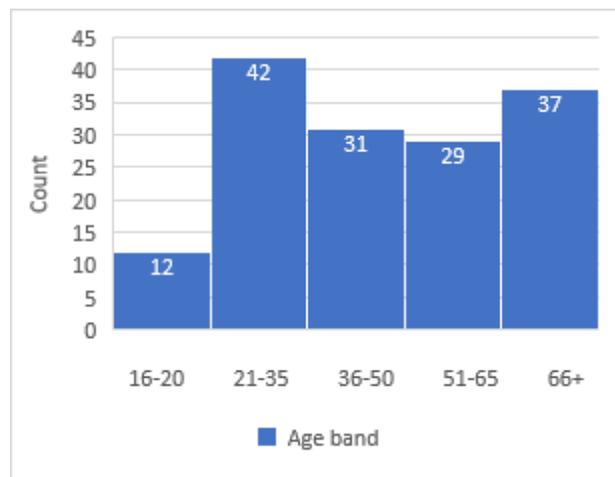


Table 1: Participant ethnicities

Ethnicity	Percentage*
New Zealand European†	40%
Pacific peoples (total)	29%
<i>Samoan</i>	11%
<i>Cook Islands Māori</i>	5%
<i>Tongan</i>	5%
<i>Pacific not further defined</i>	3%
<i>Niuean</i>	2%
<i>Fijian</i>	2%
<i>Fijian-Indian</i>	1%
Māori	25%
Asian	8%
Other European	5%
Middle Eastern	1%

* Adds to more than 100% as participants identified with more than one ethnicity

† Includes Pākehā, New Zealander, Kiwi, European not further defined

Key informant interviews about the licensing process

Structured, qualitative telephone interviews were conducted with people who participated in the licence hearing in each case study neighbourhood. Approximately six key informants were interviewed in each site, 48 in total, including Licensing Inspectors, Medical Officers of Health, Police, licensees, lawyers, community leaders, community objectors, territorial authority local board members and Māori wardens^{vi}.

Key informants were asked about alcohol’s impacts in the neighbourhood; how community concerns were presented and weighed in the licensing process; what role Te Tiriti o Waitangi or the Treaty of Waitangi might play in the process; and what could be done to improve the process.

Analysis

Legal analysis of the case study licence decisions:

The legal analysis (Appendix A) identified a set of factors in legislation and case law that affect how amenity and inclusivity issues are weighed in licence decisions. This framework was used to assess

^{vi} Māori Wardens have specific alcohol-related statutory powers under the Māori Community Development Act, with a focus on controlling alcohol consumption and disorderly behaviour.

what contributed to the failure of community objections to the licence decisions in the eight case study communities in Part 2 of this report.

One researcher analysed the written licence decisions and supplemented this by reviewing the key themes from the interviews with key informants about the eight case study licence hearings. The interview data were reviewed again by a second researcher and the wider team reviewed the findings. Agreement on themes was reached through discussion and returning to the data for clarification where needed.

Qualitative analysis of community interview data

The qualitative community interview data were analysed in Nvivo, using a deductive, content driven approach. The research team developed and agreed a frame to guide the coding based on the research questions and objectives. One researcher coded the data. Interpretation was supported by map data for each community (showing locations people avoided and where alcohol-related problems occurred) and discussion with a second researcher.

The second researcher used the coded interview data and map data to summarise content themes discussed by residents in each of the eight neighbourhoods in relation to the main research questions, returning to interview transcripts where needed. Similarities and differences across the themes in each neighbourhood were assessed with respect to:

- (a) the types and extent of amenity and inclusivity concerns relating to both alcohol and other contributing factors,
- (b) the impacts of diminished inclusivity on residents and the community, and
- (c) other effects on residents relating to alcohol, amenity and good order.

These findings were summarised to answer the first research question: “In what ways is community benefit of public space reduced by local supply and use of alcohol?”. The findings were reviewed again by the first researcher and then by the wider team; questions and disagreements were resolved by returning to the coded data on the relevant topic and further discussion.

The total number of people aware of the licence application in each neighbourhood and the number interested (or involved) in objecting to it were counted.

Triangulation

Part two of the report triangulates elements from each part of the study to answer the remaining research questions:

2. What contributes to the outcome of community objections to bottle store licences, including concerns raised about alcohol’s impacts on public spaces?
3. Did the 2018 *Lion Liquor Retail* ruling – that objectors did not need to demonstrate that alcohol-related harm in the community has come from a specific bottle store – allow community voices to be taken into account to a greater extent in the licensing process?

The analysis of the eight written licence decisions was triangulated with the views provided by key informants who took part in the licence hearings and the community interviews with local residents

(regarding awareness of the licence hearing). Factors influencing the outcomes of objections lodged by Māori were assessed and related to the current and potential role of the Treaty of Waitangi and Te Tiriti o Waitangi in the licensing process.

Because these eight licences were granted, the case studies provide insight into instances where community objections to bottle store licences have failed, in communities which in most cases had fewer economic resources than others. Alcohol licence hearings where community objections were both successful and unsuccessful were assessed in the accompanying legal analysis, and these findings are compared with the case study findings in the discussion and conclusions of this report.

Part 1: In what ways does alcohol supply and drinking in public places affect residents' use and enjoyment of their neighbourhood?

Key points

- Alcohol was widely seen as a negative influence in each neighbourhood, although this differed by location.
- Public drinking, noise and antisocial behaviour from drinkers were problems in all but one of the neighbourhoods.
- People avoided local shops, parks, recreation areas and some streets because of the increased risk of harm from drinkers. Other factors such as antisocial groups, crime or poor lighting also contributed to this avoidance in some cases.
- Children's local travel and activities were frequently restricted in part by alcohol; this limited opportunities to see friends and develop independence.
- People believed easy access to alcohol added to problems in the neighbourhood and encouraged young people to drink; many believed there should be fewer bottle stores.
- Alcohol-related rubbish and glass were widespread in many locations and required regular effort to clean up.
- Consequences related to alcohol included reduced exercise, lost sleep, higher transport costs and loss of customers to some local businesses.

Introduction

This section draws from the community interviews with residents in the eight case study neighbourhoods. The residents were asked about local places they enjoyed, places they avoided, whether and how alcohol supply and other people's drinking affected the area, and any consequences of this. The recent application for a bottle store in the neighbourhood was also discussed.

Features of the case study neighbourhoods

The eight case study neighbourhoods are residential areas in a mixture of city suburbs and small towns (Table 1). Seven neighbourhoods contained a primary, intermediate or secondary school, and there were a range of public and community spaces in each neighbourhood. These included shopping areas, parks and community facilities that people liked to visit and where a number of people had positive experiences. Some people reported pride in the vibrancy of their community and appreciated positive relationships with neighbours and the work of local community leaders.

In relation to alcohol outlets and licensing, all but one neighbourhood had either one or two pubs in their main shopping area, while two included a town centre main street containing several pubs. The

neighbourhoods differed in the number of other bottle stores or supermarket outlets in the neighbourhood or nearby. Seven of the neighbourhoods had high socioeconomic deprivation scores as measured by NZDep 2018, which is considered to increase the risk of alcohol-related harm.^{vii}

Alcohol-related issues observed in public spaces

A majority of residents said alcohol supply or use negatively affected their neighbourhood in some way, but the extent of alcohol-related issues differed across neighbourhoods. In three neighbourhoods, more than three-quarters of the people interviewed (and in two neighbourhoods more than half) believed alcohol negatively affected them or their community.

Relatively few alcohol-related issues were reported in one neighbourhood, which had a lower socioeconomic deprivation score than the other locations. The quote below illustrates some of the community concerns over amenity, and particular concerns for young people:

Interviewer: Do you think alcohol in public places affects you and your community?

“Yeah I think it does cos in [suburb] we’ve got the bottle store and then straight across we’ve got the park where our tamariki play. A lot of our whānau don’t have cars, so they’re walking to the bottle shop, buying what they buy and then they could be walking past tamariki playing in the park. They might be drinking while they’re walking through the park. They don’t always use rubbish bins. There could be cans and bottles smashed on the concrete. Our tamariki have to go there and walk to school. There’s [school] just down the road. It’s quite visual I think, it’s not a good thing.”

(Female, 35, Māori)

Group Drinking

In all eight neighbourhoods, residents highlighted groups of people drinking or intoxicated in public areas as a problem. Some groups were seen in the same place on a near daily basis – these locations appeared to be well known trouble spots as they were identified by numerous respondents. For example, in one neighbourhood a group would regularly drink outside the same local shops near the bottle store, despite a public alcohol ban being in force.

Across the eight neighbourhoods, the places commonly affected were public parks and reserves, skate parks, playgrounds and sports courts, alleys, and neighbourhood shopping precincts (particularly near pubs and gambling venues, and in one location, near 24-hour petrol stations and fast-food outlets). Drinkers were also seen frequently in specific streets and sometimes the street front of particular houses.

In four of the neighbourhoods groups of drinkers showed up regularly across different parks and reserves throughout the area:

“Mainly just the parks... Majority like most of them you're bound to get public drinking.”

(Male, 19, Fijian)

^{vii} Higher NZDep 2018 scores reflect lower levels of income, internet access, employment, qualifications, home ownership, living space, family support and dwelling conditions, as calculated from census data.

The groups were often described as “young people” but in some neighbourhoods groups of adults were also regularly seen drinking. There were also reports of school students drinking during the day and after school.

“On Saturday, Friday and Saturday the park at night can become dangerous, a lot of young ones... I don’t, I don’t think, oh I’ve had a few afternoon incidents if I stop and think about it. And it would have been about four in the afternoon and I went over there and the young men were drinking and they had dogs that were not on leashes.”

(Female, 60, NZ European)

“But no there’s some people just sit at the bus stop there with the beer boxes here and there and you’ve got nowhere to sit.”

(Female, 80, Samoan)

“Yeah, there is this whole big field there and people hang around there and they just drink.”

(Female, 33, Pacific)

Drinkers were more frequently seen at night, but in some neighbourhood locations they were encountered during the day and on most weekends.

Behaviour of group drinkers

Many residents had witnessed intoxicated people fighting, shouting and swearing. Some residents had been verbally abused, approached, or had objects thrown at them. The groups were described as an intimidating and regular presence in six of the neighbourhoods.

“Oh yeah, yeah... It was just in the alleyway, yeah it was just, ended up getting rushed eh, by a group of boys, but I was all good.”

(Male, 17, Tongan Māori)

“We avoid [street] cause that’s where a lot of the kids, like they drink outside of their houses and like if they’re drunk you can drive past and they throw stuff at you. Like that’s that area.”

(Male, 28, Tongan)

“I mean you’re standing outside your front door and you’ve got people swearing and people that don’t live here, the Police come over cause there’s people that are drunk and sleeping over here by the fence.”

(Female, 61, Māori Chinese)

“Just the young kids just not having anything better to do and they’ll get drunk, be disorderly and just be a menace yeah.”

Interviewer: “So what kind of behaviour do you see...?”

“Oh just breaking bottles, harassing people, stuff like that.”

(Male, 25, Iraqi)

A notable difference in the two neighbourhoods with a main street area with multiple pubs was that the most prominent problems (noise and aggression) were linked to groups of drinkers visiting the pubs:

“For two years, I see them every weekend. Just madness going on in the street. Just drunks. All hours, up and down.”

(Male, 52, Pākehā Māori)

Not all groups were seen as antisocial and some respondents were not bothered by them. One participant described them as groups of young boys and girls socialising, and a few said they were not worried if the people drinking were respectful and not causing trouble.

“Yeah, well, I work at [...] and there's been a handful of times where I've seen a handful of men with boxes that lives on the corner of the street, walking up and down with their boxes. They're not harmful but they're just cheeky. There's been a bunch of times where I've seen cans and boxes and all that kind of stuff littered.”

(Female, 26, Māori)

In five of the neighbourhoods people reported being approached and asked for money by intoxicated people sitting near the bottle store or local shops, although only two residents reported that this made them uncomfortable.

Noise, rubbish and property damage by drinkers

Another issue common to all eight neighbourhoods was noise from drinkers. Shouting and loud music spilling out from parties and domestic arguments caused disturbance in the wider neighbourhood, and these arguments were often attributed to alcohol:

“It affects yes, there is broken glass on the roads. Yes if you walk around you need shoes because there's broken bottles and it's generally RTD bottles. At night it affects people at night, there's just the noise of drunken domestics is not uncommon around here. Screaming and yelling, people having fights in the middle of the night. You done this and you done that and it's alcohol, they're all drunk.”

(Male, 51, NZ European)

The rubbish and broken glass from discarded alcohol bottles, cans and packaging was the next most common issue; this affected six of the eight neighbourhoods to varying degrees. The alcohol-related rubbish was described as widespread in three of the neighbourhoods, affecting footpaths, alleys, car parks, bus stops, parks and recreation areas. Rubbish was sometimes thrown onto people's properties. However, in two other locations it was not mentioned at all.

“Almost every park you go through. I don't know where they are on the map. I think the [shops], the park would be around here, cos there's the [school]. The cut through little alley way. You can't walk through any of them now without seeing broken bottles, cans. It's pretty bad. I wouldn't let my kids go play over there sort of thing.”

(Female, 35, Māori)

“I mean if you go look at car parks and stuff, they're littered with bottles after the weekend, you go somewhere on Monday morning, and you don't know if your, you know your tyres will get damaged, because bottles everywhere, you have antisocial activities. The worst part of it is just broken glass and everything on the street”

(Male, 34, Bangladeshi)

There were occasional mentions of property damage in four of the neighbourhoods, mainly at people's own homes but also in playgrounds. Residents reported drinkers had broken fences, wheelie bins and swings in the park, and had thrown rubbish onto their properties.

“Oh look I have broken bottles you know tossed in my front yard you know and it can happen regularly and you know then they've got you know that, there's a bit of grass there with the trees and quite often you know there's smashed bottles and bottles with alcohol and not alcohol. And also down this, the bottom of this, you know this driveway. The back, sort of a road thing you know where trucks go up and they congregate on that corner. Yeah they smashed the fence, some guys you know young guys I think smashed the fence about two months ago.”

(Female, 75, NZ European)

Alcohol and inclusivity of public places

Residents in each neighbourhood marked places they liked to go and places they avoided on a map of the area. Reasons for avoiding places were explored, such as poor lighting, isolation, crime and antisocial behaviour. Lastly, if alcohol had not been mentioned, they were asked if it was a factor in avoiding those places.

Alcohol's role in reducing inclusivity

People identified ways that alcohol specifically contributed to reducing their use of parts of the neighbourhood. Most often it was because people felt unsafe around drinkers and drinking locations. Those who saw local public drinking as problematic often emphasised that intoxication made people more unpredictable and increased the risk of trouble:

“Yeah we won't, definitely don't let them [children] walk, ever, ever, so yeah we do go out of our way to take them to school, pick them up, drop them off, even with like exercising, yeah we still won't go around that area but we are always together because you just don't know what's going to happen really, it's so unpredictable, everything here is unpredictable and you've just got to be aware of what's going on all the time because every day is different.”

(Male, 28, Māori)

For many residents, alcohol-related noise and mess was off-putting because it made the environment unattractive or uncomfortable, or because it made streets and parks physically less safe. Lastly, alcohol outlets themselves contributed to reduced inclusivity for some people who were recovering from addiction and did not want to pass near alcohol outlets.

Alcohol was sometimes not the sole reason people avoided local places; it could be due to a combination of factors such as antisocial behaviour or crime, gang members, broken glass, methamphetamine intoxication, and parks being dark or isolated:

“...sometimes it’s not just alcohol, it’s more than alcohol; it’s the people down that street you know. Alcohol is just an addition to the people because it’s sometimes it’s the alcohol that make the people how they are and that’s not good sometimes.”

(Female, 45, Māori)

“Just I avoid walking the street or running the street, I’d rather go drive somewhere where I know it’s safe to run, only because of dogs and because of all the glass and stuff like that.”

(Male, 26, Māori)

Extent of avoiding parts of the neighbourhood

While many residents were comfortable going anywhere in their neighbourhood, in all eight neighbourhoods several people identified certain places they actively avoided at least some of the time for reasons related to alcohol. In three neighbourhoods, more than half the people interviewed avoided some parts of the local area for an alcohol-related reason. This included people of a range of different ages and genders.

People reported varying levels of avoidance – sometimes just being more cautious – around alcohol-affected areas. Among the people who were comfortable going anywhere in the neighbourhood, some would ‘keep to themselves’ when going past groups of drinkers. In contrast, two people rarely ventured out at all because of their perception of alcohol-related risk:

“The alcohol issues, yeah we would, we would actually be out of the house, if there wasn’t much like drinkers around... I feel like we’ve wasted our teen years just staying in the house.”

(Female, 17, Samoan)

The locations commonly avoided were places where public drinking or intoxicated people were frequently seen (i.e. parks, recreation facilities, alleys, and the areas near bottle stores and pubs in their local shops). Other people would avoid going through any part of their neighbourhood, particularly after dark, and would travel to other neighbourhoods to shop, exercise or play with their children.

“I feel it’s unsafe to walk, you wouldn’t want to go to the shop within walking distance down the road, I just drive, yeah... In the evenings, like this...that’s when they come out, most of the time.”

(Male, 58, Fijian)

“Yeah going to places like that and if I see people drinking, it makes you avoid these areas. On Monday I went for a walk at the park by [x]. And there were two cars that were parked in the parking lot. And they had cases of alcohol they were drinking. And right away I just jumped back in my car and drove off.”

(Gender and age withheld, Samoan)

Some public drinking affected people at home; one couple sometimes left their front porch and moved inside to avoid it:

“But now we have people drinking over at the play, the children’s playground on the weekends and sometimes I hear screams.... it does get pretty nasty here sometimes on the weekends. So yeah in the summertime we ourselves will drink out in our front porch and we get to witness stuff so then it’s time to come in, which is really sad.”

(Female, 60, NZ European)

Among people who avoided drinkers or drinking locations, some did so only at certain times (mainly evenings), or just when drinkers were present. Others avoided known drinking places at all times. When asked how frequently this affected people, the majority said ‘all’ or ‘most’ of the time. A small number of participants also discussed whether they would go to local spaces that were affected by alcohol more often if alcohol was no longer an issue. All but one said they would, with most saying they would go to these places every day.

Overall, it appears some people’s activities in their neighbourhood were extensively affected by alcohol, while others were not troubled, or were somewhat resigned to its effects:

“Yeah have to accept it because it just comes every weekend so, just as long as we do what we do for ourselves, and stick to our own, mind our own business then we’re alright, I feel alright.”

(Female, 46, Cook Islands Māori)

Reduced inclusivity for young people

Alcohol contributed to restricting young people’s activities. Several parents did not want their children to see the drinking or to risk them being hurt. As a consequence, they did not let their children play in local parks or walk through the neighbourhood by themselves, either all the time or in the evening. Some drove children to all their activities instead of letting them walk. Caregivers in a number of neighbourhoods reported taking children home from parks earlier than planned when drinkers arrived.

“I guess it also just means that for like my kids I feel it’s a bit unsafe to let them just go down the road and get stuff like the pizzas like we could just take a walk down but I don’t really feel that safe for my kids to [go] whereas when I was younger it’s sort of like that was okay it’s fine to do that. With what you hear on the news and stuff so yeah I probably, that’s a thing I probably don’t let my daughter go to the park by herself either so, so that’s probably the only thing I mean if I felt more safe then I probably would let her.”

(Female, 31, Samoan)

“Yeah I get my teenagers, I’ve got five teenagers that go and play basketball over here but I make them come home before a certain time cause of...”

Interviewer: Which place is that?

“[Park name] Oh yeah. After hours and they’re like late and that’s where the carloads of people park up and start drinking or doing whatever so I get them to come home.”

(Female, 30, Māori-Chinese)

“My kids won’t be free to go play in the park. Or we can’t go in the park and play with stuff happening. It’s hard to say what time it will happen so we just try and avoid it.”

(Male, 26, Niuean)

“I can’t let my boys walk to school, they’re 10 and 11 but I’m too scared to let them, or even just to go to the shop I get worried but they always tell me don’t worry, they’re pretty big boys but.”

(Female, 46, Cook Islands Māori)

Consequences of diminished inclusivity related to alcohol

The people who avoided local places for alcohol-related reasons reported various emotional, physical, social and financial costs to them as individuals, to their families, and to their wider communities.

Consequences of diminished inclusivity for children

The restrictions on children’s activities and travel limited their opportunities to socialise. Some older teenagers said this meant they spent less time with friends, family or grandparents. A small number of older teenagers who went outside of home less often (due to others drinking in the area) had lost some connection with friends. Two teenagers had lost old friends who had started to drink with other young people:

Interviewer: What happened to those other friends?

“They really just became alcoholics... Part of the alleyway drinkers.”

(Female, 17, Samoan)

“I wouldn’t take my family there any more even though - like the parks we have seen a lot of people drinking there, and it’s sad because there’s families there. We take our children there, our grandchildren to play over there, but with that kind of happenings there we try to avoid it yeah.”

(Female, 71, Cook Island-Samoan)

The restrictions meant children had fewer choices and opportunities for exercise, recreation and to develop their independence.

“No I think it’s, there’s less freedom, like if they think like I think, then yeah it means mums do really need to come to the park don’t they? Which of course - okay - but then if you’ve got children of 10 and 12 then they should be able to go to the park on their own, that’s old enough.”

(Female, 60, NZ European)

Consequences of diminished inclusivity for adults

Some of the most prominent impacts of local alcohol-related problems were emotional; some people felt unsafe on an ongoing basis and this was associated with a lost sense of freedom. In the three neighbourhoods with the most widespread alcohol-related issues, people discussed feeling vigilant at all times, even if alcohol-related problems were only sometimes evident:

“Well you don’t feel, well I feel unsafe that’s why you know I’ve got to protect my kids and that’s pretty much how it affects me is I can’t freely you know go around and feel safe around [suburb] because of this stuff ... (it affects me) sometimes, but those sometimes are enough for any mum, aunty, sister or whatever to be cautious of what’s going on.”

(Female, 45, Māori)

Other common emotional impacts included feeling frustrated and negative about the neighbourhood in general:

“Well, it doesn’t make me feel happy about my neighbourhood. It makes me feel like there needs to be changes and definitely more improvements.”

(Female, 33, Pacific)

Many adults reported they lost time, had to travel further or travel by car more often to avoid the alcohol-related issues in their neighbourhood or local shops. This cost additional money for fuel or public transport.

“Well if I wanted to walk down to the shops, I just wouldn’t, more like take a car and drive around.”

(Male, 56, NZ European)

“Yeah to be fair, if there wasn’t [pub] there, I would feel more comfortable walking past and going down. If I walk my son to the skate park, we walk around. It is honestly about a 20 minute walk versus a 2 minute...”

(Female, 32, NZ European)

“Oh, most definitely. You know, fuel prices are higher than it used to be and I am having to fill my car a lot just to get to those places. I only work part time and so raising family of five children, it’s a strain on us.”

(Female, 33, Pacific)

A number of people felt they lost opportunities for exercise due to driving more often and because of avoiding local parks.

“Doing my normal walking exercise, yeah, I feel it’s unsafe to walk, yeah I want to do more but for me it is unsafe. Even when I drove to the park to take a walk, I still feel unsafe there.”

(Male, 58, Fijian)

Adults in most of the neighbourhoods did not report they had lost social opportunities due to inclusivity issues, apart from those who had given up drinking and now avoided licensed premises, and a few people in one neighbourhood who avoided intoxicated drinkers in the main street pub area. One person who had recently moved into the neighbourhood felt she had not developed connections with local people because of generally avoiding the local shops and parks.

Impact of diminished inclusivity on community vibrancy

In six neighbourhoods respondents felt alcohol's effects on the inclusivity of local spaces impacted the vibrancy of the wider community and contributed to people staying away from the area entirely, particularly to protect children and young people. One respondent described how people chose to spend leisure time elsewhere and this affected the vitality of their central community shopping area.

"I have seen you know the mothers come out with children. And they're coming to spend their money in our community. They come out of their cars, they see what's happening [people drinking outside the shops], 'back in the car kids we're off'. So they go and spend their money somewhere else. I mean it's all about us here, our community. And you know this is where I'd like for them to be safe. And you know and come and do their shopping, and spend money in our community. Because it makes everything turnaround you know so."

(Male, 55, Māori)

Consistent with this view, two respondents reported they were thinking about moving away from their neighbourhood (and two had moved in the past) due to alcohol-related issues.

Other consequences of neighbourhood alcohol stores and public drinking

Normalisation of alcohol use to young people

Several respondents discussed how public drinking, alcohol stores and the associated rubbish normalised drinking to young people. Many believed that having alcohol outlets in their local block of shops and near parks and playgrounds exposed young people to a culture of drinking.

"So we have the (gambling venue) over there, we have a lot of people that sit around drinking and stuff like that. It's not really, it doesn't make the environment look good, we have like the (venue) and then right next to (it) is the playground for the kids and stuff like that. Yeah."

(Female, 21, Māori)

"It's more to do with protecting my kids all the time you know, I don't want my kids to be brought up knowing, thinking that's a normal normality you know in (suburb) because there are good things that happen in (suburb)."

(Female, 47, Māori)

Interviewer (I): "Do you think alcohol in public places affects your community in any other ways you haven't already mentioned?"

"Yeah I think it definitely, it is just not positive, it is a negative environment for the kids to stay in, yeah it is just not good... You don't want them growing up and seeing that."

(Female, 32, NZ European)

In four neighbourhoods people described this as perpetuating a cycle in which a new generation of drinkers was emerging. Residents saw young people both drinking and asking people to buy them alcohol from local stores, and were concerned for their wellbeing:

"It's a bad influence on the kids the way they drink and stuff, and they shouldn't be drinking at that age."

(Female, 16, Māori)

"It's just sad to see really in that kind of sense. I've seen young people and then the effects of that as they kind of get into a bit of mischief, bit of trouble. I think not directly but indirectly, it does have an impact on me and my whānau."

(Female, 36, Māori)

"Breaking the cycle I guess it's been happening for years around here, it's slowly calmed right down but the changes of the, what's happening today I thought it would have, you know it should stop now in public areas."

(Female, 40, Māori Chinese)

Lost sleep

People in several neighbourhoods had lost sleep due to noise from drinkers such as fighting and arguments. This was a problem for students, shift workers and others. One man reported his daughter had to wear ear plugs to sleep, while another was frequently woken late at night:

"Yeah as I said before, we're hardly sleeping at night, they always disturb our sleeping, yeah it was mostly the weekend yeah, and sometimes during the week, it happens around, 2am to even 5am, yeah because different boys come to the (fast-food outlet), they're drunk and they fight, not fight but yell at each other, arguing and swearing, and also they come to the petrol station and argue with them and they yell outside. Yeah, even when things happen they come and stand at the front of our house."

(Male, 57, Tongan)

Responding to neighbourhood impacts of alcohol

Local residents went to some effort responding to alcohol-related disorder, rubbish and other damage. Several people from different neighbourhoods regularly spent significant time and effort cleaning up mess from alcohol-related litter or wheelie bins that had been kicked over. Sometimes damaged property needed repair. People were frustrated by the cost to them and their local council.

"Yep so when I used to do fitness out in the open, my first part of my role was to do an environmental check, so I would scan the entire grass, the entire field for smashed glass. Yeah that was part of my role to make sure that they were safe. And always, every single time, always. I got to a point where I would just automatically grab the bag without even spot checking it, I would just walk around and just pick it up."

(Female, 37, Māori)

Yeah. I have a job every Sunday morning. I pick up rubbish at the supermarket. Half of what I pick up is all the empty, broken glass, empty cans, still full of booze. Actually, I picked up three full ones just last week on the footpath. They'd just left them on the street by his mailbox there.

(Male, 56, NZ European)

"It's when the kids come in the morning and you see the council guys on the trucks cleaning it up before the kids come out in the mornings. Cause we're up early in the morning and we can

see that they're cleaning them, and broken swings and whatever they're fixing them up because of the kids, or whoever."
(Female, 62, Māori)

Another response common across several neighbourhoods was to intervene when public drinking was becoming a problem. Some directly spoke with drinkers if they felt safe to do so; others called Police, noise control officers, community safety services or Māori wardens to move the drinkers on. Some respondents discussed being comfortable with this, while others found it frightening and risky. They also described their frustration when the problems continued to occur.

"I've rung the Police quite a few times about issues yeah... (the Police) they just usually send somebody out... And then they disappear and it goes away for five minutes. For the rest of the night or something and then most probably next weekend, it happens again."
(Male, 56, NZ European)

Several people wanted the issues related to alcohol to be dealt with to improve the neighbourhood. As noted below, some thought there should be fewer alcohol outlets, while others didn't know what the solutions to these issues might be:

"...and you just want to make a difference too, it's like what can we do, what can we do to make it better."
(Female, 45, Māori)

Perceived role of bottle stores in alcohol-related harm

Residents specifically identified that bottle stores had contributed to some of the alcohol-related harm in their neighbourhood. Some saw people leave the local bottle store with alcohol and drink it nearby. Others saw minors near the bottle store ask adults to purchase alcohol for them. Empty RTD bottles and cans indicated bottle stores had supplied some of the alcohol, as supermarkets and grocery stores can only sell beer and wine.

However, a majority of people interviewed could not be certain which bottle store the alcohol being consumed in the neighbourhood had come from, particularly where there were multiple off-licensed premises in the wider area:

Interviewer: And do you know what store the alcohol comes from if you do see the alcohol say like bottles or...?

"No, there is too many... there is at least probably five within walking distance from here, within minutes."
(Female, 32, NZ European)

In six neighbourhoods multiple residents said there were too many bottle stores in the area. They felt this made alcohol too easy to access and contributed to local alcohol-related problems, including the normalisation of alcohol mentioned above.

"I would love to see there is no outlets, liquor outlets, at least not as much as they have now. You've got one on every street... And then you've got them based right by the dairy where kids

go and get bread and milk for their mum and dad you know so they've got to walk past all these people that are coming out with their boxes of booze."

(Female, 61, Māori-Chinese)

"Yeah, like I said, there are flow on effects to the wider community. At the end of the day, they do have a business and what not but still, it affects the community in the wider capacity. Easy access means easy drinking really."

(Female, 36, Māori)

While a minority of people were concerned about the one central bottle store in their neighbourhood that had recently received (or renewed) its licence (i.e. the case study licence application for that neighbourhood), the majority of people were not concerned. A small number of people were positive about the bottle store saying it was convenient or well run, and several believed closing it would not make a difference to local issues with alcohol:

Interviewer: Do you have any concerns about the alcohol stores in this area?

"No it makes no difference whether you are here or in town, somebody will still go get it."

(Male, 56, NZ European)

Part 2: Key factors affecting the outcome of community objections to bottle store licences, before and after Lion Liquor Retail

Key points

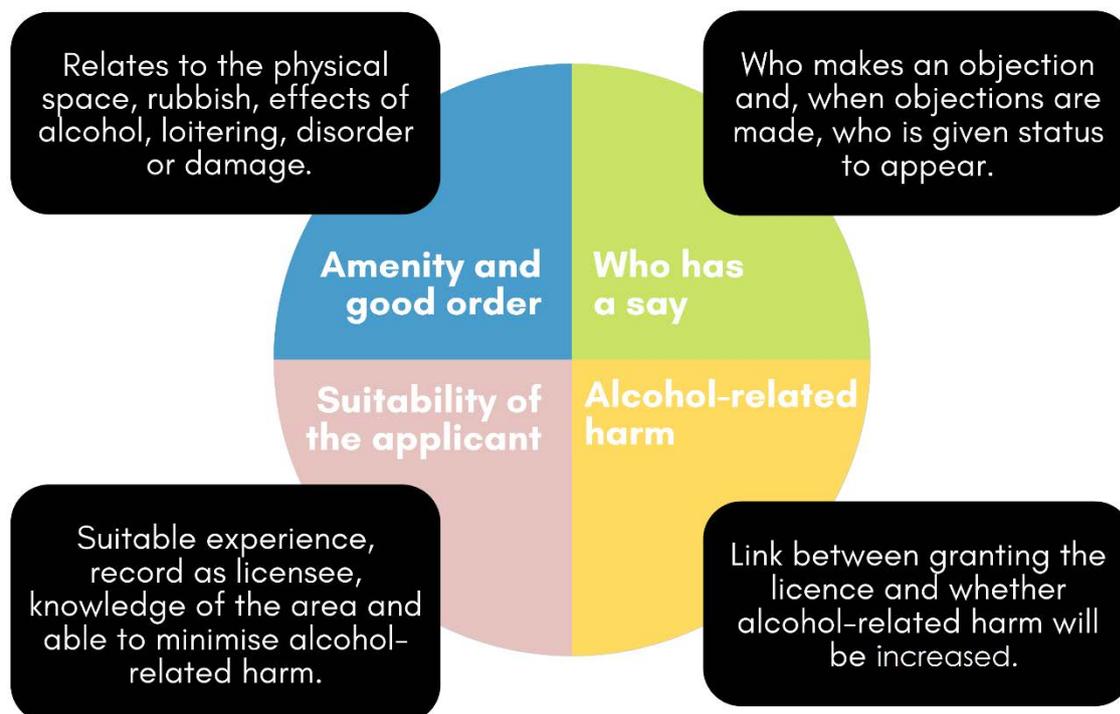
- The design and administration of the licensing system discouraged Māori from participating and sometimes excluded and discounted Māori input, partly through a failure to recognise relevant aspects of Māori culture, indicating institutional racism in the system.
- There was little evidence of proactively facilitating engagement with Māori in licensing decisions, as appropriate to Crown obligations under Te Tiriti o Waitangi, the Treaty of Waitangi and the Local Government Act 2002.
- The processes used for notifying licence applications and the location and timing of hearings were substantial barriers to community participation. Most residents interviewed (83%) were unaware of the application yet a majority would have objected had they known.
- Decision makers placed little weight on residents' objections about local effects of alcohol when little supporting information was provided by reporting agencies. This occurred in locations where alcohol-related trouble spots were well-known to residents.
- The law regarding amenity and good order is complex and decisions have been inconsistent. It was very difficult for the public in the case study neighbourhoods to produce sufficient evidence to enable decision makers to decline licence applications, especially in communities with limited resources.
- Licence hearings are a legal contest involving rules of evidence, cross examination and specialist knowledge of legal precedents. This often put local objectors at a disadvantage to applicants, who more often had legal representation.
- Objectors felt DLCs lacked diversity and were unfamiliar with the local community, which made it harder to make their case about the local impacts of alcohol.

Introduction

The legal analysis (Appendix A) identifies four areas of alcohol licensing law that affect the success of community objections to bottle store licences^{viii}: (1) who has a say, (2) amenity and good order in the area, (3) the object of the Act (to minimise alcohol-related harm), and (4) the suitability of the applicant (Figure 3). The analysis focused particularly on issues relating to amenity and diminished inclusivity of public places.

^{viii} An overview of the licensing process is provided in Figure 1 (page 6)

Figure 3. Key factors affecting consideration of amenity and inclusivity in licensing decisions



In relation to these four elements, this part of the report assesses what factors contributed to the outcomes of community objections to the eight case study licence applications (i.e. the applications for a bottle store licence at the centre of each of the eight case study neighbourhoods – see Table 2).

Table 2. Features of the eight case study licence applications and locations

Case	Bottle store application type	Geographic Location*	Socioeconomic Deprivation (NZDep)†
Cases heard before Lion Liquor Retail (2017 to 2018)			
A	Renewal	Major urban area	Decile 9-10
B	New	Major urban area	Decile 4-7
C	Renewal	Major urban area	Decile 9-10
D	New	Major urban area	Decile 6-10
Cases heard after Lion Liquor Retail (2018 to 2019)			
E	New	Small urban area	Decile 8-10
F	Renewal	Major urban area	Decile 9-10
G	Renewal	Large urban area	Decile 9-10
H	New	Large urban area	Decile 9-10

*Based on Stats NZ 2018 urban/rural categories: major urban areas have a population of 100,000+, large 30,000-99,999, medium 10,000-29,999, and small 1,000-9,999.

†Decile 10 locations have the most socioeconomically deprived NZDep scores and decile 1 the least, as measured by NZDep 2018.

Impacts relating to Māori participation and objections are discussed first and related to the role of Te Tiriti o Waitangi and the Treaty of Waitangi in alcohol licensing. The importance of the Treaty to public decision-making has increasingly been recognised in law and other public policy in Aotearoa,¹³ including recognition of the Crown's duty to protect Māori health and actively address health inequities¹⁴ such as those relating to alcohol.⁷ The discussion therefore considers consistency of the licensing system with Te Tiriti o Waitangi, followed by the Treaty of Waitangi and Treaty principles, as proposed in a Te Tiriti-based approach to analysis of policy in Aotearoa.^{ix,15} In line with that approach, it considers such elements as rangatiratanga, including provision for Māori leadership or authority in decisions that impact Māori; and Māori citizenship, such as enabling equitable participation and recognition of Māori values in public processes, and the Crown's responsibility to protect Māori health.

In each of the case study licence hearings, community objectors discussed potential problems with alcohol and the amenity and good order of the area. Although these communities had a higher risk of alcohol-related harm (which is associated with socioeconomic deprivation), each of the applications was successful. As such, the case studies highlight factors that can lead to the rejection of community concerns about alcohol in potentially high-risk locations. Factors in successful objections (identified in the legal analysis) are considered further in the discussion (Part 3).

The information considered here includes the eight written licence decisions and reasoning; key informant interviews with community objectors, reporting agencies (Police, Licensing Inspectors and the Medical Officer of Health), legal representatives and some decision makers involved in these cases; the legal analysis; and elements of the community interviews conducted in the eight neighbourhoods.

The impact of the landmark *Lion Liquor Retail* case from 2018 is assessed by comparing the four case study decisions made before *Lion Liquor Retail* with the four decisions made after. In *Lion Liquor Retail*, the High Court decided that requiring evidence to show a causal link between alcohol-related harm and the specific alcohol outlet applying for a licence was not the correct evidential standard under the Act. The Court instead emphasised that the Act requires an evaluation of prospective risk, and introduced a 'risk assessment' approach.

Within this risk assessment, the High Court decided that evidence of alcohol harm in the vicinity of the alcohol outlet is relevant even without directly linking the harm to the store, based on the likelihood that the outlet is contributing to nearby drinking and harm. As such, there was potential for a wider range of community evidence to be accepted in subsequent licence decisions.

The Treaty of Waitangi and Māori engagement in licence decisions

The Act does not reference Te Tiriti o Waitangi, the Treaty of Waitangi, Treaty principles or any process specific to engaging with Māori in regulating the sale and supply of alcohol. There is no pathway in current legislation for sharing power with Māori in licensing decisions that affect Māori communities. The legal analysis found Māori objectors have no space to argue Treaty matters because of the way the present legal framework operates.

^{ix} The approach begins from Te Tiriti o Waitangi, acknowledging Māori support for this version and in accordance with the international legal doctrine of *contra proferentem*.

DLCs have relied on a 2017 decision by ARLA when the Treaty is raised by objectors in hearings.^x The decision states that obligations to consider the Treaty or its principles do not flow to DLCs from the Crown and Local Government because the Crown’s Treaty obligations are discharged through principles outlined in Parts 2 and 6 of the Local Government Act (LGA). Based on this, some DLCs have declined requests to either proactively or separately assess the impacts of a licence on Māori, stating that impacts on Māori are considered in their overall decision.

Parts 2 and 6 of the LGA are designed to encourage Māori engagement in decision-making processes, including provision of opportunities for Māori participation, building Māori capacity to contribute to decisions and providing relevant information to assist this. These provisions fall short of partnership or sharing authority with Māori in decision-making. A recent Auckland DLC decision acknowledged these LGA requirements, noting that the Independent Māori Statutory Board is involved in setting the criteria for appointing DLC members;^{xi} the criteria include understanding of the Treaty of Waitangi and Tikanga Māori.

The key informants and analysis of the eight case study licence decisions consistently indicated several ways the licensing system actively discourages Māori participation in practice, thus weakening the consideration of alcohol-related harms important to Māori and reflecting institutional racism in the overall system.

First, the legal framework of the Act, combined with decision makers’ failure to recognise important elements of Māori culture, has allowed precedents to develop that limited the influence of Māori objectors’ contributions in three of the eight cases.

One such precedent is for decision makers to prioritise evidence provided by reporting agencies above that of Māori community leaders and representatives. With no specific provision for Māori input in the Act, nor recognition by DLCs or ARLA of Māori concepts of leadership or authority, input from Māori is regularly discounted.

This was highlighted in one of the case studies where the evidence of prominent Māori leaders – in a community where a high proportion of the population are Māori – was found to be insufficient to decline the licence in the absence of supporting objections from the reporting agencies. The decision noted the lack of objection by agencies carried “significant weight” in the assessment of alcohol-related harm due to their specific licensing duties under the Act. Counsel for the community objectors noted:

“I thought the decision was conservative and I thought that the decision really was saying if we’re not going to get any opposition from the Medical Officer of Health and from the Police then we’re obliged to grant the licence, that’s what I thought the decision said. I thought it was very conservative but I think that the role of the Treaty in a lot of areas has yet to be understood, has a long way to go in terms of the way that the law treats Treaty rights and so the argument that we were relying on in appealing that decision was that the weighting given

^x Super Liquor Holdings Limited v Auckland City Council – Provisional Local Alcohol Policy [2017] NZARLA 250 (19 July 2017)

^{xi} R.S NZ Holdings Ltd [2018] ADLC 8220013176

to the evidence of [the objectors] should have been at least on a par with any evidence or any views of the Medical Officer of Health and the Police.”

When another Māori key informant attempted to share views and information from members of his community as their māngai kōrero or authoritative spokesperson, he was told this concept was not supported by the Act and the evidence was rejected as hearsay:

“Unless those ones who have told their story to me, unless they’re prepared to front up and be cross-examined, then it’s hearsay, despite the fact that I said, ‘well, in tikanga Māori, we have what we call a māngai kōrero’ and I said, ‘that has been traditional within the whānau and the hapū, where one person speaks on behalf of the rest’ and they said, ‘It’s not in the Act.’”
(Community objector)

Decision makers failed to recognise other concepts specific to Māori culture and community responsibilities in deciding who had ‘status’ as an objector (the right to object).^{xii} The main precedent used to determine status is living or working within one or two kilometres of the licence location. Where relevant elements of Māori culture were used to argue an interest in the licence application, including local hapū membership, whakapapa links to whenua, and marae or community leadership roles, decision makers did not accept these as demonstrating a sufficient interest.

One key informant, who had sent details of his significant leadership roles in the local Māori community in advance of a hearing, had his status challenged based on the distance precedent. He described the time taken to dismiss the applicant’s challenge to his status as “a real kick in the guts”. He was granted status, but the written decision only considered his statutory roles and therefore no precedent was set in relation to his role in a Marae serving residents in the locality of the licence.

Another key informant living a little beyond the notional two-kilometre boundary was denied standing despite being tangata whenua of the broader area. He emphasised the inconsistency of decisions like this with Treaty obligations:

“...but me as tangata whenua going in there and saying that you’ve got, you haven’t got any say in this area it was pretty, that’s what kind of threw me when you know I’m from here... I’m tangata whenua here and my concern is our people... And you’re telling me that I can’t get up and speak on behalf of our people that just doesn’t. So to me I guess I’m heading in that direction of the Treaty of Waitangi and the partnership, where is that embedded in this? Where is it embedded in this? Well if it ain’t it should be because this is a government process, this is government legislation.”
(Community objector)

A factor in these problems appeared to be a lack of diversity in the membership of the decision-making bodies. Key informants noted that this needs to be addressed so that Māori and other ethnicities in communities most harmed by alcohol are better represented in the process:

^{xii} Under the Act, only people who can show a ‘greater interest’ in a licence application than ‘the public generally’ may object to it; this is often called ‘status’ and is often challenged by applicants.

“[Improvements] that I have suggested are reviewing and re-prioritising the values of the Licensing Committee which includes their recruitment processes, there needs to be more Māori, more representation from the communities that are most affected by alcohol-related harm.”

(Community objector)

Key informants were clear that the overall process and hearing environment were an entirely foreign and inappropriate way to engage with Māori in their community. They described it as an overly complex legal contest that actively discouraged Māori involvement. Two aspects that unnerved the Māori objectors interviewed were the challenges to their standing as objectors and cross examination of the evidence they provided; this also deterred other Māori from participating. One noted:

“The first time I appeared, I had a whole lot of Māori wardens turn up in uniform and they were all sitting in the public viewing gallery and they saw the work that two lawyers for the applicant, the work that they did on me and they said, ‘you want us to be part of it? Forget it. You want us to step into this arena and get torn apart by lawyers? Forget it’.

... The point that I'm making here is that [with] lawyers out of the process altogether, it will encourage a lot more of the community to come forward and will want to object. No question about that, but while the lawyers are there, forget it.”

(Community objector)

Other Māori objectors noted that both the hearing and decision-making process were highly technical and lacked heart, failing to draw in or consider the full nature and weight of alcohol’s impacts on their whānau. In some of the eight cases, serious concerns and experiences shared by Māori objectors were ultimately deemed to lack the necessary significance to decline a licence. One Māori leader whose objection failed noted the implications for current and future generations were emotionally traumatic for him – and could discourage others from objecting:

“If you felt that in opposing it, it wasn’t for yourself but it was for your grandchildren then there’s every point, and it’s at that time it becomes emotional, at that time when you know already there are generations of our young people in this way and we’re going to lose another battle that increases that impact on our family, goes to the next generation of our grandchildren and that’s the type of emotional trauma that I would share. None of us can walk freely away and say ‘oh well I did my best, that’s it’. You don’t get relieved of the responsibility, the load doesn’t get lighter because you stood up and spoke and at the end of the day it caused no changes. And then it has I think two outcomes: you either go back better prepared the next time, or you don’t go back. And if you don’t go back then it will be because of the emotion that impacted you the last time you were there.”

(Community objector)

As a consequence, matters of significant concern to Māori in the community seemed less likely to hold much weight in the final decision. Another key informant noted it came down to who could win the legal battle:

“The reality of it all is that we’ve got to try and find a lawyer that’s cleverer than their lawyer who is not going to talk on behalf of us losing whānau to addictions or anything like that but

it's going to be talking on law... There may be a little percentage of that taken into account - of what I say or what the community says - but at the end of the day it's a battle between the lawyers and who knows the most."

(Community objector)

A range of other barriers were reported by Māori key informants, including the ineffective notification system, lacking knowledge of licensing law and evidence requirements, and lacking time and resources to gather evidence and attend hearings.

These same barriers were described by non-Māori and are discussed in detail in the following sections. Their impact in deterring involvement of Māori and others from non-dominant ethnic groups is likely to be greater in a system which, as described above, reflects the dominant Pākehā culture. In addition, Māori objectors are more likely to face resource challenges due to the ongoing impacts of colonisation and racism in other public sector institutions.¹⁶ Māori key informants living in areas that face multiple disadvantages discussed how competing priorities, lack of time and resources (and usually a lack of legal representation) contributed to the process being "stacked against" them. One Māori objector working actively to improve the welfare of his community noted:

"We felt we were helpless you know, so do we settle with the 23rd (alcohol) licence there and just carry on and make sure that this doesn't happen again? Because the thing about us and other community groups that are worried about this our biggest thing, our biggest problem and issue is actually resourcing you know to find, you know if it wasn't for people that - like a couple of lawyers that we did get on board for pro bono - for them we'd just be legless without them. And also, I must say that there's so much happening in our communities at the moment. You've got all this, you've got gambling, you've got methamphetamine, you've got domestic violence you've got kids getting taken from CYFS, you've got all this stuff going on and I must admit it's been pretty hard for me to focus on this."

(Community objector)

When asked about ways the licensing process could be improved, Māori key informants proposed an entirely different process that places the wellbeing of local people – not business interests – first, with priority given to community voice.

"The whole question of whether alcohol should be available for distribution in a community should be up to the community not up to a business owner who wants to use the community. And it should make common sense that if I want to set up a practice in the community that benefits the community then why would the community say no to you. [If] I want to set up a service in the community that is going to not meet with the approval of community and therefore use the court system to get it in place anyway ... You shouldn't have that free agency in terms of that, the community should be the voice that is heard - not the business community - those that have to live there every day, bring their children up at school every day."

(Community objector)

Others recommended that, consistent with Te Tiriti o Waitangi, applicants and decision makers should proactively connect and engage with Māori in the community to make licence decisions together, with

a greater onus on applicants to prove the benefits of the application. Together, these ideas reinforced the notion that the present system is an alien approach unfit to engaging with Māori.

The observations provided here, drawn from several places in Aotearoa, clearly describe institutional racism in the design and implementation of the alcohol licensing process. It fails to align with the Crown's obligations to engage with Māori under Te Tiriti o Waitangi or the Treaty of Waitangi, despite specific provisions for this in the Local Government Act.

Opportunity to object to licence applications

Under the Act, licence objections can be made within 15 days of the first public notice by a person who has a greater interest in the application than the public generally, and, the objection must relate to the specific criteria listed in section 105 (see Figure 1, p.6).

While these requirements appear quite simple, prior studies have documented the difficulties faced by communities in finding out about applications, getting objections in on time and preparing objections that are relevant to criteria in the Act.¹⁷

In the case study neighbourhoods, the poor system for notifying licence applications was again a major barrier to the public having a say; 83% of participants (all living within 500m of the outlet) did not recall hearing about the licence application, yet a majority said they would have objected if they had known. When asked how they could be better informed, a large number suggested using a flyer in the mail or social media – often the community Facebook page. A community objector noted:

“...the notices would be in the (paper name), they're shoved on the back page so nobody in the community would know that they're there.”

(Community objector)

In most of the eight cases just three or four community objectors appeared in the hearing. Several objectors only learned of the application through links to community organisations, the local council or statutory roles relating to alcohol.

Other issues affecting participation included finding out late about the application, and lack of knowledge of the legal requirements for making a valid objection. As one key informant explained:

“We had very little time... I think we had about a day's notice. Because of the timing people were away and if it hadn't been for one person who saw it who was on the (suburb name) neighbourhood network she applied first and so all we could do really was copy what she had written and submit that we had no time to prove anything...”

(Community objector)

Other key informants indicated that the hearing locations and times made it difficult for people to attend as objectors or observers, or to learn how the process works:

“The hearings themselves need to be in more of a community friendly process, either on a marae or in a community hall, or somewhere where the community can actually access. It's a closed process which a lot of the community don't understand the vitalness of being involved,

or even just to be an observer... it would be really helpful to the community if they were held at a time that would suit them, either on a Saturday morning or even in the late afternoon, so that people who work and who are generally interested, are able to attend.”
(Community objector)

People can be excluded from licence hearings if their initial written objection does not show they have a greater interest than the general public (e.g., living or working near the premises), if the written objection is late, or if it does not address the criteria in the Act correctly. Any of these factors can lead to an objection being refused on the grounds of a lack of ‘status’. The status of community objectors was challenged in five of the eight case study hearings (see Table 3).

In two of the earliest hearings, there were only two community objectors and their status was not challenged. In case C, two objectors had their status successfully challenged by the applicant’s counsel for living more than 1 km from the off-licence, but this made little material difference as they did not turn up for the hearing.

In each of the four more recent hearings (E to H), the status of community objectors was challenged by the applicants’ counsel. A community objector in case G spoke about the impact of this on him when presenting his views:

“I’m normally a confident speaker and I still am a confident speaker but I think in that environment of talking about something you hold quite passionate anyway it just emotionally was very trying. On top of that listening to the questions and then it starts being told that ... my submission may not be able to be brought and used in this court because of me not living in (suburb), was a real kick in the guts and felt that way until [name] was able to sort that out.”

The most effective status challenge occurred in case H (Table 3) on appeal to ARLA. As the community group was the only objector in the original DLC hearing, the decision to decline the licence was overturned. Counsel for the applicant argued the community group had no geographical standing and no particular status on other grounds (e.g., contractual).

This decision has made it more difficult for organisations in local communities to gain status as objectors in licence hearings. For example, in case E (Table 3), an objector from a regional non-governmental organisation (NGO) had their status challenged by the applicant’s counsel due to not being locally based. The DLC decided to allow status, but stated that input from the NGO objector would be weighted appropriately (i.e. given less weight).

The involvement of groups concerned about local harm is an important source of support for community objectors – sharing experience and advice helps others to meet the technical demands of the objection process. To overcome challenges to group status, one community organisation ensures its objectors meet the typical geographical requirements for status (typically within 1–2 km from the alcohol outlet is considered sufficient; see Appendix A), as well as being members of the group.

Table 3. Status issues in the eight featured cases

Case	Objector status allowed	Objector status challenged	Reasons for challenge	Outcome of challenge	Other
A	Elected council member; Māori warden	None			Role as Māori Warden noted as providing status
B	Objector from local business	None			
C	All who attended the hearing	Yes, two who did not attend the hearing	Objectors lived more than 1 km from premises	Two written objections excluded	
D	All who attended the hearing	None			
E	NGO, one individual	Yes, one NGO	No greater interest than public generally	Allowed but their input was given less weight	Challenged by counsel for applicant
F		Community organisation	Relevance of objection to Act	Status allowed	Raised by counsel
G	One community objector	Two community objectors	Home and work locations too far from premises, no special interest	Status allowed	Raised by counsel
H		Community organisation	Work location too far from premises, no special interest	Declined on challenge	Raised by counsel

In the case studies, people who held health and wellbeing roles that were established in legislation and connected with reducing alcohol-related harm, such as Māori Wardens, were granted status to object. Although community objectors' status was only declined in case H, many objectors felt that even though their status was allowed, their concerns were not properly taken into account. One objector noted:

“No, it was easy but to be honest they don’t want to know about the effects on people. They just want to know the effects on property.”

Consistent with findings in the legal analysis, it appears the status of community objectors had been challenged more often in more recent hearings, preventing some from contributing in hearings or reducing the weight given to their submissions. Many more people were passively excluded by the poor notification system and attendance at these hearings was low.

Barriers that reduce community participation can limit the influence of community objectors by creating the impression their concerns are minor or not widely shared. Considering the range of alcohol-related disorder described by residents in the community interviews, it seems the barriers to accessing the licensing process left a substantial source of relevant evidence unavailable to the DLC in the case study hearings.

Amenity and good order

When assessing a new licence application, the Act requires the DLC or ARLA to form an opinion on whether the alcohol outlet is likely to reduce amenity and good order in the locality to ‘more than a minor extent’, or whether amenity in the area is already so badly affected by existing premises that it is not desirable to issue another licence. When considering a licence renewal, the question is whether refusing to renew the licence would *increase* amenity and good order by more than a minor extent.

This is the main opportunity for residents to object about the impact of a bottle store on their neighbourhood. Objections must be based in evidence indicating real or potential harm. The factors the DLC must consider are noise, nuisance, vandalism and graffiti; the number of other licensed premises nearby; and compatibility with nearby facilities (e.g., shops, schools, sports fields).

Usually the reporting agencies report on these factors, however community members have a closer view of them – as shown by the extensive observations in Part 1 of this report. As one objector put it:

“Well we are the experts in terms of the knowledge of the area, their (the DLC’s) health experts need to come in and provide some context.”

In each case study hearing, the DLC found the evidence provided by objectors and agencies was too limited to show that the particular licence was affecting (or was likely to affect) amenity and good order to more than a minor extent.

Key informants reported it had been difficult for objectors to bring enough evidence at the standard required by the law. Three common challenges for objectors related to lack of experience: not knowing the legal standard; not knowing what kind of evidence to present; and not knowing which arguments are material to the law. Two further barriers related to other parties in the hearing: counsel for applicants cross examine community evidence and raise arguments that seek to limit it; and a lack of evidence from reporting agencies to support the community objectors’ claims.

These barriers are discussed below and the amenity and good order issues raised and considered in the eight cases are summarised in Table 4.

Quality and depth of community objections

Community objectors usually have little idea of the licensing criteria in the Act or the way the hearing will be conducted. They typically don’t have legal representation and so are also mostly unaware of case law (legal precedents from earlier decisions), which further defines how licensing decisions are made. In the case studies, this affected the relevance of some objectors’ contributions to assessing amenity and good order.

“[The decision maker] was very considerate of [the community objectors’] views but at the end of the day they didn’t respond to the criteria so it wasn’t a match, there wasn’t, there was not a case really for objection. Not, that’s not to say that those things shouldn’t be taken into account but I think he was, he’s working within the constraints of the law.”

(Reporting agency)

Table 4. Arguments raised by objectors and applicant, and DLC findings on amenity and good order

	Amenity raised by objectors	Amenity raised by applicant	DLC finding on amenity and good order
Cases heard before Lion Liquor Retail			
A	Poverty in the area and impacts of alcohol on Māori	No counsel	Visible issues but declining licence would not increase amenity significantly
B	Alcohol abuse, hospital admissions, disorder, homelessness, crime, rubbish	Higher income area, no evidence of alcohol harm, gentrification	Insufficient evidence that amenity would be reduced significantly
C	Numerous issues re public drinking, disorder, kids etc.	No evidence of store leading to amenity problems	Significant issues but not linked to particular outlet
D	Sensitive sites, amenity issues, alcohol harm, children	No local evidence, “national” issues	Limited evidence, not linked to particular outlet
Cases heard after Lion Liquor Retail			
E	Increased alcohol consumption and reduced amenity in the area. Domestic violence	Argued that Police reported no problems and they are the ‘lead agency’	No evidence of existing harm shown
F	Alcohol use in town centre, drunkenness	No supporting evidence; no links between disorder and the store	Insufficient evidence that amenity would improve if declined
G	Widespread harm in local area, harm to Māori, poverty, vulnerability, crime, drugs and alcohol	Amenity discussion too general – not relevant to this site	Limited evidence of amenity problems in the locality; unclear amenity would improve if declined
H	General issues of deprivation and effects in area	Evidence too old	Evidence not specific to the locality; insufficient to show amenity would be reduced significantly

There was evidence in the case studies that community objectors may not tell the ‘whole story’ on amenity and good order in their evidence. In one case, a key informant noted the community objectors shared too few examples of amenity problems. He noted this undermined their case by giving the impression few problems existed in the locality. In multiple cases, the DLC indicated the objectors’ statements about disorder or harm were too general, implying a lack of factual evidence about specific incidents or locations. However, during the community interviews, residents readily identified a wide range of specific problems that frequently affected these neighbourhoods. This difference in the level of detail provided is likely partly due to discomfort in the unfamiliar hearing setting. One objector noted:

“I found it quite difficult because it was unfamiliar, the people there seemed to be quite experienced at how to handle those sorts of things and it was new to me so yeah, I found it quite difficult.”

(Community objector)

Linking amenity evidence to the bottle store, before and after Lion Liquor Retail

In some cases before Lion Liquor Retail, strong evidence of amenity issues raised by objectors was dismissed because the evidence was not directly linked to alcohol supplied by the store. As found by the High Court in *Lion Liquor Retail*, expecting objectors to meet this standard was unrealistic. Indeed, residents in the case study neighbourhoods who were aware of amenity issues near the local bottle store were often uncertain about who supplied the alcohol.

The requirement to link evidence directly to the outlet was less stringent after Lion Liquor Retail (see discussion under 'Alcohol-related harm and the influence of Lion Liquor Retail'), but was still a barrier. In cases G and H, objectors needed to prove the alcohol-related problems were close enough to the store to be connected to it; both decisions found the issues were not sufficiently linked to the locality of the store. Another objector noted it was hard to find the linking information they needed:

"(Māori wardens) were telling us that (suburb) has a big drinking problem amongst the young people. And they were able to see that they were drinking but they weren't able to locate where they got their alcohol from, cause no one is going to admit to giving alcohol to minors but they were getting it from the same store that we would then say shouldn't be here, but we had no real proof, and we couldn't get the proof that we thought we might be able to obtain from Police."

(Community objector)

Applicants' arguments and cross examination

As noted above, alcohol licensing decisions are tightly framed by the law and legal processes, and so hearings are often a legalistic contest between applicants and objectors. In this environment, where applicants usually have legal Counsel and community objectors do not, it is very difficult for objectors to develop a persuasive case about local disorder. Both community and agency key informants described this power imbalance:

"Even though it (the Act) says it's there for community to have more say, to be able to play at this game you have to really have legal representation or support of an agency to really get to a point where you're really going to have anything credible in the eyes of the DLC when you're up against applicants that are lawyered up... it's such an unlevel playing field for community and I think we're setting them up to fail."

(Reporting agency)

"I was told later that the people who are petitioning, they had hired the best lawyer that they could get, so they were paying big money for this guy from Auckland and his sole kaupapa was licensing, so you know he, you kind of got that feeling the whole way through this isn't, we're going to end up with another bottle store. Sure enough we have."

(Community objector)

In the case studies, counsel for applicants sometimes used the requirement for alcohol-related issues to be in "the locality" of the outlet to exclude evidence provided by community members. For instance, in case G, counsel attempted to confine the boundaries of the relevant locality for amenity issues to the town shopping centre and car parking zone, excluding the adjacent reserves, sports areas and surrounding streets. They then highlighted the lack of any reports to the Council of noise, nuisance

or vandalism in this zone, and pointed out that the Police had not raised any concerns about crime or disorder. In contrast, during the community interviews, a range of issues with alcohol-related rubbish, noise and disorder were described within 500 metres of this store.

The weight or credibility of evidence on amenity and good order provided by community objectors (and sometimes by reporting agencies) can be further reduced during cross examination. In case H, for example, counsel successfully argued that the only evidence provided had been produced in the context of developing the LAP and was thus several years old.

Generally, as cross examination is a legal skill, it further advantages applicants over community objectors. A number of people interviewed noted that removing the cross-examination would improve the licensing process:

“The top one probably would be to remove cross-examination and the reason for that is that it’s a weapon used by the alcohol industry and the lawyers against not only objectors but agencies as well. It’s terrifyingly used. Whereas the agencies and certainly objectors don’t have the same skill level to use it.”

(Counsel for community objectors)

Key informants had seen community objectors brought to tears by cross examination. In case D, one community objector discussed their experience:

“... being in that sort of semi-legal thing it feels really confrontational, like the lawyer for (the applicant)... he sort of as part of his argument he belittled all of the objectors and things so that’s not a very pleasant process, yeah no it’s not pleasant at all so I wouldn’t recommend... I mean I would do it again but I wouldn’t recommend the sort of casual member of the community to do it ‘cause I feel like it’s a really difficult and sort of a bit soul destroying process really to be belittled by a counsel (chuckle) and not really feel like you’re being listened to, it’s not a nice process, I wouldn’t want to put people through that, yeah.”

As a consequence of these various challenges to providing evidence, several objectors felt the DLC paid little consideration to their input.

“I was able to describe it [the local effects of alcohol], but there is a difference to being able to describe it and it being given weight in that environment and yeah that is where the disconnect is.”

(Community objector)

More than one experienced community objector indicated that it was common for DLCs to show disregard for community evidence, but this could depend on the commissioner:

Interviewer: What weighting do you think they did give to the concerns you raised then in the decision?

“Next to nothing. Next to nothing. There’s still this perception that objectors are a nuisance. That’s the feeling among some of the commissioners. Not all of them. There are a couple of very good commissioners who give community objectors a fair bit of latitude to present their

arguments and that's two out of I don't know how many commissioners there are. Whenever I object, I'm going, please, please, please, let it be one of those ones that's going to sit there. That's sad. That's sad when you're relying on two people to get your story across."
(Community objector)

Supporting evidence from reporting agencies

Because the reporting agencies have a formal role in reporting on licence applications, DLCs give more weight to the evidence they provide. When they support – or do not oppose – an application, it becomes harder for community objectors to persuade decision makers that amenity and good order has been affected to more than the 'minor extent', as required by the Act.

This occurred in several of the case study hearings where no or limited supporting information was provided by the reporting agencies, and the DLC gave less weight to objections about amenity and good order made by community objectors. In half of these hearings, the lack of relevant Police records of alcohol-related disorder in the locality was cited as an important factor in considering the community objections. As a DLC member in case E commented:

Interviewer: Yeah and the car park issues were raised as well by local people or?

"Yeah, yeah they said you know there had been trouble but what sort of, without evidence from the Police you know like I guess we couldn't substantiate any of that."

(DLC member)

Some decisions highlighted that the evidence available related to the personal experiences of one or two people and noted the lack of supporting data from the reporting agencies. This implied the community objectors' observations alone were insufficient to assist with forming an opinion on the impacts or risks of alcohol in the wider locality.

Nevertheless, during the community interviews in five of these neighbourhoods, residents readily identified well-known trouble spots for alcohol-related disorder, providing information on harm that was not raised by the reporting agencies in the licence hearing. The issues included drinking in parks, car parks and shops, including alcohol ban areas next to the outlets or in nearby blocks; nearby fighting particularly around pubs; and frequent clean-up of beer and RTD bottles in locations close to the site.

This inconsistency raises the issue of whether local reporting agencies receive sufficient data, or adequately record incidents to fulfil their role. The regulatory staff interviewed noted that the quality of their information and collaboration varied from one town to another. A DLC member also said Police and Council data had been very poor in one case, perhaps due to inadequate record keeping, or possibly limited reporting of problems by the public:

"...the way, the Police let themselves down is basically in the sense that, or even the council, the liquor licensing service, it's well known here that there's no sort of, apart from the controlled purchase operations and the things that the Police do, it's not recorded, you know the evidence wasn't actually strong enough as well..."

I think it comes down to you know the Police Commissioner needs to have a look at the liquor licensing in New Zealand and how the local regions are actually dealing with it because in my

opinion you know the committee was actually really let down, it's like (Police officer) knew darn well that there were problems but there was no, no, the Police aren't doing enough recording of it you know like of the incidents at the time."
(DLC member)

In another case, counsel for an objector asked about the lack of Police evidence and was told it was due to a lack of capacity:

"In the break I approached the officer who was sitting there and asked him about what data they collect and wanted to have a discussion with him about how the Police could go about collecting this data... so that we actually did have localised evidence on what was going on. And he just said oh we just don't have, we just don't have the capacity, we don't collect anything like that and we don't have the money to do that, so there was really a lack of engagement."
(Counsel for community objector)

Interviews with regulatory officers confirmed some of these issues, with some indicating they may be beginning to be addressed:

I think it's a problem for Police to obtain that information, (Police) need better systems and processes in place to record that information, and I know that they're currently going through a new type of programme they're putting together that they can obtain all those stats, ages, addresses, time and dates and as in recording each individual type of offence so we can specifically say at a hearing exactly what is happening rather than ... just generally saying hey we've got a lot of crime happening, yeah but what type of crime, so we've got to get more specific."
(Reporting Agency)

As such, it appears that a lack of reporting agency data or opposition is sometimes not a reliable indicator that the community is not routinely affected by alcohol, yet agency input still takes precedence over that of local residents in the assessment of alcohol's impact in the neighbourhood.

In summary, even after *Lion Liquor Retail*, it remained very difficult for community objectors alone to convince DLCs to decline a licence because of problems with amenity and good order; it was important to the DLCs to see sufficiently detailed evidence, tied to the locality, and supported by the reporting agencies. Key factors that affected objectors were not knowing what information and arguments would matter and how to present them effectively; cross examination; and a lack of resources and time to prepare, particularly where multiple social issues were impacting the neighbourhood.

Alcohol-related harm and the influence of *Lion Liquor Retail*

In 2018, the High Court made a series of findings in the *Lion Liquor Retail* case that changed the law in relation to alcohol-related harm. The decision was crucial because minimising alcohol-related harm is both the object of the Act and the first factor that must be taken into account in alcohol licence

decisions. It is also a deciding factor: if the licence application fails on minimising harm, it cannot be granted.^{xiii}

The *Lion Liquor Retail* decision established that any alcohol-related harm in the area in which the alcohol outlet is (or will be) located must be considered as part of a 'risk assessment'. The evidence of harm does not have to be traced back to the outlet; it is sufficient that the alcohol-related harm exists and issuing a licence will not minimise it (see Appendix A, pp.57-58).

Prior to *Lion Liquor Retail*, the legal position was that objectors had to give evidence linking harm in the area to the outlet applying for the licence. Objectors noted how challenging it was to collect such evidence:

"Well it is difficult, you're pushing it all uphill, when we first started the DLC wanted receipts out of plastic bags that the remains of the bottles were in, in the park, I mean for goodness sake."

(Community objector)

"So one of the problems that we've had as (organisation) is to identify to the District Licensing Committee, that the alcohol that is sort of spread in that 1km area, specifically came from that licensed store, and that was very difficult to prove..."

(Community objector)

A summary of the findings and arguments around alcohol-related harm in the eight cases considered here is shown in Table 5, which highlights differences before and after *Lion Liquor Retail*.

In case C, the DLC's view was that the evidence of harm relating to the existing store was "general". Although they specifically noted the high levels of alcohol-related harm in the area, including crime data from Police, the decision stated that this evidence could not be relied upon without being directly linked to the outlet.

In the other pre-*Lion Liquor Retail* cases, counsel for the applicants challenged whether evidence of alcohol harm could be linked to the existing bottle store (or the proposed location for a new store). In case D, counsel argued that an expressway separated the most vulnerable part of the surrounding suburb from the proposed location of a new bottle store; the DLC agreed that this physical barrier reduced the risk for that location. In addition, the DLC questioned whether off-licence holders are responsible for harm occurring beyond their immediate locality.

Findings in case A essentially came down to the DLC's belief that the evidence of harm did not meet the threshold required to decline the application. The finding in case B was similar; the committee decided the risk of harm would be minimised given promises to minimise the visibility of cheap products and promotions. A number of conditions intended to minimise the risk of harm were placed on the licence.

In the four hearings held after *Lion Liquor Retail*, objectors continued to have difficulty providing

^{xiii} Shady Lady Lighting [2019] and Riccarton Liquor [2019] ARLA

evidence that met the requirements of the law, particularly in three cases where the Police did not provide recent data, and in two cases where no agency objected.

Table 5. Arguments for and against alcohol-related harm

	Alcohol-related harm issues raised	Counter arguments	Outcome
Cases heard before Lion Liquor Retail			
A	Harm will increase if removal of licence conditions allowed – objectors, Medical Officer of Health and Police	Relaxation in licence conditions will not increase harm	Licence conditions relaxed – insufficient evidence restrictions reduced harm
B	Existing harm in area – health data from Medical Officer of Health	Boutique store will minimise harm	Allowed with conditions – risk mitigated by store design and focus on boutique products
C	Vulnerable area, harm, youth, deprivation	Local harm not linked to premises, restricted access to store, safe licensee	Application found to meet object of the Act
D	Family violence, objectors and Medical Officer of Health noted sensitive sites, deprived area; density link to harm	Customers will be from elsewhere; weak links between premises and local harm; research flawed	No direct evidence harm in community would increase
Cases heard after Lion Liquor Retail			
E	Raised by most objectors – harm in community, harm to youth, excessive drinking	Applicant – none of the harm relates to this outlet	Unclear – the DLC decision did not outline its assessment of the risk of harm.
F	Supply of single serves to vulnerable drinkers	Deemed “speculative” – causal nexus	No direct link between harm and the premises
G	Multiple, detailed evidence of harm adduced	Significant alcohol-related harm but not specific to suburb	Outlet will not on balance increase alcohol-related harm in the area
H	Objectors and Police raised harm in area	Objectors’ status appealed	Status declined; no current evidence of harm linked to the location

In case E, objectors had difficulty arguing that alcohol-related harm would increase if a new licence was issued, despite high socioeconomic deprivation in the area. Counsel for the applicant sought to defeat any arguments about alcohol-related harm up front, arguing that neither research on bottle store density (typically national) nor district-wide health data help DLCs assess risk in the locality of a new outlet. This appeared to have a strong influence on the decision, as one DLC member noted at interview:

“There was a Medical Officer of Health had a lot of data et cetera about you know violence rates et cetera, et cetera, but none of it was local data. Which was you know a moot point for the applicant’s solicitor who made it quite clear that the only relevant information that we could take into account was if it was local data.”
(DLC member)

While objectors in case E cited their personal and work experiences, and news articles about alcohol-related crime, the Police presented no local data, and said nothing about regular problems on the same street little more than one block from the site. Here, the community interviews identified that intoxicated pub patrons would regularly fight and abuse others, and several residents mentioned avoiding the main street on weekend nights. The reasoning applied in this decision did not consider the current law on alcohol-related harm – as outlined in *Lion Liquor Retail* – and its applicability to this community.

In cases G and H, objectors again had trouble providing sufficiently detailed evidence to satisfy the decision maker. One discussed his long experience supporting families harmed by alcohol, describing its destructive effects on families and young people in the area. The decision maker described the evidence as “general” and related to personal experiences, implying that detail of specific incidents was needed. Another objector lamented not having local families at the hearing to provide those specific stories:

“No I don’t think they (DLC) did get a good picture, I think they got a very good legal picture but they didn’t get the feel ...the heartbeat of (suburb) you know and I think that’s where the disservice is done to community where they don’t get the real impact stories. If we could have taken families along with the mothers and children were direct beneficiaries of alcohol in their house and they get abused daily or every Friday and Saturday night they get bashed over cause dad’s back and had a bad day at the rugby or something and fuelled by alcohol, if those stories could be a part of that whole application, then you might be able to bring the humanity in to it.”

(Community objector)

In both cases, statistics presented for the wider district were not seen as valuable; the decisions emphasised that more evidence was needed of specific harms in the suburb itself. One objector had in fact provided reliable data on the very high crime rate in the actual locality, but this was not discussed in the decision. They noted:

“I presented evidence showing that this is one of the most crime-ridden areas of the entire country and when it came to summarising the evidence that I had presented it just you know it just wasn’t explained in full, so I didn’t feel that what I had said was necessarily reflected in the decision.”

(Community objector)

Interestingly, in case H, the decision maker referred to the risk assessment approach in *Lion Liquor Retail*, noting that a causal link between the store and alcohol-related harm was not necessary, and acknowledging that high socioeconomic deprivation in the area was a very important issue. However, the decision found objectors’ data on harm was limited and had no support from Police, concluding that the risk of alcohol-related harm would not be increased by renewing the licence.

The accompanying legal analysis notes a number of shifts in the law since *Lion Liquor Retail*. In particular, under the risk assessment approach, new bottle store licences have been declined fairly consistently at the DLC level where community evidence of harm is local and specific, and reporting agencies provide supporting data on social deprivation and alcohol-related harm.

If community objectors are well supported and organised, they may succeed in such cases even without objections from the reporting agencies. In 2021 in Hornby, residents successfully opposed a new bottle store on the basis of risk and the suitability of the applicant.^{xiv} Unlike the case study hearings, a large number of objectors provided specific, recent examples of disorder, rubbish and graffiti, and this was connected to vulnerability in the community including the local crime rate, density of licensed premises and social housing. The quantity of objections and their relevance to the Act was assisted by the coordination provided by the local Residents Association and advice from legal counsel.

Overall, *Lion Liquor Retail* appeared to make little difference to the extent to which the community voice was heard in the case study hearings because of the overwhelming influence of the other barriers for the objectors, particularly the inaccessibility and technicality of the system, the contestation of their evidence by experienced counsel, and a lack of data from the reporting agencies.

Thus the standard and extent of evidence needed to demonstrate harm remains a high barrier for many community objectors, as one expert witness summarised at interview:

“The burden of proof in licensing here is very, very high, it’s extraordinarily high and it’s almost impossible to reach. A community would have to have collected data for a very long time to demonstrate harm and the problem being with the data is that if you have an off licence and somebody purchases that alcohol and travels 2-3km away and increases harm then that’s irrelevant, it’s only the level of harm within the locality.”

The suitability of the applicant

Applicants must demonstrate they are of suitable character and have the necessary experience to safely operate an alcohol outlet. In the past, suitability was mainly tied to managing the outlet. In recent ARLA decisions, alcohol-related harm and amenity in the area around the outlet have become more important in assessing suitability, specifically in locations that have a high risk of alcohol-related harm.

In these locations, a higher standard of suitability has been applied that takes account of the applicant’s ability to engage with and minimise alcohol-related harm in the area around the premises. This can include whether the applicant has a strong understanding of the elevated risks specific to the area and has engaged with relevant local organisations to consider how best to minimise alcohol-related harm; a failure to do so has contributed to some licence applications being declined (see discussion of ‘enhanced suitability’ in Appendix A, pages 68-69).

Although the case study locations all have some relevant risks (e.g., socioeconomic deprivation), no objector, agency or DLC member in any of the eight hearings suggested the applicant should demonstrate this higher standard of suitability (see Table 6). For instance, in case E, objectors and the Medical Officer of Health only raised concerns about the applicant’s reliability and ability to oversee multiple premises. The applicant’s counsel successfully countered these concerns with a narrow view

^{xiv} Christchurch DLC, decision no 60E [2020] 6837.

of what constitutes applicant suitability, focusing on individual characteristics and inconsistent with the case law prevalent at the time.

Suitability was raised in two other hearings by community objectors, and was an important theme for the objectors in case C. The DLC decision concluded the suitability issues raised were not significant as the CPO had not resulted in cancellation of the licence or any opposition from the reporting agencies.

Table 6. Suitability raised or not raised in case study hearings

Case	Suitability as an issue	Reasons	Outcome
Cases heard before Lion Liquor Retail			
A	Not raised		Suitable
B	Raised by reporting agencies	Had not contacted agencies	Suitable
C	Raised by objectors	Failed controlled purchase operation (CPO), harm, hours of opening	Suitable
D	Not raised		Suitable
Cases heard after Lion Liquor Retail			
E	Raised by objectors, reporting agency	Lack of qualifications, harm issues	Suitable
F	Not raised		Suitable
G	Not raised		Suitable
H	Not raised		Suitable

Across the case study hearings, it appears the community objectors, DLCs and reporting agencies may have been unaware that a higher standard could have been applied to assessing applicant suitability, which may have assisted the community's opposition to the licence applications.

Part 3: Discussion

In what ways is the community benefit of public space reduced by local supply and use of alcohol?

While much discussion of alcohol harm in public locations focuses on town centres, in this study residents of suburban neighbourhoods provided detailed accounts of the significant ways their lives are impacted by the supply and use of alcohol. A majority believed local supply of alcohol and drinking in public places affected their neighbourhood negatively. While many people took pride in their neighbourhood and discussed positive places and experiences, alcohol detracted from this in a range of ways.

The extent of the negative impacts of alcohol differed by neighbourhood and, consistent with quantitative studies in Aotearoa,¹² the six neighbourhoods with higher social deprivation scores (as measured by NZ Dep 2018) reported more widespread effects, particularly those with multiple off-licensed premises nearby. One problem prominent in all neighbourhoods was feeling unsafe or uncomfortable around groups of drinkers or intoxicated people.

While recent literature has focused on groups of rough sleepers and youth drinking in public areas,^{18,19} residents in this study identified groups of adult drinkers as well as groups of young people. The groups were sometimes noisy and verbally or physically aggressive, but not always. Nevertheless, some residents found drinkers an intimidating presence at any time, as alcohol was felt to increase the risk of the drinkers harassing or assaulting others.

The other most prominent concerns were noise, rubbish and broken glass, consistent with findings from surveys of alcohol's harms to others noted in the literature review.³ Noise from intoxicated people in public areas, house parties and domestic disputes affected some residents' sleep and comfort in the wider neighbourhood. Broken alcohol bottles posed physical risks to people walking and for children using parks and playgrounds. Rubbish was observed in parking areas close to alcohol outlets and was a risk to car tyres. In three areas, as well as being seen on streets, footpaths and in parks throughout the neighbourhood, it was tossed onto people's properties.

These alcohol-related problems impacted neighbourhood inclusivity – comfort entering and using public spaces in the neighbourhood – to a considerable extent for some residents. In each neighbourhood, some participants of a range of ages and genders avoided using some local amenities such as parks, shopping centres, certain streets and walking routes through the area. In three neighbourhoods, over half the people interviewed avoided some parts of the area because of alcohol at least some of the time.

Young people were frequently affected, as many caregivers restricted their children's independent travel and avoided taking them to or through locations where drinking occurred. It is likely that reduced inclusivity at the neighbourhood level is not evenly spread across the population; representative national surveys find teenagers, young adults and women are more likely to avoid drunk people and drinking spaces,³ and in Aotearoa children report drinkers are a barrier to active travel in their neighbourhoods.²⁰

A major concern expressed by residents was the high visibility of alcohol to young children and teens as a result of bottle stores being beside local dairies and bakeries and close to schools. Combined with nearby public drinking and related rubbish, residents said this normalised alcohol use and encouraged young people to start drinking at an early age. Indeed, residents observed minors starting to drink in public with other local young people and asking adults to buy alcohol for them.

A range of other personal consequences from reduced inclusivity were identified. Safety was the most prominent; people felt less free to walk through their neighbourhood. Fear, worry for family members and frustration were all expressed, alongside a general sense of not feeling good about their neighbourhood. The literature review noted perceptions of disorder and fear of crime have been linked with common mental illnesses.^{3,21} Since the residents in this study who were troubled by alcohol in public places reported it bothered them most or all of the time, it is probable that it is impacting residents' mental health. This may be compounded by the reported loss of sleep and loss of opportunities to exercise.

Lastly, the practical costs of reduced neighbourhood inclusivity were extensive for some people, including lost time and the transport costs involved in driving children to activities, driving to shops and parks instead of walking and travelling to shops and parks in other neighbourhoods, as well as the time spent cleaning up rubbish and glass.

[What contributed to the outcome of community objections to bottle store licences?](#)

The issues raised by local residents in the eight communities appear to provide strong evidence of the types of alcohol-related harm, disorder and substantial amenity problems that can lead to an off-licence application being declined, particularly in areas of high socioeconomic deprivation. However, the respective licence applications in each area succeeded.

The analysis of the eight hearings identified several major barriers for community objectors that contributed to the failure of their objections, many of which are similar to those recorded in other studies.²² This study goes one step further by making a comparison between the evidence presented in the licence hearing and that provided in interviews with residents living in the area. The comparison suggests decision makers had a limited view of the extent of the alcohol-related problems affecting these communities: in most of the eight neighbourhoods, the residents interviewed identified a wider range of problems, and in greater detail than that provided by either the objectors or reporting agencies at hearings.

Consideration of alcohol-related concerns important to Māori in decisions was limited by a combination of the legal framework for licensing, operational practices and decision makers' failure to recognise relevant aspects of Māori culture. These elements actively discouraged, excluded and minimised contributions from Māori participants in the hearings in this study, providing evidence of institutional racism in the process as a whole.

Legal precedents commonly relied upon by decision makers undermined the mana of Māori objectors and leaders, reduced the weight placed on their evidence and prevented them from representing the concerns of their whānau or hapū. Important aspects of Māori culture that establish interest and authority in the local area were either rejected by decision makers or not recognised in written decisions. As such, concepts important in Māori culture failed to enter case law, even when Māori

objectors had legal counsel to argue these matters. Consequently, bias against Māori in the administration of the licensing system appears self-reinforcing, and unlikely to improve in any consistent way without changes to the legislation.

In the case study licence hearings, the only Māori participants were community advocates and leaders who came forward seeking to reduce the harmful impacts of alcohol in their communities. They came away disappointed and, in some instances, disrespected and traumatised. Taken together, the evidence indicated the licensing system falls far short of obligations to work with Māori and protect Māori interests in decision making, as established under Te Tiriti o Waitangi, the Treaty of Waitangi and the Local Government Act (LGA)^{xv}; rather, it discourages Māori involvement. The findings are consistent with another study which found Territorial Authorities (TAs) did not consult meaningfully with Māori during development of Local Alcohol Policies (LAPs).¹⁰

Because the licensing system limits the voice of Māori, the number of bottle stores in Māori communities is more likely to be maintained or increase, alongside inequities in alcohol-related harm. The observations made here support a claim before the Waitangi Tribunal lodged by David Ratū, Wai 2624.¹¹ The claim argues that Treaty obligations should be recognised and actively provided for in the design of the Act (including the licensing system and LAPs, among other matters) to improve health outcomes for Māori. Similarly, Māori key informants in this study consistently called for major reform of alcohol licensing, with specific processes prescribed in legislation to ensure Te Tiriti o Waitangi is given proper effect by those administering the licensing process. Such concerns have been raised consistently over time, as discussed more fully in a recent paper exploring why and how Te Tiriti o Waitangi could be given effect in alcohol law.²³

A lack of diversity in the membership of DLCs was likewise considered a barrier to other non-Pākehā objectors, and they recommended ensuring DLC membership is representative of local communities so local needs are better understood. This is particularly relevant to the somewhat subjective requirement in the Act for decision makers to form an ‘opinion’ about how extensively local amenity and good order is (or might be) affected by bottle stores.

Objectors of all ethnicities encountered barriers to presenting evidence and to making an effective objection, beginning with the processes used for notifying applications. Most residents in the eight neighbourhoods had not heard about the application despite living within 500 metres of the outlet. Others were excluded when applicants successfully challenged their right to object. When only a few objectors remain to speak, their concerns may seem unsupported and therefore less convincing.

Participants in the eight case study hearings emphasised that the licensing process is still very much a legal contest, which the average person – with limited legal knowledge or experience – has little chance of influencing without considerable support from experienced objectors or lawyers and large amounts of relevant evidence. The legal analysis (which considered cases additional to the eight case study hearings) found that even when community objections succeed, the evidence may subsequently be scrutinised more rigorously by ARLA and overturned.

^{xv} The highest level of obligation is affirmed in Te Tiriti o Waitangi, which guarantees Māori rangatiratanga or authority in decisions affecting Māori; the Treaty of Waitangi at least guarantees equal treatment for Māori in public systems; while the LGA aims to encourage and facilitate Māori participation (p.29).

These barriers are likely greater for community members in areas facing multiple socioeconomic disadvantages, and so may further contribute to inequities in alcohol supply and related harm. The hearings in the eight neighbourhoods in this study stand in stark contrast to another hearing in the wealthy Wellington suburb of Khandallah. There, despite a lack of agency opposition or major vulnerability in the community, a coordinated campaign involving legal counsel, expert witnesses and over a hundred objectors persuaded the DLC that granting a licence to a new bottle store would have more than a minor impact on the pleasant character of the area, and the application was declined.^{xvi}

Evidence of alcohol-related harm has been persuasive in hearings where high levels of amenity evidence provided by objectors are also linked to vulnerabilities in the community, such as material poverty, social housing, schools or mental health facilities. In such cases, a considerable amount of specific (rather than general) evidence tied to the local area is presented, supported by data from reporting agencies. This apparently successful combination of factors is yet to be tested by appeal to ARLA. At DLC level, community members have used this approach successfully even when the reporting agencies did not object. However in such instances, they had considerable supporting resources such as legal advice and a coordinating group.

The alcohol-related harm and amenity issues identified in the case study neighbourhoods call into question the precedent of decision makers setting a higher bar for objectors when there is a lack of opposition or supporting data from the reporting agencies. Their lack of opposition or failure to present current data was not a reliable indicator that alcohol-related issues did not exist. In many of the eight cases, Police and licensing inspectors did not present evidence on alcohol-related trouble spots that were well-known to residents. Further, some reporting agency staff noted these data are not consistently recorded, or that they lacked resources to collate it. Therefore, it appears inappropriate for DLCs to automatically place less weight on community objections when reporting agencies provide limited evidence, or do not oppose a licence.

[Has the 2018 Lion Liquor Retail ruling – that objectors do not need to demonstrate that alcohol-related harm in the community has come from a specific bottle store – allowed community voices to be taken into account to a greater extent in the licensing process?](#)

In hearings after the *Lion Liquor Retail* ruling, DLCs no longer rejected community objectors' evidence of alcohol-related problems when it was not directly linked to the bottle store applying for the licence. The focus moved to a risk analysis, with a strong emphasis on whether the problems described are near enough to the bottle store to be considered relevant, and perhaps to the quality of evidence.

Despite this shift, the evidence supplied by community objectors alone is often found to be insufficient to see a bottle store licence declined. As noted above and in the legal analysis, even when many residents object, a very high standard of evidence is required. Community input is contested and heavily scrutinised, and its bearing on the final decision is often limited by whether or not it is corroborated by data from the reporting agencies. Accordingly, the *Lion Liquor Retail* decision does not seem to have made a meaningful difference in the extent to which community voices are taken into account in the licensing process.

^{xvi} Plenitude Limited Trading as Bottle-O Khandallah, Wellington DLC 49B/2019/ NZDLCWN/1654

Strengths and limitations

A strength of this study was the recruitment of participants from random points in the vicinity of each bottle store, which enabled a range of perspectives about the neighbourhood effects of alcohol to be gathered. However, residents with an interest in how alcohol affects their neighbourhood may have been more likely to agree to an interview, possibly resulting in increased representation of negative views on the local effects of alcohol. Despite this possibility, slightly less than half the participants did not consider alcohol to be a problem, and overall the sample was demographically diverse.

The mixed methods design enabled the alcohol-related problems debated in licence hearings to be compared against the observations of a diverse group of residents in the same area. Further, by combining key informant interviews with a legal analysis of licensing decisions, structural issues within both the Act and its implementation could be explored. As the case study alcohol licences were all granted in areas of higher socioeconomic deprivation, the insights from key informants focused on factors that contributed to public objections failing in locations where the risk of alcohol-related harm is potentially greater. These insights were compared with factors that contributed to successful objections in the decisions explored in the legal analysis.

Conclusions

The local supply and use of alcohol was widely seen to negatively impact residential neighbourhoods in socioeconomically disadvantaged areas; alcohol-related noise, rubbish and antisocial behaviour detracted from the positive features of these locations. This reduced the inclusivity of public spaces, particularly for children, whose activities and independence were restricted by parents seeking to keep them safe, as well as for many residents who reported avoiding local streets, shops and parks due to feeling unsafe. Local alcohol stores and public drinking were also believed to encourage young people to drink.

Many residents wished to reduce the number of alcohol stores in their area, but for most the licensing process was barely visible, difficult to access, intimidating and hard to influence. Objectors were clear the playing field was very unbalanced and hard to navigate without specialised knowledge and legal support. As such, the Act is unfit to meet its intention of increasing community voice in where and when alcohol can be sold.

For communities with fewer resources, these barriers are higher and likely to exacerbate inequities in alcohol supply and related harm; this may be tempered somewhat by a general recognition among decision makers and the reporting agencies that bottle stores pose a greater risk of harm in more socioeconomically deprived communities.

Substantial evidence of institutional racism was found in the licensing system, which actively discourages Māori participation and does not specifically recognise Te Tiriti o Waitangi or the Treaty of Waitangi in the decision process. This runs counter to Crown obligations to work alongside Māori in decision-making, as established in Te Tiriti o Waitangi, The Treaty of Waitangi and guidance in the Local Government Act 2002, reflecting concerns identified in another recent study.²³

Considerable gaps were evident between residents' observations of local alcohol-related problems and the issues relayed in licence hearings, which calls into question the accuracy of the assessment of

alcohol harm that is central to the licence decision. It appears DLCs may often not receive important data from the reporting agencies and the wider community, and therefore dismiss some valid community objections because of a lack of supporting information.

Off-licence outlets contributed to diminished inclusivity in public spaces and negative impacts on good order and amenity in our case communities, yet this was not taken into account in alcohol licensing decisions in these same communities for the following reasons: a lack of mandate in the Act or processes for appropriate engagement with Māori; low participation due to inadequate notification and support for residents who wish to object; complex evidence standards that lay people struggle to understand and meet; the higher standard applied to community evidence when reporting agency data is lacking; and, gaps in the information held or provided by reporting agencies. These findings add to the case for fundamental reforms to the Act, the licensing process and its implementation, and for inclusion of Te Tiriti o Waitangi in alcohol law.

Appendix A: Diminished inclusivity as a factor in alcohol off-licence applications to District Licensing Committees: An analysis of legal processes

Dr Liz Gordon

Introduction

This paper considers the legal issues, constraints and outcomes that occur when a person objects to an application for an alcohol off-licence due to a perception that the licence would lead to diminished inclusivity. For our purposes, *diminished inclusivity* refers to a reduced ability of people to participate in their local communities due to the impact of alcohol harm on public spaces and amenity, as perceived by those in the surrounding area.

The focus here is on contested applications for bottle store off-licences, whether for new licences or for renewals, which are treated similarly in the licensing process: “The criteria for renewal of a licence are substantially the same as the criteria for issue of a licence”.^{xvii} After the initial granting of one-year licence, renewals come up every three years. There are no national limitations on the development of new off-licences, although these are sometimes bound by planning laws, council plans and Local Alcohol Policies (LAPs).

The process for objecting to an application for an alcohol off-licence is described under s.102 of the Sale and Supply of Alcohol Act 2012 (‘the Act’). People object to alcohol licence applications on a wide variety of grounds. Many of these objections concern the potential for diminished inclusivity. This comes up in many ways. One recent example reports the evidence of a young woman as follows:

[95]Ms Josephs read her brief of evidence. She told the hearing that she regularly walked and ran in the area between 7.30 pm and 11.00 pm and was concerned with the proposed hours of operation of the proposed store. She was concerned that the late hours of operation would increase the foot traffic of intoxicated persons and decrease her safety.^{xviii}

In addition to community objections, the Act requires the Police, Licensing Inspectors and the Medical Officer of Health (agencies) to inquire into and report on new licence applications. The Act outlines the criteria by which the 67 District Licensing Committees (DLCs) must make decisions on whether to grant a licence application. This paper argues there are four key elements in the Act on which inclusivity issues turn: deciding who is eligible to object, considering the suitability of the applicant, considering the amenity and good order of the community and, as a final step, considering whether the object of the Act has been met in relation to minimising alcohol-related harm.

^{xvii} Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd [2018] NZHC 112 at [34].

^{xviii} Decision of the Christchurch DLC in the application of JJMS Enterprises for an off-licence, 24 May 2021 at [95].

Each of these areas is governed by both the Act and through its interpretation by DLCs, the Alcohol Regulatory Licensing Authority (ARLA), occasionally (in judicial review and appeal on points of law) the High Court and, rarely, the Court of Appeal. The Act has been in operation for close to a decade and the prior case law still has relevant dicta so there are a number of case law precedents that affect decision-making at each stage, beyond what is stated in the Act. One inequity in the process is that, by and large, community objectors enter the process with no knowledge or understanding of the case law, whereas Counsel acting for applicants can use the case law to their clients' advantage.

This paper will explore the legal factors and decision processes that come into play when issues relating to diminished inclusivity are considered at licence hearings. The methodology used is legal analysis based on the 2012 Act. The analysis considers the development of precedent-forming decisions made and used under the Act, as well as a number of relevant decisions made at the DLC level through contested cases. The DLC cases are primarily from Auckland and Christchurch. The aim is to provide an overview of the current operation of the legislation in relation to licensing factors and diminished inclusivity. An additional focus is the periods before and after the important 2018 High Court decision in the Lion Liquor case.^{xix} This case was expected to significantly change how alcohol-related harm was to be assessed and considered, especially in new or renewed off-licence applications.

How diminished inclusivity is addressed through licence hearings

The introduction noted that four aspects of the law have particular implications for the representation of inclusivity issues at hearings, as shown in Figure 1. The first matter that has become increasingly prominent is whether objectors are to be given status to participate in the hearing as 'parties', and thus able to make written and oral submissions and give evidence.^{xx} This question has become increasingly contested and regulated over time as case law has developed. Applicants now often seek to prevent as many objectors as possible from participating in hearings as parties. Several recent ARLA cases have elaborated on the status of objectors as parties.

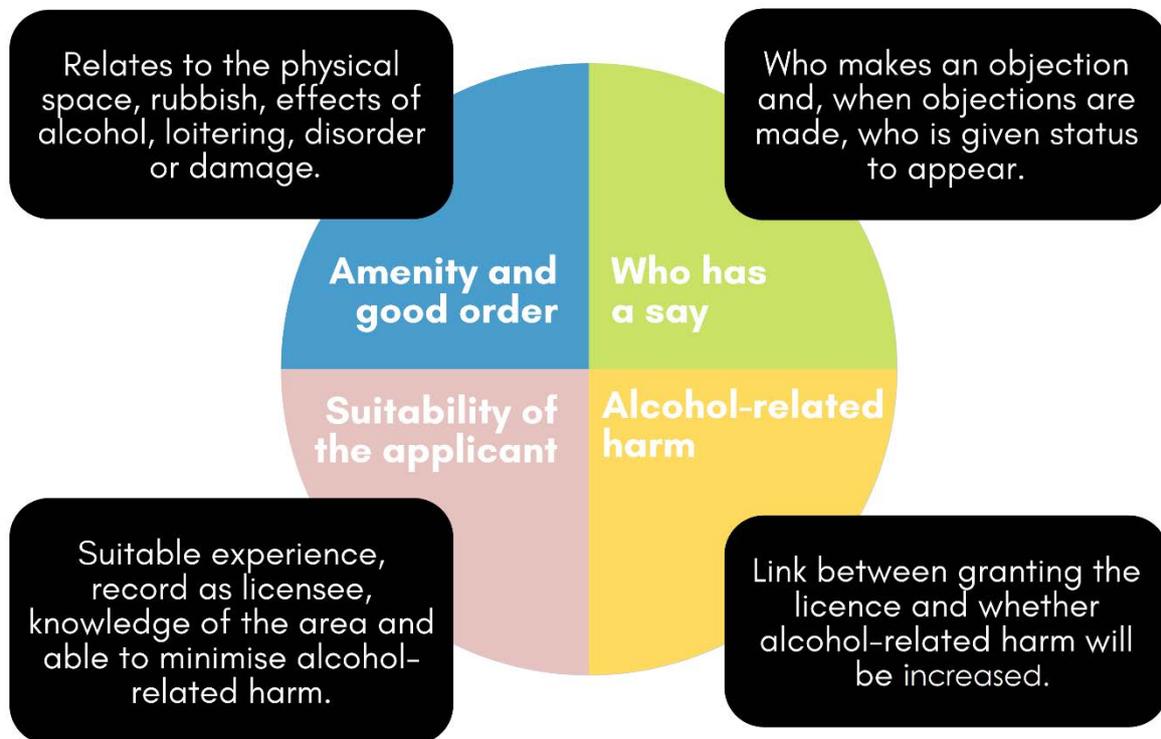
The second element of importance to inclusivity concerns the suitability of the applicant.^{xxi} In recent cases, ARLA and the High Court have expanded the definition of what constitutes 'suitability'. The term suitability used to be employed largely by the reporting agencies, and in particular the Police and Licensing Inspectors, to indicate the applicant demonstrated the proper qualifications and a lack of any 'black marks'. More recently, suitability has been expanded to include the extent to which the applicant has knowledge and understanding of the surrounding area, the effective maintenance of the premises' environment and the ability to recognise and act to limit alcohol-related harm. In deprived localities, the concept of 'enhanced suitability', which is a more detailed and higher test of suitability, is now often applied.

^{xix} Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd [2018] NZHC 112

^{xx} S. 102 (1) and s 128(1), Sale and Supply of Alcohol Act (SSAA), 2012, for new licences and renewals respectively.

^{xxi} S. 105 (1) (b) SSAA 2012, and, for renewals, also s 131(1)(d).

Figure 1. Key factors affecting consideration of amenity and inclusivity in licensing decisions.



The third category is most obviously associated with the concept of diminished inclusivity. Two subsections consider the effects of the licence on amenity and good order^{xxii} and a whole section of the Act, s. 106, outlines what factors decision-makers must have regard to. While s. 106 provides concrete examples of issues that need to be taken into account, this paper will argue that, in practice, decision-making around amenity and good order remains relatively difficult to predict and assess.

The final category to be considered here is the object of the Act, which is defined as follows in s. 4 of the Act:

- (1) The object of this Act 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.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—

^{xxii} S. 105 (1) (h) and (i) and s 106(1) SSAA 2012, for new licences, and s 131(1)(b) and s 106(2) for renewals.

(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and

(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

Aside from the power of this section as the purpose of the Act, it is also explicitly included as one of the s. 105 criteria (s. 105 (1) (a)) in that decision makers must have regard to the purpose of the Act when deciding whether to issue a licence. This double role, as purpose and criterion, has been recognised in a number of recent decisions.

The changing law on alcohol-related harm: The *Lion Liquor* case

In the third reading of what became the 2012 Sale and Supply of Alcohol Act, Minister Judith Collins noted: “At present, it is very difficult to successfully object to a licence application. Licence criteria are limited and licences are relatively easy to obtain. This can be frustrating and disheartening for communities concerned about alcohol-related harm in their areas. Under the bill, licences will be harder to get and easier to lose” (New Zealand Parliament, 2012).

It is evident that, despite the concerns of Minister Judith Collins, under the 2012 Act, it remains very difficult to successfully object to a licence application. In particular, community objections alone may carry little weight unless backed by the support of the reporting agencies and detailed evidence. Also, few licence applications even reach a hearing.^{xxiii}

In addition, the case law developed in quite a narrow way in the earliest cases. These cases appeared to require objectors to have evidence demonstrating a link between the specific liquor outlet and the incidence of alcohol-related harm in the community. In the initial *Lion Liquor* hearing (which was appealed) the DLC went so far as to make it a condition of renewal that “all carry bags in which alcohol is sold to customers must be branded on at least one face of the bag with *Liquor King* branding”; on appeal, ARLA upheld the condition as it would help decision makers by linking alcohol related issues to particular outlets.^{xxiv} Some objectors were also asked to show such links even when opposing new outlets in advance of the outlet being opened. The new off-licence at Wickman Way, for example, was in a very deprived area, but ARLA ruled that “The evidence of social problems in the locality was too generalised to be of assistance as it did not relate specifically to the premises”.^{xxv} Objectors felt this to be a very high bar for them (and the reporting agencies) to meet. As a result, the promise that the new Act would make licences harder to get and easier to lose was rarely met in practice.

In 2017, the licence for *Liquor King* in Wellington was due for renewal. This is a prominent off-licence outlet very close to Courtenay Place, an area known for its rowdy weekend nightlife. The Medical Officer of Health and the Police argued that the outlet contributed to high levels of alcohol-related

^{xxiii} <https://www.arphs.health.nz/assets/Uploads/Resources/Alcohol/Is-the-communitys-voice-being-heard-alcohol-licensing-applications-FINAL.pdf>

^{xxiv} Quoted in *Lion Liquor Retail Ltd v Medical Officer of Health* [2017] NZARLA PH 170 at [12 (a)].

^{xxv} *Mangere-Otahuhu local board v Level 18 Ltd.* [2014] NZARLA PH 627-628 at [36]

harm in the area. To reduce such harm, as required by the object of the Act, they argued Liquor King's hours of operation should be reduced on Friday and Saturday nights to 9pm closing. The DLC agreed with that assessment and the outlet's licence was re-issued with the condition of early closing on certain nights.

The applicant appealed to ARLA on the basis that the hours between 9–11pm on Fridays and Saturdays were peak sale periods for the outlet, and there was no evidence that sales during those hours contributed to alcohol-related harm in the area. In their decision, ARLA outlined “that the causal nexus which needs to be established is between the granting of the application for a licence (or in this case, a renewed licence), and the object of the Act contained in s 4(1)”.^{xxvi}

On this basis, ARLA decided there was insufficient evidence to demonstrate that Liquor King was the source of any particular harm cited by the reporting agencies in the area. The decision of the DLC was reversed and the outlet was allowed to remain open until 11 pm seven nights of the week. The Authority reasoned that:

Evidence of vulnerability of the community is not sufficient to alter a premise's operating in the absence of some link between the operation of those premises trading hours and that vulnerability.

As a result of that decision, the Medical Officer of Health and the Police then appealed to the High Court on two grounds:^{xxvii}

- (a) whether the Authority applied the correct legal test in setting the trading hours condition; and
- (b) whether the Authority erred in its conclusion there was an insufficient evidential basis to maintain the hours condition.

The first question concerned the ARLA requirement that the alcohol-related harm needed to be directly linked to the particular outlet. The High Court decided this was the wrong test. Clark J at paragraph [68] noted:

In the face of such evidence the Act does not countenance the continuation of high levels of alcohol-related harm. The Act requires minimisation of the ... harm. The task of the DLC was to respond to the risk and it did so. It is not necessary to establish, as the Authority required, that the proposed operation “would be likely to lead to” alcohol-related harm. To require demonstration of a link to this degree of specificity is not much different from requiring proof. Requiring proof of a causative link is not only unrealistic but is contrary to the correct legal position.

On the second point, the evidential basis, Clark J noted (at [70]):

It was sufficient to engage the requirement to minimise alcohol-related harm that the evidence implicates the premises. The Authority erred in requiring evidence of demonstrable

^{xxvi} *Lion Liquor Retail Ltd v Medical Officer of Health* [2017] NZARLA PH 170 at [58].

^{xxvii} *Medical Officer of Health v Lion Liquor Retail* [2018] NZHC 1123

historical harm. Rather, it was required to assess risk which, by definition, is future risk. In that regard, there was extensive evidence of the alcohol related harm associated with this locality on Friday and Saturday nights. In fact, the DLC in its decision described the evidence as compelling. Having read the evidence I agree with that assessment.

Clark J. came to the following conclusion: “With respect to the Authority I am of the view it both misdirected itself and reached a conclusion which I consider contradicts the true and only reasonable conclusion available on the evidence” [at 71].

The appeal succeeded on both grounds of appeal. The original decision that the outlet close at 9 pm on Friday and Saturday nights was reinstated.

This new ruling had the potential to significantly influence the way in which DLCs and ARLA responded to community level objections around alcohol-related harm with respect to both new license applications and renewals. After the *Lion Liquor* decision, DLCs were required to conduct what is basically a ‘risk assessment’ of the link between a “real risk of alcohol-related harm and the grant or renewal of a licence” (para [67]) for each case. The role of evidence in such a risk assessment would be crucial. Objectors and opposing agencies needed to bring evidence to show that the granting of the licence would be likely to increase, or at least fail to minimise, alcohol-related harm. This had potential implications for the kinds of evidence that objectors might bring, and the potential success of that evidence.

There have been some downstream effects of this decision on other aspects of decision-making. The introduction of the ‘risk assessment’ approach made the evidence of community objectors increasingly important, allowing them to provide evidence of local problems related to alcohol that would feed into the DLC decision-making rather than having to bring proof of harm to hearings, such as linking specific harm to specific premises. Likewise, evidence held by reporting agencies indicating local alcohol-related harm and disorder has become increasingly relevant. It is likely the *Lion Liquor* decision did tilt the balance a little towards the evidence of community objectors. At the same time, applicants have increasingly fought to exclude objectors from hearings, thus nullifying such evidence.

Getting to have your say: Factors in the interpretation of s. 102 (1)

Objectors do not have an absolute right to become parties to a hearing. The Act stipulates that only objectors “with an interest greater than the public generally” (s.102) may object to an alcohol licence application. This is called ‘standing’ and is based on a traditional notion in the law that only those who have an ‘interest greater than the public generally’ in legal proceedings may participate in those proceedings. In the Resource Management Act jurisdiction, this is managed by only allowing the public at large to participate in resource consent applications that are publicly notified. Almost all resource consent applications are non-notified and therefore the public cannot participate. Under the SSA Act, the reverse applies and nearly all alcohol licences are notified (only temporary and special licences are non-notified). However, the Act limits full public participation according to the provision that only those “with an interest greater than the public generally” can object.

In current law, the main way objectors can demonstrate they have ‘standing’ is based on their proximity to the premises. According to the notional geographic distance established in case law, objectors must reside or do business within a 1–2 km radius of the premises. In order to gain standing,

they do not have to show how they will be affected by the premises but only that they live or work nearby.^{xxviii} In addition to geographic proximity, another possibility for attaining ‘standing’ applies to those objectors who have ‘status’ greater than the public generally, such as school principals or board chairs, medical practitioners or other professionals. This has been extended through case law to elected members of councils or local boards, Māori elected to District Māori Councils, and likely extends to Members of Parliament.^{xxix}

Under the Act, gaining status has become a fraught process as applicants seek to challenge the standing of objectors on a regular basis. The question of who gets a voice in DLC hearings has been increasingly contested over time. Gordon’s (2019) study notes that the main reason given by community members for their objections was “a potential loss of good order and amenity in the community”.^{xxx} From the perspective of applicants, objections are a potentially significant barrier to gaining or keeping a licence. As a result, challenging the status of objectors has become a powerful means of limiting the voices of objectors.

Most people who live within a 1–2 km radius of the proposed outlets are granted status, although some DLCs have not caught up with the more recent case law. In Christchurch, for example, the DLC has been rigid until very recently in enforcing a ‘baseline’ 1 km limit on proximity for individual objectors. Teachers from local schools, business owners, church people and other locals are given reasonable leeway in most cases. The ARLA decision in *Flaxmere* does not make this distinction. It is also important to note that many DLCs use means of measuring distances that are not based on a radius but which use a more direct route (Google maps can use either method).

In a hearing of the Gisborne DLC, the main objector was a community organisation called Ka Pai Kaiti, which had campaigned against several new alcohol outlets in Gisborne city. Ka Pai Kaiti was given standing without prior consideration at the DLC hearing of the *Gisborne Liquormart* application. However, their status became a central issue on appeal to ARLA. ARLA rejected the view that Ka Pai Kaiti had an interest as a “responsible public interest group that represents a relevant aspect of the community”.^{xxxi} In a strong ruling, ARLA said:

The Trust’s interest must not only be greater than that of the public generally, but the Trust must have an interest greater than that of the public in respect of this particular application.^{xxxii}

Even though people might buy their alcohol at the new outlet and take it over the bridge to Kaiti (a suburb ten minutes from the city centre), this did not bestow status upon the organisation. This was regarded by some as a much tighter interpretation of status than had previously been evident.

^{xxviii} *Flaxmere Liquor (2008) Limited*, [2019] NZARLA 94 at [26].

^{xxix} See *Flaxmere Liquor (2008) Limited*, [2019] NZARLA 94 (District Maori Councils) and *Wilson v Durga Sai Holdings Ltd* [2017] NZARLA 42.

^{xxx} Gordon, Liz (2019) A strong legislative framework? The 2012 Sale and Supply of Alcohol Act. Report of research funded by the Law Foundation and Borrin Foundation.

^{xxxi} *Gisborne Liquormart* [2018] NZARLA 316 at [84].

^{xxxii} At [84].

In the *Westport Bottle O* case, the applicant was forced to concede that essentially the whole of Westport was within a 1–2km radius of the premises. However, the applicant argued that the organisation Alcohol Action West Coast – which is based outside of Westport – should not be granted status following the decision in *Gisborne Liquormart*. In that particular case, the Westland DLC decided to hear the evidence of the organisation, giving it due (lesser) weight on consideration.

The new status standard developed under *Gisborne Liquormart* has a potentially chilling effect on the ability of community groups to have their say in alcohol applications. However, some community groups have got around this restriction by extending their membership and ensuring that objections are made by members both in their personal capacity and relying on their residential status, while advising both the applicant and respective DLCs that they belong to a group who are collaborating on making objections. This approach was used recently in the *Vine Street* (Auckland DLC) case.^{xxxiii}

Turning back to the case of *Flaxmere Liquor* in 2019, Māori kaumatua Henare O’Keefe and Des Ratima had their status considered by the appeal authority. Both lived more than 2 km from the premises. ARLA adopted the concept of ‘enhanced interest’, first discussed in the High Court decision in *Utikere*^{xxxiv}, to grant O’Keefe standing on the basis that he was also a city councillor, even though he did not have authority to object to the application on behalf of the Council. Des Ratima, a highly regarded leader of the Te Aranga Marae located three kilometres from the premises, as well as Chair of the local District Māori Council and a member of the national Māori council, was granted standing. ARLA noted:

Ms Mason submits that taken together Mr Ratima’s roles as Chair of the Takitimu District Māori Council and as member of the Kahui Kaumatua of Te Aranga Marae, along with his standing as a Justice of the Peace and Member of the New Zealand Order of Merit is more than sufficient to give Mr Ratima standing to object in terms of the test in the Act.^{xxxv}

The argument was also made that Mr Ratima’s role as kaumatua of Te Aranga Marae covered the whole district, not just where he was located:

In respect of the normal geographic test for establishing standing, Ms Mason says that the applicant’s objection fails to understand how Tikanga Māori works and that despite the location of the Marae, its constituents are located throughout the Hastings area and many live closer to the premises. As kaumatua, Mr Ratima has responsibility for all constituents in the area.^{xxxvi}

As with Mr O’Keefe, in considering Mr Ratima’s eligibility, ARLA noted:

... there may also be a narrow class of objectors who have standing by virtue of an enhanced interest, regardless of geographical boundaries (per *Utikere v I S Dhillon & Sons Limited*).

^{xxxiii} HS Judge Enterprises [2021] Auckland DLC.

^{xxxiv} *Utikere v I S Dhillon & Sons Limited* [2014] NZHC 270 at [11]

^{xxxv} *Flaxmere Liquor Ltd* [2019] NZARLA 94 at 23

^{xxxvi} *Op cit* at [20].

How then was standing established in this case? Two elements were important in confirming Mr Ratima’s status as an objector. The first was that his role as Chair of the Takitimu District Māori Council gives him an enhanced interest because that body has “statutory” obligations around Māori health and wellbeing that align “with the object of the Act”. Second, the decision recognised that Mr Ratima’s organisation itself was established under legislation and was not “merely a free association”. In terms of Mr O’Keefe, his status arose from his role as a city councillor.

Thus, the *Flaxmere* case acknowledges standing can be gained through an enhanced interest based on holding a ‘public office’ or relevant statutory obligations. Similarly, Maori wardens have been granted status due to their statutory role and its specific functions regarding reducing alcohol-related harm. This has the potential to be tested in future licensing decisions.

Of note are the fine differences between the *Flaxmere* and *Gisborne Liquormart* decisions. In the latter case, despite its hard work in vulnerable Māori communities facing serious levels of alcohol-related harm, this was not sufficient for Ka Pai Kaiti to gain standing. It does appear the granting of status based on ‘enhanced interest’ is limited to people and organisations holding official or professional roles.

It is noteworthy that in *Flaxmere* the ARLA did not state specifically whether it considered Mr Ratima’s connection to the area as Kaumatua of Te Aranga Marae relevant to his status. DLCs have sometimes denied status to iwi members seeking to object to a licence in their rohe due to their distance from the location, despite their whānau connection to the area.^{xxxvii} As such there is no clear approach in the law to factors Māori consider central to status and involvement in local decisions. Objectors in *Flaxmere* and elsewhere^{xxxviii} have further argued that DLCs are obligated to consider the Treaty of Waitangi and to assess the local impacts of alcohol upon Māori specifically. These arguments have not succeeded, with a precedent set by ARLA [2017] and again in *Flaxmere* that the Act does not require it to consider Treaty provisions when evaluating alcohol licence applications.^{xxxix} The decisions note the DLC must already consider the risk of alcohol related harm to Māori within the Act’s main criteria.

Since *Flaxmere Liquor*, there has only been one appeal case that has examined issues of objector status in detail – the case of *Liquorland Papatoetoe*. In June 2019, Communities Against Alcohol Harm (CAAH) successfully argued against the renewal of an off-licence. On appeal, the applicant strongly opposed the status of the corporate objector. The appeal authority decided that CAAH did not have status and the DLC decision was overturned.^{xl} The case law therefore suggests that community based groups whose purpose is to reduce alcohol-related harm, such as Communities Against Alcohol Harm, will not be given standing per se, but in terms of their interest in and relationship with the particular application. Nonetheless, individual members will be if they reside within 1–2km and make an objection on that basis. Arguably, as organisations aligned with the object of the Act (part of the test

^{xxxvii} Health Promotion Agency (2020). Māori Wardens presence and potential in the alcohol space. Wellington: Health Promotion Agency.

^{xxxviii} RS Holdings Lt D re Crown Liquor Clendon Wines, [2018] Auckland DLC 8220013176

^{xxxix} Super Liquor Holdings Limited v Auckland City Council - Provisional Local Alcohol Policy [2017] NZARLA 250 (19 July 2017)

^{xl} [2019] NZARLA 222.

in the *Flaxmere* case), groups like CAAH should be able to gain enhanced status as groups (rather than as individuals living in the area), but that has not occurred to date.

One recent case at the Christchurch DLC (*Good Bliss Hornby*) saw a number of challenges to those objectors living outside a 1 km radius of the area^{xli}. In a separate pre-hearing, the DLC allowed the Hornby Residents Association, a local board member, a representative of the community board and a small number of others to have status. One other person who raised issues around the legality of the application was declined status but the DLC agreed to raise the issues on his behalf and did so.

That case demonstrated the power of community objectors when allowed to air their concerns at a hearing, even in a case in which the reporting agencies did not oppose this new licence. In case law, the lack of opposition by agencies raises the evidential threshold for objectors to prove their case:^{xlii}

...a reasonably high threshold [of evidence must be] met by the objectors in order to displace the absence of concerns by the reporting agencies. We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an [application should not be granted].

However, the persuasive evidence from a mix of local residents, the Residents Association and the local board convinced the DLC that a new off-licence should not be issued, on both suitability and amenity grounds. Much of the evidence in the *Good Bliss Hornby* case centred on inclusivity issues, with a focus on the suitability of the applicant and amenity and good order. Evidence noted as material to the decision included: a declining deprivation status in the area and high vulnerability; significant evidence of existing alcohol-related harm; new social housing being built in the area; and applicants who “were in complete denial of the vulnerability of the location”.^{xliii} The DLC found that the applicants failed to meet the suitability test in such a deprived location, and that the bottle store proposal “was not compatible” with the vulnerable residential nature of the surrounding area.^{xliiv}

This case study highlights the potential loss of relevant information that may result when local residents are excluded from the licensing process due to the various technical and legal challenges to having a say under the Act. Where there are no valid objections, and no objection from agencies, the approval rate by DLCs is very high.

Amenity and good order

The phrase “amenity and good order” was specifically introduced into the Sale and Supply of Alcohol Act 2012 so that these wider aspects of alcohol effects on a locality could be considered in licensing matters, as the previous Act limited consideration to suitability only.

Guidance on assessing the effects of an application for an alcohol licence on “amenity and good order” is set out in sections 105 and 131 of the Act. Essentially the DLC must have regard to whether (in its opinion) the amenity and good order of the locality would be “likely to be reduced, to more than a

^{xli} Christchurch DLC, decision no 60E [2020] 6837.

^{xlii} *British Isles Inn Ltd*, NZLLA PH 406/2006 at [39].

^{xliii} Christchurch DLC, 60E at [203].

^{xliiv} At [208] and [217].

minor extent, by the effects of the issue of the licence”, or “likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence”.

The concept of “amenity and good order” is defined in section 2 as the extent to which, and ways in which, the locality in which the premises concerned are situated are “pleasant and agreeable”. Noise, nuisance and vandalism are specified in the Act as factors that may affect amenity and good order and must be assessed by the DLC in accordance with s. 106 (1) for new licences and s 106(2) for renewals:

In forming for the purposes of [section 105\(1\)\(h\)](#) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a new licence, the licensing authority or a licensing committee must have regard to—

- (a) the following matters (as they relate to the locality)
 - (i) current, and possible future, noise levels:
 - (ii) current, and possible future, levels of nuisance and vandalism:
 - (iii) the number of premises for which licences of the kind concerned are already held; and
- (b) the extent to which the following purposes are compatible:
 - (i) the purposes for which land near the premises concerned is used:
 - (ii) the purposes for which those premises will be used if the licence is issued.

Assessments of the effects on amenity and good order are dealt with unevenly by DLCs and ARLA. The requirements under these sections of the Act have turned out to be complex. Sub-section 106(1) says that the DLC or ARLA must form an opinion on whether the grant of a licence *will be likely to reduce the amenity and good order of the locality* “by more than a minor extent”. They must consider current and possible future noise levels, levels of nuisance and vandalism and the number of licensed premises in the area as well as land use around the proposed premises and use of the premises.

Sub-section 106(2) concerns renewals of licences and requires the DLC and ARLA to form an opinion on whether a refusal to renew a licence of the area *would be likely to increase the amenity and good order* with regard to noise levels, nuisance and vandalism.

On both counts, forming an opinion is a complex process. In the High Court decision in *Re. Venus*^{xlv} at [57], Heath J said:

... s 105(1)(h) and (i) of the 2012 Act, both of which deal with “amenity and good order” considerations, requires the Authority to form an “opinion”. The need for a judicial body to form an independent opinion is conceptually different from a decision that is based on

^{xlv} Re Venus NZ Ltd, [2015] NZHC 1377, [2015] NZAR 1315, at [57]

whether or not an applicant has established on a balance of probabilities that a relevant fact has been proved.

The case law on amenity and good order makes it difficult for objectors to advance persuasive objections on these criteria. As the High Court noted in the *Lower Hutt Liquormart* case, it is not possible to subject the evidence of objectors to an objective legal test “for the purpose of assessing whether the amenity and good order of the locality would be likely to be reduced to more than a minor extent”.^{xlvi} Churchman J argued:

[73] As noted above, notions of standard of proof and onus of proof have little or no relevance and application to the inquisitorial, evaluative decision-making process when an Authority is considering whether or not to grant a new off-licence. Although, when having regard to the s 105 criteria in considering whether an application is consistent with the object of the Act, the view of the decision-maker must be supported by evidence, what is required is no more than that the decision-maker is reasonably satisfied of any evidence put to it, having regard to the nature and consequence of the facts in question.

This means that community objectors must provide evidence to satisfy the DLC or ARLA that the grant of the licence would significantly affect the amenity and good order of the area, without having to ‘prove’ to a particular standard that this is the case. This has, in general, been difficult for objectors to achieve. One notable recent decision was made by the Hurunui DLC in the case of *Thirsty Liquor Amberley*. This was an application for a new off-licence on the main street of Amberley. It was opposed by a large number of objectors, many of whom turned out for the hearing.

The primary objections related to amenity and good order, the proliferation of outlets and alcohol-related harm. Objectors argued that the amenity and good order of the area would be reduced if the licence was granted. The DLC declined the application, primarily on amenity grounds. Arguably it was the cumulative effect of the sheer number of objectors and their range of stories that led to the decision. The Police did not oppose the application and the Licensing Inspector supported it, which, as already noted, raises the bar for objectors.

The applicant appealed to ARLA, who noted that amenity issues were at the forefront of community objections. As noted by the Licensing Inspector, there were three amenity issues: seeking to maintain existing positive amenity and good order in the town, worry that the new licence would diminish amenity, and concern that the amenity and good order of the town was already being affected.^{xlvii} ARLA went through the evidence of the objectors one by one and dissected it. Their evidence was not treated cumulatively. The Authority concluded the evidence largely boiled down to concerns about litter and the “prospect of irresponsible behaviour increasing in what is an otherwise pleasant and agreeable town”, deciding there was little evidence for this concern. It noted that the initial licence was for one probationary year only, and “should the objectors’ concerns crystallise then that is a matter that should rightly be put before the DLC on renewal” (at [158]).

^{xlvi} *Lower Hutt Liquormart v Shady Lady Lighting* 2018 NZHC 3100 at [71].

^{xlvii} *Townill Ltd v Alcohol Wise Hurunui & Ors NZARLA* 2021 50 at [40]

The Authority therefore concluded that the risk of future levels of nuisance and vandalism increasing with the issue of the licence to be low (at [160]) and the DLC's decision was overturned. Consistent with earlier decisions ARLA relied heavily on the Inspector's supportive evidence and the lack of Police oppositional evidence when finding the objectors' evidence unpersuasive.

In summary, while the DLC essentially considered the cumulative effect of the evidence and made a decision on that basis, ARLA took the opposite approach, dissecting each objection individually. Both bodies carried out assessments of risk and came to opposite conclusions. This one application shows how completely different decisions about amenity and good order can be reached based on the same evidence. The question of which is the correct methodology (or, indeed, whether there is a correct methodology), has yet to be tested.

In order to succeed in showing that the amenity and good order will be affected by the licence, significant evidence needs to be provided and sustained. In the *Westport Bottle O* case only four objectors spoke, and their arguments rested on news reports of alcohol-related offences, potential increases in disorder and vandalism, and the presence of young people in the area. Counsel for the applicant strongly argued that “the opposition to amenity and good order is unsubstantiated and there are no direct observations (anecdotal or otherwise) about historical impacts in the locality or existing risks”. In this case, essentially the DLC agreed with the applicant against the local community and the application was allowed.^{xlviii}

The example above illustrates the difficulty faced by objectors when professional counsel is able to cross examine their statements. Arguments work best for objectors at the DLC level where there are many objectors supported by one or more agencies, and no imbalance of legal representation. One notable decision, based primarily on preserving a high level of amenity and good order, was around the application for a new licence for a Bottle O in Khandallah, a very wealthy neighbourhood of Wellington.^{xlix} In that case, the applicant had counsel, as did a number of the objectors (two lawyers). Standing was granted to 178 of the 538 objectors. Many of the objectors were prominent citizens, including the Mayor and some councillors. There were expert witnesses on both sides. Key to the decision was the objectors' view of “the village as a treasure, which is unique and needs to be protected. Put simply, the objectors do not want a bottle store in their village”. Some, including Mayor Lester, suggested that there was a lack of ‘social licence’ to operate a bottle store at this locality” (at [16]). The licence was declined and this decision was not appealed by the applicant.

Recent objections based on amenity and good order have found success by highlighting the deprivation of the locality in which the premises are planned to be located or are already located. A growing body of case law accepts that if deprivation levels are high (often interpreted as Dep 8, 9 or 10^l), then the risk of alcohol-related harm is also high. Here, the starting point for objectors has been

^{xlviii} S and P Private (Westport Bottle O), Buller DLC / 069/2019.

^{xlix} Plenitude Limited Trading as Bottle-O Khandallah, Wellington DLC 49B/2019/ NZDLCWN/1654

^l The NZDep is an area-based measure that measures the level of deprivation for people in each small area and is based on nine Census 2013 variables (NZDep2013). NZDep2013 is displayed in 10 deciles: Decile 1 represents areas with the least deprived NZDep2013 scores. [https://ehinz.ac.nz/indicators/population-vulnerability/socioeconomic-deprivation-profile/#:~:text=Deprivation%20\(NZDep\).-,The%20NZDep%20is%20an%20area%2Dbased%20measure%2C%20which%20measures%20the,the%20least%20deprived%20NZDep2013%20scores](https://ehinz.ac.nz/indicators/population-vulnerability/socioeconomic-deprivation-profile/#:~:text=Deprivation%20(NZDep).-,The%20NZDep%20is%20an%20area%2Dbased%20measure%2C%20which%20measures%20the,the%20least%20deprived%20NZDep2013%20scores)

that the pleasantness and agreeableness of the locality is already likely badly affected by existing licences and it is therefore desirable not to issue any further ones, or alternatively, that the pleasantness and agreeableness of the locality would be likely reduced, to more than a minor extent, by the effects of the issue of a licence.

Similarly, when considering a renewal in an area of high deprivation (where there is a high risk of alcohol-related harm), the starting point can be that a refusal to renew the licence would be likely to increase, by more than a minor extent the amenity and good order of the locality. In the *Riccarton Liquor* case, the Authority noted:

...to the extent that the vulnerability of an area raises the threshold of suitability, it is open for a DLC on the evidence before it to find that some locations are already vulnerable such that it may be impossible for an applicant to establish its suitability to hold a licence there. Even stopping short of this, and even without applying the precautionary principle, it is clear from s 105 (1) (i) that the amenity and good order of a locality may already be so badly affected by alcohol that even though that amenity and good order may not deteriorate further with the issue of a new licence, it is nevertheless desirable not to issue a further licence.^{li}

In addition to looking closely at deprivation levels, any evidence of negative effects on pleasantness and agreeableness, such as noise, nuisance and vandalism (or criminal activity) that can be attributed to alcohol or arise out of alcohol-related harm will also support decisions to refuse a licence. As in the Lower Hutt *Shady Lady Lighting* case, where the locality included the Hutt River embankment park and recreational area. Finally, any sensitive sites, such as schools, vulnerable residential areas, parks and reserves will add further support for a refusal.^{lii}

Two recent decisions of the Auckland DLC illustrate how the current law is applied in practice. The *Vine Street* application was for a new off-licence on the site of an earlier off-licence that had closed. Key issues identified were the suitability (especially the lack of preparedness) of the applicant and the amenity and good order of the area. It was opposed by all the agencies, as is current practice in Auckland in high-deprivation vulnerable community areas. A public health expert [Mr Galvin, representing the Medical Officer of Health] provided detailed information and noted:^{liii}

56. Mr Galvin concluded his evidence by saying, that the proposal to open a new bottle store, by an operator with little knowledge or experience in a vulnerable community, which already suffered relatively high levels of alcohol related harm, and near child centric educational and recreational facilities, was at odds with the legislative intent of the Act to minimise alcohol related harm. This was a ‘textbook’ example of a licence application that the Act was designed to decline.

The DLC declined the application on the grounds that the amenity and good order of the area were such that a new outlet could not minimise harm, and also that the application itself was “poorly researched and poorly presented”:

^{li} Riccarton Liquor [2018] at [187].

^{lii} Gordon op cit.

^{liii} HS Judge Enterprises Ltd trading as Vine Street Liquor at Auckland DLC [2021] ADLC 8220062695

We were left with the distinct impression, that this was an application where the applicant had considered that there were ‘available premises’ and that by simply completing the documentation to show compliance with the Act, that would be sufficient for us to reach a favourable conclusion (at [102]).

The second recent decision is that of *Hunters Corner* (ADLC 2021). This case shared many of the characteristics of the *Vine Street* application. What distinguished it was the detailed plan, outlined by the applicant’s lawyer (Mr Sherriff), to meet the requirements of enhanced suitability in such a deprived area.

Mr Sherriff argued that (a) “it is acknowledged that new bottle stores in places where there have never been bottle stores are progressively becoming harder to obtain where there is community objections”, and (b) “there is no jurisprudence to indicate that a Committee can never grant a new off-licence in a vulnerable location”.^{liv} Mr Sherriff provided a detailed plan to meet stringent requirements outlined in prior DLC decisions, including opening hours, restrictions on certain products, a pricing strategy, use of CCTV, limits on promotion, a daily rubbish sweep and engaging with community objectors on a regular basis and to limit alcohol harm.

However, the Committee found a credibility gap between the comprehensive response to vulnerability outlined by Mr Sherriff and the knowledge and approach of the applicant’s principal witness observed during the oral hearing. In its decision, the Committee noted that a plan around vulnerable persons was not well developed, the applicant lacked knowledge of the local area, and the amenity issues raised by objectors and opposing agencies would not be addressed by the issue of a licence. In particular:

[238] The Committee was concerned that the details in the application, which were comprehensive, were not reflected in the oral evidence. Overall, there was a distinct impression of the application being well-dressed, but not backed up by substance. This was reflected in the lack of genuine understanding of the vulnerability of this community, and the repeated comments by the applicant, to the effect of, if people want to buy alcohol they will, and so it may as well be from her.

The Committee affirmed that in the absence of applicant suitability, amenity and good order of the locality “would be reduced, by more than a minor extent, by the issuing of a licence”. The finding also noted:

[262] If the Committee is wrong in its assessment of whether the amenity and good order of the locality would be reduced by more than a minor extent by the issuing of the licence that would likely be because the amenity and good order of the locality is already so badly affect [sic] by the effects of the existing licences. Accordingly, and taking into account the extent of the alcohol related harm in the locality, we have considered this issue also.

The linking of amenity issues with community vulnerability has provided a powerful discourse for consideration, particularly in relation to new off-licences in deprived areas, and especially within the

^{liv} *Hunters Corner*, Auckland DLC 2020 at [12 l and m].

Auckland DLC area. The consideration of applicant suitability has become increasingly important in this regard, as it is only enhanced skills that may allow an applicant to overcome the lack of amenity and good order.

From the perspective of diminished inclusivity, the new approaches focus on the need to minimise harm around liquor stores through programmes that enhance amenity and good order. Nevertheless, some areas are being considered so vulnerable or badly affected by alcohol that is seen as impossible to successfully establish a new bottle store operation.

The priority in the current legal environment is the risk assessment of the likelihood of future alcohol-related harm and presentation of credible evidence of existing alcohol-related harm and existing vulnerabilities in the locality and community of the premises sought to be licensed. Factors in this include issues of proliferation and future risk of harm. Such arguments are most likely to succeed when raised by the agencies and, at the appeal level, are unlikely to succeed without agency support.

Suitability of the applicant

While not immediately obvious as a cause of objection relating to inclusivity, clause 105 (1) (b) regarding the suitability of the applicant has been affirmed and extended by multiple decisions at DLC and ARLA levels. A number of ARLA rulings have emphasised that suitability is “a broad concept”^{lv}, covering not just the character and reputation of the applicant, but also their ability to deal with liquor abuse issues that arise, to moderate and reduce alcohol-related harm, and to competently keep the area around the liquor store safe. Recent decisions have affirmed that, aside from the core issues, suitability includes the following broad concepts:

1. The applicant must demonstrate knowledge of the local environment and have a plan to minimise harm based on that knowledge^{lvi}. Objectors need to bring “cogent, admissible evidence” to bear to show that the lack of knowledge is material^{lvii}.
2. The difficulty of demonstrating suitability increases with the vulnerability of the area:

The vulnerability of the area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol related harm^{lviii}.

While prominent in ARLA and High Court cases, it is not clear that either of these broader elements have been widely applied in DLC hearings. One recent exception is the *Good Bliss Hornby* case discussed above, where the DLC noted that the applicants “were in complete denial of the vulnerability of the location”, and that denial made them unsuitable to hold a licence in such a vulnerable area. That decision was not appealed.

^{lv} Re Nishchay’s [2013] NZARLA 837 at [53]

^{lvi} Re R S Dhillon Ltd [2013] NZARLA 920 at [49].

^{lvii} Utikere v I S Dhillon and Sons Ltd [2014] NZHC 270 at [63].

^{lviii} Shady Lady Lighting v Lower Hutt Liquormart [2018] NZARLA 198-199 at [127]

One difficulty faced by community objectors is that unless they get legal advice, they are unlikely to know the state of current case law regarding suitability. The case law is also very complex and only decipherable by experienced lawyers. Thus, community objectors may not have the necessary knowledge to engage in the broader aspects of suitability. Similarly, agencies may not use the broader approach. For example, the Police often only cite a lack of criminal record and compliance with licensing rules as indicating suitability.

In *Thirsty Liquor Wickman Way*, which considered sale of alcohol to an under-age customer in a controlled purchase operation (CPO), the Auckland DLC noted there was no clear definition of suitability in the legislation and weighed up a number of key statements around how it should be decided. In the end, the Committee decided there was a “credible reason” for the failed CPO, which tipped the balance in favour of the applicant’s suitability.^{lix}

In conclusion, issues around applicant suitability in the case law now include questions of the vulnerability of the community, awareness of alcohol-related harm, and the ability to effectively manage the licence in all circumstances. These developments are relatively recent and perhaps less understood by DLCs than they should be. It is sometimes difficult to know how to apply them. The *Good Bliss Hornby* and *Hunters Corner* cases clearly show the power of the application of ‘enhanced suitability’ criteria in more vulnerable areas. The exposition of the law in these judicial precedent decisions places proprietors at the forefront of managing and minimising harm and maintaining the amenity of the area.

Alcohol-related harm in the current law

How has the law operated in the wake of the *Lion Liquor* case in relation to conceptions of alcohol-related harm? In the *Lower Hutt Liquormart* case, ARLA adopted and extended the principles of the *Lion Liquor* decision and considered that the significant evidence of existing and likely increased alcohol-related harm in the area meant that another outlet was inappropriate. The application was therefore seen as not capable of meeting the object of the Act and the decision of the DLC was overturned.^{lx} Where previously evidence not directly implicating the premises was often dismissed,^{lxi} the new focus is on the assessment of risk of alcohol-related harm against the evidence presented. The obligation is therefore on all parties to provide cogent evidence (in reality, that responsibility of evidence falls on the applicant in relation to suitability, and the agencies and objectors in terms of amenity, good order and other health and social harms).

Suitability has come to be an important factor in the assessment of alcohol-related harm. In the light of issues of amenity and harm, applicants must be able to demonstrate the ability to minimise alcohol-

^{lix} *Thirsty Liquor Wickman Way*, Auckland DLC 2017 at [35] ff

^{lx} *Lower Hutt Liquormart*, ARLA op cit at [130-131]

^{lxi} *Thirsty Liquor Wickman Way*, Auckland DLC 2017 at [56]. DLCs and ARLA often do not acknowledge the guidance from the Court of Appeal. “*The new Sale and Supply of Alcohol Act signals a new community oriented approach incorporating both purpose and object provisions. A key purpose of the Act is to put in place, for the benefit of the community as a whole, a new system of control over the sale and supply of alcohol*” – citing s 3(1)(a) of the Act. [See *Vaudrey v Canterbury MOH* [2017] 2NZLR 334 at [23]].

related harm. This is hinted at in *Lower Hutt Liquormart* by ARLA, but laid out fully in the recent *Hunters Corner* decision at Auckland DLC:

[270] The object of the Act has changed significantly from that of the previous Act and in our view, raises the bar for all operators of licensed premises. A person who has the privilege of holding a licence, must ensure that the sale and supply of alcohol should be undertaken safely and responsibly and that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised^{lxii}.

Amenity and good order issues are also important in assessing alcohol-related harm. Several cases considered here have traversed those arguments. At the forefront is the ARLA decision in *Flaxmere Liquor*, an existing off-licence seeking renewal in one of the most deprived areas of New Zealand. Agreeing that the area is vulnerable, ARLA argued that inadequate evidence of harm arising from that vulnerability was presented and that a lack of opposition from the agencies made a risk assessment difficult:

That carries significant weight for the Authority as the risk assessment the Authority is required to undertake features the reporting agencies in a prominent role where regard must be had to any matters they bring to the fore.^{lxiii}

The importance of the agencies failing to present an adverse risk assessment of alcohol-related harm weakens the position of community objectors, or rather raises the obligation on objectors to provide compelling evidence of harm, usually by showing evidence around amenity and good order that has been missed or ignored by the agencies. That test failed in the *Flaxmere* case.

Important too is the methodology employed by ARLA in considering the evidence around amenity. As discussed above, in their handling of the appeal in *Thirsty Liquor Amberley*, in our opinion, ARLA adopted an analytical approach that considered each piece of evidence in isolation and made no clear attempt to understand the evidence holistically or cumulatively. This raises the bar higher for objectors and, indeed, for the agencies.

In the *Waiheke* case,^{lxiv} in which ARLA overturned a decision to grant a licence, the evidence came from both the Licensing Inspector (an appellant) and a number of community groups dealing with aspects of alcohol-related harm in the immediate area, including alcohol and drug issues, family violence, youth harm etc. The Authority concluded:

[180] The Authority also finds that the DLC erred in failing to give appropriate consideration to existing levels of socioeconomic deprivation and alcohol-related harm in the locality, particularly in relation to nearby sensitive sites within walking distance that house individuals with substance abuse problems and that counsel persons with alcohol-related violence issues, as well as local schools whose children frequent the local shops including the neighbouring bakery.

^{lxii} *Hunters Corner* op cit.

^{lxiii} *Flaxmere Liquor* at [207].

^{lxiv} *Ritchelle Roycroft et al ARLA [2020] NZARLA 204 (Waiheke case)*.

Thus “granting the licence subject to the proposed conditions and undertaking, would not plausibly address or mitigate the evidence on the record showing that the grant of the application would be contrary to the object of the Act, or minimise the risk of alcohol-related harm in the community” (at [182]).

In summary, the risk analysis approach developed by the High Court in *Lion Liquor* requires objectors and agencies to bring significant evidence of such risk, evidence that withstands the scrutiny of the appeal authority. It is not certain, at either end of the vulnerability spectrum, whether the *Khandallah* case (based on keeping an area pleasant) or the *Hornby* case (showing significant suitability and amenity issues but not supported by agencies) would have satisfied the requirement for alcohol-related harm to be established probatively on appeal.

Conclusion: Diminished inclusivity in current alcohol law and licensing

This paper has considered four aspects of decision-making in relation to DLC and appeal-based alcohol licence decisions, with a focus on off-licences only.

The analysis of cases has resulted in four main findings. The first is that the law is still highly contested in many respects. Applicants are able to use their knowledge of the legal framework, which is quite complex, to gain advantages over community objectors, commencing with their contesting their status and standing.

Second, the question of what constitutes applicant suitability is interpreted extremely broadly in prominent legal decisions, such as *Lower Hutt Liquormart*, but some DLCs continue to interpret this much more narrowly in practice. A systematic analysis of suitability needs to take into account requirements that applicants are able to understand and reduce alcohol-related harm in the local area, to know the area well, and to work effectively with others – especially in communities considered vulnerable to harm. It is difficult for community objectors to be familiar with the legal issues around suitability, let alone raise them appropriately within hearings in their current structure. Indeed, in some of the cases discussed here, objectors did not articulate the relationship between suitability and harm.

Third, the law around amenity and good order is complex and unclear. In the *Waiheke* case, agency opposition and community objections saw the decision of the DLC overturned on appeal. In the *Khandallah* and *Hornby* cases, and more recently in the *Vine Street* and *Hunters Corner* cases in Auckland, community objectors made strong arguments that persuaded DLCs not to issue new off-licences. None of these cases were appealed to ARLA, and therefore their findings were not tested. In terms of the *Amberley* decision discussed above, what the DLC saw as a strong case was entirely demolished by ARLA on the basis that the amenity and good order of the area would likely not be affected, by more than a minor amount, by the issue of a new licence.

Finally, the landmark decision in *Lion Liquor* has placed the focus on risk analysis, namely the risk that the issue of the licence under particular conditions would increase, rather than minimise, alcohol-related harm. The focus is on the evidence of risk of alcohol-related harm in the local community generally, rather than proving local harms are being, or will be caused by specific premises. While this has increased the range of relevant evidence that community members may put forward, it has increased the onus on community objectors to spell out the risks, citing concrete evidence. It also

increases the value of agency support, particularly in providing evidence of social deprivation and local alcohol-related harms to indicate the level of existing risk. Objectors are more likely to succeed where they are supported by evidence of alcohol-related harm from the Medical Officer of Health and/or the Police, and/or the Licensing Inspector.

All aspects canvassed in this paper affect the ways in which diminished inclusivity is considered in the application for an off-licence. There are significant barriers to members of communities expressing their concerns about inclusivity in ways that allow consideration according to the s.105 criteria, even when they do get to have their say. Further barriers exist in relation to the complex matters around applicant suitability, especially in vulnerable areas.

Having a number of objectors with strong views about the likely effects on amenity and good order is not enough. The evidence must be sufficiently cogent to withstand strong evaluative analysis, and may not be considered cumulatively. Finally, in the assessment of future risk required by decision-makers, evidence of vulnerability, applicant expertise or lack of relevant experience, local amenity and good order, and other factors must be weighed by DLCs and ARLA in coming to a conclusion on whether a licence should be issued. Evidence of potential or actual diminished inclusivity will inform such risk analysis but may not be determinate in the decision to issue a licence.

References

1. New Zealand Law Commission. Alcohol in our lives: curbing the harm. Law Commission report no. 114. [Internet] Wellington (NZ): NZLC; 2010 [cited 3 Aug; 2021]. Available from: <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf>
2. Auckland Regional Public Health Service. Is the community's voice being heard? [Internet] Auckland Regional Public Health Service; 2019 [cited 3 Aug; 2021]. Available from: https://www.arphs.health.nz/assets/Uploads/Resources/Alcohol/Is-the-communitys-voice-being-heard_alcohol-licensing-applications_FINAL.pdf
3. Randerson S, Casswell S, Rychert, M. Diminished inclusivity in public space: How alcohol reduces people's use and enjoyment of public places. Literature review. [Internet] Wellington (NZ): Health Promotion Agency; 2019 [cited 3 Aug; 2019]. Available from: <https://www.hpa.org.nz/sites/default/files/Diminished%20inclusivity%20in%20public%20space%20literature%20review1.pdf>
4. Gray-Phillip G, Huckle T, Callinan S, et al. Availability of alcohol: Location, time and ease of purchase in high- and middle-income countries: Data from the International Alcohol Control Study. *Drug Alcohol Rev.* 2018;37(2):S36-44.
5. Hay G, Whigham P, Kypri K, et al. Neighbourhood deprivation and access to alcohol outlets: A national study. *Health Place.* 2009;15(4):1086–93.
6. Cameron M, Cochrane W, McNeill K, et al. The impacts of liquor outlets in Manukau City summary report – Revised. Wellington (NZ): Alcohol Advisory Council of New Zealand; 2012.
7. Connor J, Kydd R, Rehm J, et al. Alcohol-attributable burden of disease and injury in New Zealand: 2004 and 2007. Wellington (NZ): Health Promotion Agency; 2013.
8. Muriwai E, Huckle T, Romeo, J. Māori attitudes and behaviours towards alcohol. Wellington (NZ): Health Promotion Agency; 2018.
9. Hansard. New Zealand Parliamentary Debates. 11 Dec 2004;686:7348 (Hon Judith Collins, Minister of Justice).
10. Kypri K, Maclennan B, Brausch S, et al. Did New Zealand's new alcohol legislation achieve its object of facilitating public input? Qualitative study of Māori communities. *Drug Alcohol Rev.* 2019;38:331–8.
11. Ratuu D. Wai 2624, #1.1.1, 13 February 2017. [Internet] 2017 Feb [cited 8 Sep; 2021]. Available from: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_122228675/Wai%202624%2C%201.1.1.pdf
12. Cameron MP, Cochrane W, Livingston M. The relationship between alcohol outlets and harm: A spatial panel analysis for New Zealand, 2007-2014. Wellington (NZ): Health Promotion Agency; 2016.
13. Ruru J, Kohu-Morris J. 'Maranga Ake Ai' The heroics of constitutionalising Te Tiriti o Waitangi/The Treaty of Waitangi in Aotearoa New Zealand. *Fed Law Rev.* 2020;48(4):556-69.
14. Ministry of Health. Te Tiriti o Waitangi Framework. [Internet] 2020 [cited 2 Mar; 2022]. Available from: <https://www.health.govt.nz/our-work/populations/maori-health/te-tiriti-o-waitangi>

-
15. Came H, O'Sullivan D, McCreanor T. Introducing critical Tiriti policy analysis through a retrospective review of the New Zealand Primary Health Care Strategy. *Ethnicities*. 2020;20(3),434-56.
 16. Human Rights Commission. Structural discrimination: The need for systemic change to achieve racial equality: A discussion paper. Wellington (NZ): HRC; 2011.
 17. Gordon L. A strong legislative framework? The 2012 Sale and Supply of Alcohol Act. [Internet] Lower Hutt (NZ): Law Foundation and Borrin Foundation; 2019 [cited 5 Aug; 2021]. Available from: <http://www.nzlii.org/nz/journals/NZLFRRp/2019/2.pdf>
 18. Wilkinson S. Alcohol, young people and urban life. *Geogr Compass*, 2015;9(3):115–26.
 19. Pennay A, Room R. Prohibiting public drinking in urban public spaces: A review of the evidence. *Drugs: Educ Prev Policy*. 2012;19(2),91–101.
 20. Witten K, Field A. Engaging children in neighborhood planning for active travel infrastructure. In: Waygood EO, Friman M, Olsson LE, et al., editors. *Transport and Children's Wellbeing*. Elsevier; 2020. p. 199-216.
 21. Hobbs M, Kingham S, Wiki J, et al. Unhealthy environments are associated with adverse mental health and psychological distress: Cross-sectional evidence from nationally representative data in New Zealand. *Prev Med* [Internet]. 2021 Apr [cited 12 Feb; 2022];14,106416. Available from: <https://www.sciencedirect.com/science/article/pii/S0091743520304473?via%3Dihub>
 22. Ryan-Hughes N. Sale and Supply of Alcohol Act (2012) Community Experience Survey. Wellington (NZ): Health Promotion Agency; 2018.
 23. Maynard, K. Te Tiriti o Waitangi and alcohol law. Wellington: Te Hiringa Hauora | Health Promotion Agency; 2022. Available from: <https://www.hpa.org.nz/news/the-place-of-te-tiriti-o-waitangi-in-alcohol-law>