

# Supplementary Analysis Report: Sale and Supply of Alcohol (Community Participation) Amendment Bill

Purpose of Document	
Decision sought:	This analysis informs final Cabinet decisions on an amendment Bill to enhance community participation and influence in alcohol regulation
Advising agencies:	Ministry of Justice
Proposing Ministers:	Ministry of Justice
Date finalised:	17 November 2022
Problem Definition	
<b>Enhancing community participation and influence in alcohol regulation</b>	
<p>Alcohol licensing has a direct effect on communities, including on health, wellbeing, amenity and good order, as well as economic impacts. The Sale and Supply of Alcohol Act 2012 (the Act) is intended to enable communities to influence the way alcohol is regulated in their own neighbourhood, according to its character and circumstance, through alcohol licensing decisions.</p> <p>However, communities find it challenging to influence licensing decisions in the way the Act intended. This reduction in community input has contributed to a proliferation of licensed premises where communities do not want them. This has been particularly stark in some poorer communities that already have a high density of outlets, late opening hours, and outlets situated close to sensitive areas.</p>	
Executive Summary	
<p>This Supplementary Analysis Report (SAR) outlines options that have been considered for changes to the Act, to be in place in 2023.</p> <p>The Minister of Justice directed Ministry of Justice officials to introduce a bill this calendar year to make targeted changes to the alcohol licensing process to improve communities' ability to influence alcohol regulation in their area, and thereby ensure that:</p> <ul style="list-style-type: none"> <li>the sale, supply, and consumption of alcohol is undertaken safely and responsibly, and</li> <li>the harm caused by excessive or inappropriate consumption of alcohol is minimised.</li> </ul> <p>The changes will address the following issues:</p> <ul style="list-style-type: none"> <li><b>Who can object to licence applications (standing):</b> Currently, people with a <i>greater interest than the public generally</i> can object to licence applications. This has been interpreted narrowly to permit only a small number of people to object, and to exclude community groups and organisations.</li> <li><b>How licensing hearings are run:</b> Currently, licensing hearings before district licensing committees (DLCs) can be formal and adversarial often resulting in non-</li> </ul>	

professional and poorly resourced participants being disempowered and disadvantaged.

- **The ability to adopt and apply local alcohol policies (LAPs):** Territorial authorities can develop provisional LAPs through the special consultative procedure to represent community interests.
  - Currently, parties can appeal LAPs to the Alcohol Regulatory and Licensing Authority (ARLA). Appeals are delaying and preventing territorial authorities from adopting and applying LAPs at all.
  - Currently, DLCs must not take any inconsistency between LAPs and the renewal of licences into account when deciding whether to approve applications. This means decisions are less likely to reflect the relevant LAPs.

The proposals in this SAR are cumulative rather than alternative, with separate options considered for each proposal. The proposals are not interdependent, although the preferred options for each proposal form a ‘package’. As a package, we consider these changes will improve the ability of communities to influence alcohol licensing decisions.

The proposals are set out in three separate sections. Each section covers the problem definition and options analysis specific to that proposal.

*Table of proposals*

<b>Section</b>	<b>Policy problem</b>	<b>Preferred option</b>
Proposal A: Changes to who can object to licence applications and attend hearings	The current test set out in the Act has been interpreted narrowly, meaning only a small number of those who want to object are permitted to do so.	Any person may object to the grant of a licence, whether as an individual or representative of a group or organisation.  Trade competitors can only object if they are directly affected by the application in a way that does not relate to trade competition.
Proposal B: Changes to how licensing hearings are run	Hearings are formal and adversarial, meaning non-professional, often poorly resourced, participants are disempowered and disadvantaged.	Hearings are conducted without unnecessary formality, do not permit those who appear at hearings to question parties, do not permit cross-examination, and can be conducted by telephone, audio-visual link etc where appropriate and the facilities are available.  DLCs have administrative tools to manage hearings, for example, so that the licensing committee can limit the circumstance in which objectors with similar evidence may speak or call evidence in support.

<p>Proposal C: Changes to adoption and application of LAPs</p>	<p>Appeals against LAPs are delaying and preventing their adoption, meaning they are not applied to licensing decisions; and DLCs must not take inconsistencies with LAPs into account when deciding whether to approve renewal applications, meaning decisions are less likely to reflect LAPs.</p>	<p>Provisional LAPs may not be appealed and DLCs have discretion to consider LAPs in renewal of licence applications.</p>
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Due to the urgency given to the development of legislative proposals to address the challenges communities face to influence alcohol regulation, we provided a Regulatory Impact Analysis for one of the three proposals when policy decisions were agreed by Cabinet. We have now prepared a SAR that analyses all three proposals for Ministers' consideration alongside the advice for the Cabinet seeking approval for the introduction of the *Sale and Supply of Alcohol (Community Participation) Amendment Bill*.

*Potential impact of the proposals*

The proposals are designed to improve community participation in alcohol regulation, as per the original intent of the Act. We expect this will have a positive impact for communities who have found it difficult to influence alcohol licensing decisions. Communities will likely have an enhanced sense that their voice has been considered, and licensing committees should be assisted in their decision-making.

We consider that the changes to who can object to applications and how hearings are run have the potential to result in an increased number of licensing hearings. This would increase some of the costs involved for participating, particularly for parties attending hearings, and in the administration of the application and hearing process. The proposals have been developed with this risk in mind, such as providing tools to help licensing committees streamline hearings.

All the changes proposed could impact on the outcome of licensing decisions. However, this is dependent on individual licensing decisions, rather than a direct impact of the changes proposed here.

**Limitations and Constraints on Analysis**

We have been directed by Cabinet to introduce a bill this calendar year to:

- make objecting to licence applications and participating in hearings more accessible and fairer; and improve communities' ability to influence alcohol regulation, and
- remove the ability to appeal LAPs, and amend the way they apply to applications for renewal of licences.

These are discrete changes. The range of options identified in this SAR is limited to the status quo and legislative amendments. Our policy analysis therefore does not consider more systemic changes, such as to local decision-making structures or the licensing process. We are currently undertaking policy work to provide the Minister of Justice with

forward work options for a second phase of work, looking at broader and more systematic reform of the Act. This work would complement and expand the proposals here.

Our proposals assume that enabling better community participation in alcohol licensing decision-making procedures will lead to a reduction in the harm caused by the excessive or inappropriate consumption of alcohol, which is an object of the Act.

Our proposals also assume that the special consultative procedure to represent community interests in LAPs is effective.

We have developed our options analysis under tight timeframes, driven by direction to ensure legislation was introduced this year and passed next year to bring about immediate change.

### Consultation

Due to the timeframes to provide proposals to Cabinet and the direction given, we have not had time to consult widely. However, we maintain active relationships with a range of interested stakeholders, including organisations delivering the licensing regime, public health professionals, academics, businesses, and professional bodies. We have led targeted conversations with these stakeholders to clarify the issues and test the proposals.

We have drawn on written evidence, including a 2010 Law Commission report, two government reports (*He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction* and *Turuki! Turuki!* – the second report of Te Uepū Hāpai i Te Ora, the Safe and Effective Justice Advisory Group), academic articles, and the Alcohol Healthcare Claim made by David Ratu before the Waitangi Tribunal (Wai 2464). We have heard clear and consistent evidence that the status quo is not working well.

### Responsible Manager(s) (completed by relevant manager)

Brendan Gage  
General Manager, Criminal Justice Unit  
Policy  
Ministry of Justice



17 November 2022

### Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Justice
Panel Assessment & Comment:	<p>A Quality Assurance panel within the Ministry of Justice has reviewed the Supplementary Analysis Report. The panel considers that the information and analysis summarised in the Supplementary Analysis Report meets the Quality Assurance criteria.</p> <p>In reaching this conclusion, the panel noted that the paper would be more convincing if there were stronger evidence of the link between the objectives of the Act and the proposed changes to how hearings are run. The panel concluded that there was</p>

sufficient information about the current experience of submitters to meet the requirement to be convincing.

# Diagnosing the policy problem

## What is the context behind the policy problem and how is the status quo expected to develop?

### *Alcohol is part of many New Zealanders' lives*

1. Alcohol is readily available and used in many settings, for a range of purposes. Evidence from the New Zealand Health Survey<sup>1</sup> shows that:
  - Approximately four out of five adults in New Zealand consume alcohol (meaning they had a drink in the last year). The prevalence has remained relatively stable over the past decade.
  - The rate of drinking among 18 to 24-year-olds has remained relatively stable since the Act came into force (in 2020/21, the rate was around 86%).
  - The rate of drinking among 15 to 17-year-olds decreased from about 75% to about 60% between 2007 and 2012, and has remained relatively stable since.
2. Alcohol is a multi-billion-dollar industry that includes growers, manufacturers, retail distributors, and the hospitality sector. The sector contributes \$1.92 billion to GDP.<sup>2</sup> Alcohol is also a major export with about 33% of alcohol made in New Zealand being sold overseas.<sup>3</sup>

### *Alcohol contributes to a range of health, social, and justice harms*

3. Alcohol is a harmful drug that contributes to a wide range of health, social, and justice harms. Short-term harms include alcohol poisoning, injury from violence, and accidents. Alcohol is believed to contribute to 11% of all ACC claims.<sup>4</sup> Alcohol is also a factor in two in five cases of interpersonal violence and one in three cases of family violence.<sup>5</sup> The Government Inquiry into Mental Health and Addiction notes that alcohol use plays a role in one-third of recorded offences.<sup>6</sup>
4. Long-term harms include liver disease, alcohol use disorder, cancer, and dementia. Alcohol use has been linked to over 200 health conditions<sup>7</sup> and an estimated 950 new cancer cases in New Zealand in 2020.<sup>8</sup> An article published in the New Zealand

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1 Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey.

2 NZIER. (2022). *Industry report: Alcohol beverages industry: a thriving, durable industry adding value to New Zealand's financial, environmental and social economies*: <https://nzabc.org.nz/industry-report-by-nzier-a-thriving-durable-industry-adding-value-to-new-zealands-financial-environmental-and-social-economies/>.

3 Action Point. (2022, November 10) *The alcohol industry in New Zealand*, retrieved from [https://www.actionpoint.org.nz/the-alcohol-industry-in-new-zealand#:~:text=The%20volume%20of%20spirits%20increased,11.6%20per%20cent%20from%202020\).](https://www.actionpoint.org.nz/the-alcohol-industry-in-new-zealand#:~:text=The%20volume%20of%20spirits%20increased,11.6%20per%20cent%20from%202020).)

4 Action Point. (2022, July 18). *Alcohol is a major factor contributing to health inequities*, Retrieved from <https://www.actionpoint.org.nz/tags/alcohol-is-a-major-factor-contributing-to-health-inequities>.

5 Te Hīringa Hauora – Health Promotion Agency. (2022, July 18). *Key facts about drinking in New Zealand*. Retrieved from <https://resources.alcohol.org.nz/resources-research/facts-statistics/nz-statistics/>.

6 New Zealand Police. (2010). *Framework for Preventing and Reducing Alcohol-related Offending and Victimisation 2010–2014*. Wellington: New Zealand Police.

7 World Health Organisation. (2018). *Global Status Report on Alcohol and Health 2018*.

8 Te Aho o Te Kahu – Cancer Control Agency. (2022). *Cancer Prevention Report*.

Medical Journal on 15 July 2022 reports that more than 26% of all suicides in New Zealand involve acute alcohol use.<sup>9</sup>

5. Alcohol also causes harm to other people from assaults, road traffic crashes, miscarriage, and foetal alcohol spectrum disorder.<sup>10</sup>
6. In total, alcohol-related harm is estimated to cost New Zealand \$7.85 billion annually. The costs include lost productivity and unemployment, justice, health, ACC, and welfare costs.<sup>11</sup>

#### *Rates of hazardous alcohol consumption in New Zealand*

7. Hazardous drinking carries an elevated risk of harm to individuals, whānau, community, society, and future generations.
8. Evidence shows that:<sup>12</sup>
  - Around 20% of New Zealanders drink hazardously. This rate has remained relatively stable over the past six years.
  - Males are twice as likely than females to report hazardous drinking.
  - Hazardous drinking is highest among 18 to 24-year-olds who drink: 34.9% are hazardous drinkers.
  - Since 2018, hazardous drinking has increased among 15 to 17-year-olds from 6.7% to 11.8%.
9. The proportion of Māori who drink is roughly the same as the general population, however those who do drink are more likely to drink hazardously. Of people who drank alcohol in the past year, 50% of Māori men, and 32% of Māori women report drinking hazardously, compared to 34% of European men and 16% of European women.<sup>13</sup>
10. Pacific peoples are less likely to drink than people in other ethnic groups but are more likely to drink hazardously if they do drink. Of Pacific peoples who drink, 53% of men, and 29% of women, report drinking hazardously.<sup>14</sup>
11. Alcohol-related harms fall disproportionately on New Zealanders living in the poorest neighbourhoods, who are 1.3 times more likely to report drinking hazardously than those living in the wealthiest.<sup>15</sup>
12. Alcohol-related harms also fall disproportionality on people with disabilities, people with mental health and addiction issues, people who identify as gay, lesbian, bisexual or

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9 Crossin, Cleland, Beautrais, Witt, and Boden. (15 July 2022). Acute alcohol use and suicide deaths: an analysis of New Zealand coronial data from 2007–2020, *New Zealand Medical Journal*, 135(1558).

10 Environmental Health Intelligence New Zealand (EHINZ), (2022, July 18). *Alcohol-related harm indicators*. Retrieved from <https://www.ehinz.ac.nz/indicators/alcohol-related-harm/about-alcohol-related-harm/#ref1>.

11 Action Point. (2022, July 18). *Alcohol is a major factor contributing to health inequities*, Retrieved from <https://www.actionpoint.org.nz/tags/alcohol-is-a-major-factor-contributing-to-health-inequities>.

12 Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey.

13 Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey.

14 Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey.

15 Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey.

other non-heterosexual, pregnant people (and their foetuses), breastfeeding people (and their children), and rangatahi.

13. Population groups that already have disproportionately higher suicide rates, including young New Zealanders and Māori, have a higher proportion of suicide deaths involving alcohol.<sup>16</sup>

*The Sale and Supply of Alcohol Act 2012 regulates alcohol*

14. The Act regulates the sale, supply, and consumption of alcohol in New Zealand. The object of the Act is to ensure:
  - the sale, supply, and consumption of alcohol is undertaken safely and responsibly, and
  - the harm caused by excessive or inappropriate consumption of alcohol is minimised.<sup>17</sup>
15. The Act creates a licensing regime for the sale and supply of alcohol, outlines the application process for prospective licensees, and a decision-making structure for consideration of those applications. The regime is operationalised by territorial authorities, with the appeals body, ARLA, which is provided by the Ministry of Justice.
16. The Ministry of Health, New Zealand Police, Ministry of Social Development and Oranga Tamariki are some of the agencies providing services to those affected by alcohol-related harm.

*The Act provides for community participation in licensing decisions*

17. Given the range of interests in alcohol, it follows that alcohol licensing has a direct effect on the community, including on health, wellbeing, amenity and good order, as well as economic impacts. This range of interests means that community involvement in decisions about licence applications is important.
18. To this end, the Act includes a range of settings to enable communities to influence alcohol licensing decisions in their own neighbourhood, according to its particular character and circumstances. Under the Act, people can object to an application for an alcohol licence or renewal of a licence and can appear at hearings to give evidence about the potential impacts of the proposed licence.
19. The Act also provides for territorial authorities to adopt LAPs that set policies for the area related to the allowable number, location and trading hours of licensed premises, the issue of licences, and one-way door restrictions. In developing a LAP, the territorial authority must consult with the public using the special consultation procedure prescribed by the Local Government Act 2002.

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16 Crossin et al. (15 July 2022). Acute alcohol use and suicide deaths: an analysis of New Zealand coronial data from 2007–2020 *New Zealand Medical Journal*, 135(1558).

17 'Harm caused by the excessive or inappropriate consumption of alcohol' is defined in s 4 of the Act as: (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 in the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).



### *Availability is a key determinate of alcohol-related harm*

20. One of the major policy levers to reduce alcohol-related harm is regulating the physical availability of alcohol-related harm through restrictions on time, place, and density of licensed outlets.<sup>18</sup> Studies of historical and current policies relating to alcohol across multiple countries have found that when alcohol is less available, less convenient to purchase, or less accessible, alcohol consumption and alcohol-related harms decrease.<sup>19</sup> There are more places to buy alcohol in our poorest communities, which suffer disproportionately from alcohol-related harm.<sup>20</sup>
21. The Law Commission reported strong support for halting the proliferation of licensed premises, but particularly for off-licences. In its report the Law Commission recognised that while researchers continue to probe the relationship between alcohol-related harm and outlet density, “those who actually live and work in communities battling high levels of crime and social deprivation, seemed in no doubt about the damaging effects of saturating their neighbourhoods with liquor.”<sup>21</sup>
22. A survey of Aucklanders by Auckland Regional Public Health Service found that the majority of public opinion is in favour of more restrictions than are currently in force regarding the availability and supply of alcohol. The key findings included: strong support for off-licences beginning sales no earlier than 10am and stopping no later than 10pm; the public not wanting any more on-licences in their communities; and between 91% and 95% wanting no increase in the number of off-licences in their area.<sup>22</sup>

### *Available data shows very few licence applications are being declined*

23. Available data from local authorities shows very few licence applications are declined.<sup>23</sup> The reasons for refusals are not collated but the data shows that only a fraction of applications for licences are refused. For example, over the last five years:
  - **Auckland** has granted 5704 new licences and declined 10,
  - **Wellington** has granted 431 new licences and declined 5,
  - **Christchurch** has granted 663 new licences and declined 7,
  - **Invercargill** has granted 54 new licences and declined 0, and

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<sup>18</sup> Babor et al. (2010). *Alcohol: No ordinary commodity: Research and public policy* (2<sup>nd</sup> ed), Oxford: Oxford University Press: 107.

<sup>19</sup> Österberg. (2013). Chapter 44: Control of Alcohol availability: Historical and current policies and their effects. In Boyle, Boffetta, Lowenfels, Burns, Brawley, Zatonski and Rehm (Eds.), *Alcohol: Science, Policy and Public Health*, Oxford University Press: 361-368.

<sup>20</sup> Hay, Whigham, Kypri, and Langley. (2009). Neighbourhood deprivation and access to alcohol outlets: a national study, *Health Place*, 15: 1086–93; Connor, Kypri, Bell, and Cousins. (2011). Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study, *Journal of Epidemiol Community Health*, Oct;65(10): 841-6.

<sup>21</sup> The Law Commission. (2010). *Alcohol in our Lives: Curbing the Harm*, NZLC R114: 1.40.

<sup>22</sup> Wyllie. (2014). Public support for alcohol policies in the Auckland Council Region, cited in Auckland Regional Public Health Service. (2014). *Submission on the Draft Auckland Council Local Alcohol Policy*. Retrieved from: <https://www.arphs.health.nz/assets/Uploads/Resources/Submissions/Draft-Auckland-Council-Local-Alcohol-Policy.pdf>.

<sup>23</sup> The Act requires local authorities to report each year on the number of alcohol licence applications granted and refused so that ARLA can maintain registers. Some local authorities are not providing this information, which means the information collected centrally is incomplete.

- **Porirua** has granted 78 new licences and declined 1.<sup>24</sup>
24. Available data also shows that when community objectors attend a hearing and express concern about an application, it is unlikely that the application will be declined. In the Auckland region between 1 July 2014 and 30 June 2018, 16,478 applications were received. The data shows:<sup>25</sup>
- 180 (1%) of the applications had a hearing at the DLC and 155 (86%) of these applications were granted,
  - most of the hearings were for (i) renewal of off-licence applications (granted 91% of the time), (ii) renewal of on-licence applications (granted 76% of the time), (iii) new off-licence applications (granted 93% of the time), and (iv) new on-licence applications (granted 82% of the time),
  - in applications where objections were only from community objectors, 2% of the applications were declined; in cases where Police, inspectors or Medical Officers of Health only opposed the application, 26% of applications were declined, and
  - when both the public and at least one agency objected/opposed an application, this resulted in the highest proportion of declined applications (33%).
25. The size of Auckland's population relative to the rest of the country and the period of time over which the data was collected means that this is a useful case study. The data indicates that objectors struggle to influence licence decisions.
26. In its 2019 annual report, the Alcohol Regulatory and Licensing Authority noted the low rate of applications refused for new licences compared to the number of applications granted, suggesting that "the reason why there are so few refusals may be worthy of some investigation by policy officials to see if this is consistent with what was envisaged at the date of the enactment of the Act."<sup>26</sup>

*There have been repeated and increasing calls for a review of the Act*

27. The Act fully came into force in 2014. In the period since then we have heard repeatedly from stakeholders about issues with the Act. These stakeholders include Māori, academics, medical practitioners and health services, communities, NGOs, growers, manufacturers, hospitality, retailers, and licence holders.
28. Some stakeholders raise issues about alcohol availability and consumption, in light of the compelling evidence that alcohol contributes significantly to a range of short and long-term health impacts and social harms.
29. Stakeholders have also raised multiple issues regarding the regulatory settings within the Act, including communities' challenges with participating in alcohol licensing processes despite this being an intention of the Act.

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<sup>24</sup> Appendix One provides more detailed data on the licence application process and outcomes.

<sup>25</sup> Auckland Regional Public Health Service. (2019, December 5). Is the Community's Voice Being Heard? Retrieved from: [https://www.arphs.health.nz/assets/Uploads/Resources/Alcohol/Is-the-communitys-voice-being-heard\\_alcohol-licensing-applications\\_FINAL.pdf](https://www.arphs.health.nz/assets/Uploads/Resources/Alcohol/Is-the-communitys-voice-being-heard_alcohol-licensing-applications_FINAL.pdf).

<sup>26</sup> Alcohol Regulatory and Licensing Authority. (2019). *Report of the Alcohol Regulatory and Licensing Authority for the 12 months ended 30 June 2019*.

*Reports have also called for stronger regulation of alcohol*

30. There have also been a number of reports published since the Act was introduced which support stronger regulation of alcohol, including:
- *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*,<sup>27</sup>
  - *Turuki! Turuki!*, the second report of Te Uepū Hāpai i Te Ora - the Safe and Effective Justice Advisory Group,<sup>28</sup> and
  - the Ministerial Forum on Alcohol Advertising and Sponsorship.<sup>29</sup>
31. The Government's high-level plan for transforming the approach to mental wellbeing, *Kia Manawanui Aotearoa – the Long-Term Pathway to Mental Wellbeing*,<sup>30</sup> recommends reviewing the Act as a medium-term action to improve the legislative and regulatory environment to support healthy environments and a mental wellbeing approach.

*The Government has agreed to prioritise work on alcohol in two phases*

32. Alcohol harms impede progress on several of the Government's current priorities, including reducing family violence and addressing inequity and poor health outcomes.
33. On 19 October 2022, Cabinet considered the paper *Reforms to the Sale and Supply of Alcohol Act 2012* [SWC-22-MIN-0179 refers]. The paper outlined the range of issues with the regulatory regime around alcohol licensing, and described the calls for comprehensive reform.
34. Cabinet agreed to progress work in two phases:
- an immediate phase to improve community participation in alcohol licensing procedures with a Bill introduced this year (the focus of these proposals), and
  - a longer-term phase of broader, and more systematic, reform with a report back in March 2023 to confirm the approach.

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<sup>27</sup> Government Inquiry into Mental Health and Addiction. (November 2018). *He Ara Oranga*. Retrieved from: <https://mentalhealth.inquiry.govt.nz/assets/Summary-reports/He-Ara-Oranga.pdf>. *He Ara Oranga* recommends taking a stricter regulatory approach to the sale and supply of alcohol, informed by the recommendations of the 2010 Law Commission report, the 2014 Ministerial Forum on Alcohol Advertising and Sponsorship, and the 2014 Ministry of Justice report on alcohol pricing. The Government's response to *He Ara Oranga* noted the need for further consideration of how best to give effect to the intent of this recommendation. The report also recommended establishing clear cross-sector leadership and coordination within central government for policy in relation to alcohol. The Government fully accepted this recommendation.

<sup>28</sup> Te Uepū Hāpai i Te Ora - the Safe and Effective Justice Advisory Group. (November 2019). *Turuki! Turuki!* Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/turuki-turuki.pdf>. This recommends stronger regulation of alcohol.

<sup>29</sup> Ministerial Forum on Alcohol Advertising and Sponsorship. (October 2014). Retrieved from: <https://www.health.govt.nz/system/files/documents/publications/ministerial-forum-on-alcohol-advertising-and-sponsorship-recommendations-on-alcohol-advertising-and-sponsorship-dec14.pdf>. The report made recommendations around restricting alcohol advertising and sponsorship.

<sup>30</sup> Ministry of Health. (2021). *Kia Manawanui Aotearoa: Long-term pathway to mental wellbeing*. Wellington: Ministry of Health. Retrieved from: [https://www.health.govt.nz/system/files/documents/publications/web3-kia-manawanui-aotearoa-v9\\_0.pdf](https://www.health.govt.nz/system/files/documents/publications/web3-kia-manawanui-aotearoa-v9_0.pdf).

35. This SAR focuses on the changes proposed through the Bill to improve community participation in licensing procedures.

### How is the status quo expected to develop?

36. It is likely that without legislative change, the challenges experienced by communities that want to participate in alcohol licensing will continue. These challenges will continue to limit the voice of the community in alcohol licensing, including the voices of individuals and groups who experience the harms of alcohol in their community.

### What is the overarching policy problem or opportunity?

37. The Act expressly provides for community input into alcohol licensing decision-making, so that the community can influence alcohol licensing decisions the way that alcohol is regulated in their neighbourhood according to its particular character and circumstances. However, these settings are not working as intended and, as a result, communities struggle to influence decision-making. Little community input enables licences to proliferate where communities do not want them, including in poorer communities that already have a high density of outlets, late opening hours, and outlets situated close to sensitive areas.

38. In this immediate phase of work, the Bill will address three discrete and persistent issues with community participation and influence in alcohol regulation. Each issue has its own section in this SAR:

- **Who can object to licence applications (standing):** Currently, people with a *greater interest than the public generally* can object to licence applications. This has been interpreted narrowly to permit only a small number of people to object, and to exclude community groups and organisations.
- **How licensing hearings are run:** Currently, licensing hearings before DLCs can be formal and adversarial often resulting in non-professional and poorly resourced participants being disempowered and disadvantaged.
- **The ability to adopt and apply LAPs:** Territorial authorities can develop provisional LAPs through the special consultative procedure to represent community interests.
  - Currently, parties can appeal LAPs to ARLA. Appeals are delaying and preventing territorial authorities from adopting and applying LAPs at all.
  - Currently, DLCs must not take any inconsistency between LAPs and the renewal of licences into account when deciding whether to approve applications. This means decisions are less likely to reflect the relevant LAPs.

### Stakeholder input

39. Key stakeholders include communities, including communities experiencing alcohol harm, mana whenua, Police/Medical Officers of Health/Licensing Inspectors, local government, and people who hold alcohol licences or apply for alcohol licences and their representative groups.
40. We have a good understanding of the range of views about alcohol regulation generally, formed as a result of regular communication in our ongoing stakeholder management (as set out above).
41. In the time available, we engaged with community stakeholders and Police and Medical Officers of Health who are routinely involved in licensing hearings. We have not discussed the policy problem directly with Māori, industry representatives, or the public

generally. Industry in this context covers a range of interests, including: hospitality, the retail and grocery sector, growers and producers, groups that hold club licences. These stakeholders may hold on or off licences, club or special licences, and they includes small, medium and large businesses.

### What objectives are sought in relation to the policy problem?

42. The aim is to improve community participation and influence in alcohol regulation. Specifically, the objectives are to:
- **Enhance community participation:** Communities can effectively object to applications and give evidence in hearings; territorial authorities can adopt LAPs that have been developed in consultation with the community.
  - **Uphold the object of the Act:** The sale, supply, and consumption of alcohol is undertaken safely and responsibly; and the harm caused by the excessive or inappropriate consumption of alcohol is minimised.
  - **Improve the effectiveness and efficiency of decision-making:** The objections and hearing processes are as efficient and effective as possible; all evidence is heard to inform decisions; decisions are made in line with the object of the Act; territorial authorities can enact LAPs without undue delay or cost.
  - **Meet Treaty of Waitangi/Te Tiriti o Waitangi (te Tiriti) obligations:** The processes facilitate Māori participation in decision-making and support the Crown's obligation to positively promote equity and protect Māori against alcohol harm.

### A note about the costs associated with administering the licensing regime

43. The Act provides for a fees regime to recover the cost of administering the alcohol licensing function. The Act sets out that:
- fees regulations may be made to prescribe fees payable to the licensing authority and territorial authorities in relation to their alcohol licensing functions (s 397),
  - the fees regulations may do anything reasonably necessary to ensure that, so far as is practicable, the total cost of the licensing functions is recovered out of the fees paid under the Act (s 402), and
  - that the licensing functions of territorial authorities may include the performance of the functions of their licensing committees; their inspectors; or the undertaking of enforcement activities (s 397, s 402).
44. The Sale and Supply of Alcohol (Fees) Regulations came into force in 2013 and establish the regime, which includes: a fees framework for the types of licences established in the Act, the specific fees payable, and administrative requirements.
45. The Act also includes a Bylaw Order which enables individual territorial authorities to adjust some fees to aid cost recovery.
46. We note that there is currently a review of the Regulations to assess whether the licensing fees are fit for purpose and sufficient to recover costs.

# Proposal A – Who can object to licence applications

## Section 1A: Diagnosing the policy problem

### What is the context behind the policy problem?

*The Act sets out who can object to applications*

47. Under the Act, applications for alcohol licences are considered by DLCs appointed by territorial authorities to deal with licensing matters for the district. The DLC may also refer applications to ARLA for decision.
48. A person may object to a licence application if he or she can show *greater interest in the application than the public generally* (s 102). The same test applies for an objection to a licence renewal (s 128). A person who can demonstrate such an interest is said to have 'standing' or 'status'.
49. If an objection is filed by a person with standing, the DLC (or ARLA) must convene a public licensing hearing to determine the application, rather than deciding the application on the paperwork alone (s202). However, there are exceptions where the application is withdrawn, the objector does not require a public hearing, or the DLC considers the objection to be vexatious or based on grounds outside the scope of the Act.
50. In addition to the applicant and any objectors, an inspector, constable, and a Medical Officer of Health may also be involved in licensing hearings. They do not need to prove standing.
51. At a hearing, the applicant, objectors, an inspector, a constable, and a Medical Officer of Health may appear and be heard, and call, examine, or cross-examine witnesses (s 204). The parties may be represented by counsel.
52. In practice, the test for who may object to a licence application has been narrowly interpreted by DLCs, ARLA, and the higher courts. This has the effect of excluding people and organisations, and fails to guarantee that mana whenua have standing to object.

*People who want to object are often excluded from the process*

53. Objections by individuals and organisations concerned about alcohol harm in their communities are being dismissed because they do not meet the narrow interpretation of *a greater interest than the public generally* that has been established by DLCs and ARLA.
54. Where this is happening, this severely reduces community input, enabling licences to proliferate where communities do not want them, including poorer communities that already have a high density of outlets, late opening hours, and outlets situated close to sensitive areas.
55. Objections are being dismissed because an objector:

- does not live or operate a business within one or two kilometres of the proposed site - a test that is difficult to fulfil, particularly in rural areas,<sup>31</sup> and/or
  - cannot show they will be personally affected in some way by the licence application.<sup>32</sup> (DLCs have concluded it is not enough to show an objector is concerned generally about the adverse effects of alcohol on the community, nor that they have a specialist interest in addressing such harm.)
56. ARLA has recognised the standing of objectors by virtue of an ‘enhanced interest’, regardless of geographical boundaries<sup>33</sup> – but this interest has been interpreted narrowly to include primarily organisations that have a statutory obligation, such as territorial authorities and elected councillors.<sup>34</sup>
57. Community organisations that take an interest in alcohol harm reduction in the area, and regularly work in the area, have also been excluded, because they cannot show they will be affected by the grant of the application.<sup>35</sup>
58. Appendix Two provides relevant examples.

*A narrow interpretation of ‘person’ has led to exclusion of organisations, mana whenua, and other community groups*

59. Some DLCs have interpreted the use of the words ‘he or she’ in section 102 to mean that only natural persons have standing to object to licence applications.<sup>36</sup> In these cases, individuals such as iwi representatives, school principals, addiction clinicians, charities, and church leaders may find they are expected to object in their personal capacity rather than as a representative.<sup>37</sup> As a result, their objection may carry less weight than it may otherwise do.

*The Act fails to guarantee Māori participation in licensing*

60. The Alcohol Healthcare Claim made by David Ratu before the Waitangi Tribunal (Wai 2424) has highlighted the impact of these exclusions for Māori. Wai 2624 claims that that the Act breaches the principles of te Tiriti in a number of ways, including around

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<sup>31</sup> For example, of 538 objectors to a proposed bottle store in Khandallah (Wellington) in 2019, about 370 objections were automatically excluded, most because they lived more than one kilometre from the proposed store. Armstrong. (2019, August 20). Good folk of Khandallah aren’t wowsers – they’re smart citizens with a fair point, *Stuff*. Retrieved from: <https://www.stuff.co.nz/dominion-post/news/wellington/115112133/good-folk-of-khandallah-arent-wowsers--theyre-good-citizens-with-a-fair-point>. See also *GTD Trading Limited - Liquorland Papatoetoe v Communities Against Alcohol Harm Inc* [2019] NZARLA 222; *General Distributors Ltd t/a Countdown Cable Car Lane* [2018] NZDLCWN 907.

<sup>32</sup> *GTD Trading Limited - Liquorland Papatoetoe v Communities Against Alcohol Harm Inc* [2019] NZARLA 222; *General Distributors Ltd t/a Countdown Cable Car Lane* [2018] NZDLCWN 907; Sherriff, A. 2019 Updating Alcohol Licensing. Paper delivered at the New Zealand Institute of Liquor Licensing Inspectors Inc (NZILLI), Annual Conference 2019, Wellington, 30 August 2019.

<sup>33</sup> *Flaxmere Liquor (2008) Limited* [2019] NZARLA 94; *Utikere v I S Dhillon & Sons Limited* [2014] NZHC 270.

<sup>34</sup> *Utikere v I S Dhillon & Sons Limited* [2014] NZHC 270.

<sup>35</sup> *General Distributors Ltd t/a Countdown Cable Car Lane* [2018] NZDLCWN 907; *GTD Trading Limited - Liquorland Papatoetoe v Communities Against Alcohol Harm Inc* [2019] NZARLA 222; *Gisborne Liquormart Limited v Ka Pai Kaiti Trust* [2018] NZARLA 316; *A One Limited ‘Taupiri Wine Shop’ v Waikato District Licensing Committee* [2021] 10/2021.

<sup>36</sup> Section 102 of the Sale and Supply of Alcohol Act 2012.

<sup>37</sup> Sherriff. (2019). *Updating Alcohol Licensing*.

who has standing to object to applications under s 102(1). The definition makes no reference to Māori, including their whānau, hapū, iwi, marae, or organisation of their choosing, mana whenua, and disregards whakapapa. The claim states that this actively prevents Māori, in a grouping of their choice, from participating in the process, which has an active and direct impact on their health and wellbeing.<sup>38</sup>

61. Act breaches the principles of te Tiriti in a number of ways, including around who has standing to The Act fails to guarantee that Māori have standing to object, even though the alcohol-related prejudice suffered by Māori is greater than that of the general public.<sup>39</sup>
62. In a recent case, a Māori public health organisation was denied standing to object to a licence as its 'interest' was seen to be no greater than that of the public generally.<sup>40</sup>

### How is the status quo expected to develop?

63. Without legislative intervention, the status quo is highly likely to continue, as DLCs will continue to apply the narrow interpretation of standing. Individuals and organisations concerned about alcohol harm in their communities will continue to be denied standing to object, reducing their ability to influence alcohol regulation.
64. A change to the existing regulation is required to ensure community members are not prevented from objecting to licence applications due to a narrow interpretation of the statutory test for standing.

### What is the policy problem or opportunity?

65. The statutory test for those who can object to licence applications has been interpreted narrowly by DLCs, ARLA, and higher courts – an unintended consequence resulting from the design of the existing legislation. This has meant that individuals and organisations who have objected to an application because of concerns about alcohol harm in their communities have not been given standing. This reduces community input and enables licences to proliferate where communities do not want them, including poorer communities that already have a high density of outlets, late opening hours, and outlets situated close to sensitive areas.

### Stakeholder views

66. Key stakeholders that this policy problem involves or would likely impact upon include communities, including those experiencing alcohol harm, mana whenua, Police/Medical Officers of Health/Licensing Inspectors, and people who hold alcohol licences or apply for alcohol licences.
67. On this issue, we spoke with community stakeholders and Police and Medical Officers of Health who are routinely involved in licensing hearings.
68. We heard that decisions about standing can vary between DLCs but that, overall, it is extremely difficult for most community members to participate in the process. The process works for those who are legally literate parties against those who are not. We heard that the community generally knows what works for their area (e.g. fewer

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<sup>38</sup> Alcohol Healthcare Claim made by David Ratu before the Waitangi Tribunal (Wai 2464).

<sup>40</sup> *A One Limited 'Taupiri Wine Shop' v Waikato District Licensing Committee* [2021] 10/2021.



licences, a reduction in hours), but they are unable to effect these changes through the licensing process.

69. Decisions to exclude groups can be harmful, particularly when those organisations could provide a voice for those who do not have the capability or capacity to object individually. We heard that the geographical interpretation of the test can be arbitrary and not always relevant, particularly in rural or small-town situations.
70. We also heard that the process can be frustrating and involve wasted resources. In some cases, community members prepare to attend licensing hearings, take the time off work to attend, only to have their standing denied at the beginning of the hearing.
71. It was suggested that the law should be as inclusive and enabling for community participation as possible, including by granting standing based on locality or connection to the area (e.g. groups that represent people living in the area).
72. We have not had the opportunity to discuss the policy problem directly with industry representatives. We recognise that those who are involved in hearings as applicants have (necessarily) not had the experience of having their involvement challenged through litigation. We also recognise that the decisions to strike out objections on the grounds of standing may benefit applicants in the process.

### What objectives are sought in relation to the policy problem?

73. The objectives in relation to this problem are to:
  - **Enhance community participation:** The settings allow communities to object to applications.
  - **Uphold the object of the Act:** The sale, supply, and consumption of alcohol is undertaken safely and responsibly; and the harm caused by the excessive or inappropriate consumption of alcohol is minimised.
  - **Improve the effectiveness and efficiency of decision-making processes:** The process is efficient and effective; all evidence is heard and informs decisions; decisions are made in line with the object of the Act.
  - **Meet te Tiriti obligations:** Māori can participate in decision-making; equity is promoted and Māori are protected against alcohol harm.

### Section 2A: Deciding upon an option to address the policy problem

#### What criteria will be used to compare options to the status quo?

74. The following criteria will be used to compare the options to the status quo:
  - Enhancing community participation
  - Upholding the object of the Act
  - Improving the effectiveness of decision-making processes
  - Meeting te Tiriti obligations.

#### What scope will options be considered within

75. Cabinet agreed to introduce a Bill this year to improve community participation in alcohol licensing procedures.

76. In response to this policy problem, the Minister of Justice provided clear commissioning on the options officials were to pursue. We were asked to make the process for objecting easier and more accessible. We were asked to look at the example of the Resource Management Act 1991 (RMA), which permits submissions on applications for publicly notified resource consents to be made by any interested party, except trade competitors of the applicant.<sup>41</sup>
77. The scope of our analysis has been limited to this policy proposal. We have focused our efforts on the implementation cost, benefits, risks, and transitional arrangements.
78. We have not considered other policy approaches to achieve our stated objectives. We are aware that there are other settings and broader levers which could improve outcomes against our objectives. However, due to the direction and timeframes, these have been ruled out of scope for this paper.

## **What options are being considered?**

### **Option 1 – status quo**

79. The status quo, as described above, continues.

### **Option 2 – specify parties that may object, for the avoidance of doubt**

80. This option would retain the current test for ‘greater than public interest’ to object to a licensing application or renewal of licence application but amend the Act so that specific parties who have standing are named ‘for the avoidance of doubt’. This would include, for example, people who live, work, shop or study in the wider area, or who whakapapa to that area. It could also include expressly extending the geographical limit within which a person has standing from the 1 to 2 kilometres established through case law.

### **Option 3 – anyone can object to licence applications**

81. This option broadens the scope of parties that can object to licensing applications and renewals, so that any person may object to the grant of a licence, whether as an individual or representative of a group or organisation.
82. However, under this option, objections by trade competitors would be restricted – they could only object to a licence application if they are directly affected by the application in a way that does not relate to trade competition. This is not responding to any particular problem that we are currently aware of, but is to prevent this broadening of scope being used in a way that is not intended.
83. This option aligns the ability to object with the RMA, under which submissions on applications for publicly notified resource consents can be made by any interested party, except trade competitors of the applicant.<sup>42</sup>

### **Option 4 – giving DLCs administrative tools to manage hearings**

84. Option 4 is an additional option that may be chosen to supplement option 2 or 3.
85. This option provides for DLCs and ARLA to manage hearings through, for example, limiting the circumstances in which objectors with the same or similar interests may

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<sup>41</sup> Sections 96 and 308B of the Act.

<sup>42</sup> Sections 96 and 308B of the Resource Management Act 1991 (RMA). Note that a trade competitor of the applicant may still make a submission if affected by the activities proposed in the application, provided the submission does not relate to trade competition (s 308B). This wording remains the same in the Natural Built Environments Bill, which is expected to replace the RMA.

speak or call evidence in support, directing the order of business, taking evidence and submissions as read, directing that evidence and submissions be presented within time limits.

86. This option is also similar to provisions in the RMA, which give authorities conducting resource consent hearings tools to manage hearings where the scale and significance of the hearing makes it appropriate to do so.<sup>43</sup>

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Sections 41A to 41D of the RMA.

## How do the options compare to the status quo/counterfactual?

Key					
---	much worse than the status quo	0	about the same as the status quo	+++	much better than the status quo
--	worse than the status quo			++	better than the status quo
-	slightly worse than the status quo			+	slightly better than the status quo

	Option 1 - status quo	Option 2 – specify parties that may object, for the avoidance of doubt	Option 3 – anyone can object to licence applications (preferred option)	Option 4 – hearing management provisions
<b>Community participation is enhanced</b>	0	<p style="text-align: center;">+</p> <p>More groups can object. We expect that DLCs and ARLA will respond to this legislative change by interpreting the test for standing generously.</p> <p>The list may inadvertently exclude some groups who might have a valid interest in objecting to a licence application.</p>	<p style="text-align: center;">++</p> <p>No person or group is excluded based on narrow criteria of ‘standing’. Lawyers may not challenge a community member on their right to object.</p> <p>There is a risk that people from outside the area may make objections on licence applications e.g. professional ‘objectors’ objecting to multiple licence applications from across the country. We consider the extent of this impact is mitigated because applications for licences (which trigger objections) are published locally and thousands of applications are made each year.</p>	<p style="text-align: center;">++</p> <p>Streamlined hearings will encourage people to participate, particularly as it should reduce amount of time required of parties to take time out of their day-to-day to attend hearings.</p>

<p><b>The object of the Act is upheld</b></p>	<p>0</p>	<p>++</p> <p>Allowing more people to object helps meet the object of the Act to allow communities to input into licensing decision-making.</p>	<p>+++</p> <p>Not restricting who can object helps meet the object of the Act to allow communities to input into licensing decision-making. Allowing those with a more general knowledge of alcohol harm reduction to object, even if not from the local area, will help achieve the object of the Act to minimise the harm caused by excessive or inappropriate alcohol consumption.</p> <p>Trade competitors may not use the objection process as a tool to limit competition.</p>	<p>0</p>
<p><b>Decision-making is effective and efficient</b></p>	<p>0</p>	<p>+</p> <p>When someone makes an objection, a hearing is convened, which will cause delays in some applications. But hearings can assist decision-makers.</p> <p>Allowing more people to input into the licensing process means DLCs will have a greater range of information to inform their decisions.</p> <p>In some cases, time, effort and resources will be expended to establish objectors' standing.</p>	<p>++</p> <p>When someone makes an objection, a hearing is convened, which will cause delays in some applications. But hearings can assist decision-makers.</p> <p>Time, effort and resources are not expended to establish objectors' standing. Number of appeals challenging decisions about whether an objector has standing is likely to reduce.</p> <p>Allowing more people to input into the licensing process means DLCs will have a greater range of information to inform their decisions.</p>	<p>+</p> <p>DLCs can manage hearings with provisions given to them to mitigate the increased administrative burden incurred, although applying these tools will include some burden (e.g. issuing directions to effectively manage the hearings) in the appropriate cases.</p> <p>Some parties may challenge the DLCs' use of these provisions by way of judicial review, which would slow decision-making.</p>

		DLCs can weigh the evidence presented based on how relevant they think it is for the area concerned.	DLCs can weigh the evidence presented based on how relevant they think it is for the area concerned.	
<b>Te Tiriti obligations are met</b>	0	++ Naming the right of mana whenua to object upholds the right of mana whenua to be part of decision-making on issues in their rohe, but could result in a specific group being excluded.	+++ Mana whenua is not named as an interested party. However, the right of anyone to object means that mana whenua have their right to object recognised, without the need to litigate this.	0
<b>Overall assessment</b>	<b>0</b>	<b>6</b>	<b>10</b>	<b>3</b>

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

87. Our preferred option is option 3, bolstered by option 4:
- broadening the test so that anyone can object to licence applications
  - including a specific exception for trade competitors
  - providing tools for DLCs and ARLA to manage hearings as needed.
88. Together, this would mean that anyone who feels strongly enough about a proposed licence (or renewal of a licence) to object to it could make an objection without expending time, effort and resources establishing their standing. It would also mean:
- objectors would no longer need to prove they live within an artificially narrow geographical boundary nor show that granting the application would affect them personally in some way,
  - individuals could bring objections on behalf of organisations or groups, making it easier for groups with a particular interest in, or knowledge of, alcohol harm, to contribute this knowledge to the licensing decision-making process,
  - mana whenua could contribute to licensing decisions in their rohe without having to litigate their right to do so, in line with the principles of te Tiriti,
  - trade competitors would not be able to use the objection process as a tool to limit competition, to ensure the application process is not hijacked to gain competitive advantage.
89. This would bring the Act better into line with the clear intent of the legislation that communities be able to input into licensing decisions.

### *Costs associated with Option 3 can be mitigated by Option 4*

90. The proposal will eliminate the administrative work and proceedings required to determine standing. However, it is likely to result in more community members being granted standing, which would lead to an increased number of hearings (as DLCs must convene a hearing where an objection is made). This will likely mean an increased administrative burden on DLCs and ARLA, although we have not had the opportunity to consult with territorial authorities to understand the extent of this.
91. There is also a risk that people from outside areas may make objections to licence applications, which goes against the purpose of enhancing community participation. For example, professional 'objectors' might object to multiple licence applications around the country, thus increasing the burden on DLCs. However, this is a small risk. Notices about applications are published locally, and thousands of applications are made every year. Even a very committed advocate would struggle to go to that many hearings. DLCs can weigh the evidence presented based on how relevant they think it is for the area concerned.
92. Option 4, tools for DLCs to manage hearings, will help mitigate the additional administrative burden. We also consider the democratic importance of communities having a say over alcohol harm in their communities to be the more important consideration.
93. We also consider the democratic importance of communities having a say over alcohol harm in their communities to be the more important consideration.

94. One of our stakeholders suggested that an increased number of objectors at hearings could have the perverse result of watering down of the value of their evidence. However, we consider with a reasonable and objective DLC, using the hearing management tools available to them, a high volume of objectors should strengthen, rather than undermine, the community voice, which should contribute to (rather than detract from) decision-making.
95. We recognise that in cases where there are large numbers of objectors and the DLC decides to manage this by using these tools, there will be some administrative burden involved e.g. issuing directions to the parties to effectively manage the hearing. However, it is likely that this will be a smaller impact than the current burden on DLCs involved in determining standing.

*This combination of options mirrors the settings in the RMA*

96. These combination of options mirrors the settings in the RMA, where there is no limit to the number of submissions that can be received to a resource consent where that consent is publicly notified. We understand this element of the RMA process works well, and that the relevant provisions remain the same in the Natural Build Environments Bill, which is expected to replace the RMA.
97. However, about 3% of resource consents in 2019/20 were publicly notified (which is required for full public participation). The majority of consent applications are non-notified or limited notified to a specified number of people/affected parties.

*Constraints limiting the extent of benefits*

98. The policy option addresses the issue of *who* can make an objection. We recognise that the benefits from this change will be limited by another issue relating to objections.
99. Communities have raised issues around the grounds on which they can object to a licence application. As well as showing *who* the objector is (which is addressed by this proposal), an objection must be made in relation to criteria for the issue of licences (s 102). We have heard that community members sometimes struggle to tie their objection to these criteria. Some commentators have expressed a wish for the criteria to be widened, including so that it references te Tiriti and/or the impact of alcohol on Māori communities.<sup>44</sup>
100. This issue relates more broadly to licensing structure and conditions. The Government will consider advice on these topics as part of its longer-term phase of work from March 2023.

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<sup>44</sup> Maynard. (2022). *Te Tiriti o Waitangi and alcohol law*. Wellington, New Zealand: Te Hīringa Hauora, Health Promotion Agency: 38.



## What are the marginal costs and benefits of this option?

<b>Affected groups</b>	<b>Comment</b> <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Business/applicants	Ongoing – increased number of objectors may increase uncertainty to business; reduction in alcohol licences issued, reducing the sale and supply of alcohol.	Low - contingent on individual applications, objections made, and the decisions made at licensing hearings and is not an immediate cost of this proposal.	Low – impact unknown.
Business/ Applicants	Ongoing – costs to be involved in licensing hearings (on the assumption that there will be an increase in hearings).	Medium - mitigated by addition of hearing management tools to increase efficiency of hearings and reduction in hearings to determine the status of an objector	Medium – costs unknown but almost certain to apply.
Objectors	Ongoing – costs to be involved in hearings (on the assumption that there will be an increase in hearings).	Medium - mitigated by addition of hearing management tools to increase efficiency of hearings and reduction in hearings to determine the status of an objector	Medium – costs unknown but almost certain to apply.
Govt	Ongoing – administrative costs to Government.	Low – likely to be minimal increase to status quo.	High – value unquantified, but administrative costs will be incurred.
Agencies	Ongoing – costs for involvement of Police/Medical Officers of Health/licensing inspectors to be involved in contested hearings (on	Low – mitigated by addition of hearing management tools and reduction in hearings to	Medium – costs unknown but almost certain to apply.

	the assumption that there will be an increase in hearings).	determine the status of an objector	
Local Govt	Ongoing – costs arising from increased case load on DLCs.	Low – mitigated by addition of hearing management tools and reduction in time taken for deciding if an objector has standing.	Medium – costs unknown but almost certain to apply.
Judiciary	Ongoing – costs arising from court time required to hear likely increase in ARLA cases (e.g. appeals from DLC decision) or increase in judicial review claims.	Low – likely to be minimal increase to status quo given the reduction in hearings needed to decide on objectors.	Medium – costs unknown but almost certain to apply.
Consumers	Reduction in the availability of sale and supply of alcohol.	Medium – contingent on decisions made.	Low – size of impact unknown.
Trade competitors	Ongoing – inability to object where a new licence may add competition to their existing business	Low – competition is already a major component of running a licensed premise	Low – size of impact unknown.
<b>Total monetised costs</b>	NA	NA	NA
<b>Non-monetised costs</b>	Licensing procedures are likely to be more costly to administrators and parties involved.	Low	Medium

<b>Affected groups</b>	<b>Comment</b> <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional benefits of the preferred option compared to taking no action</b>			
Objectors, including	Ongoing – more likely to be able to participate in licensing hearings, increased beneficial	Medium – greater opportunities to participate in the process if they wish to	Medium – benefits

mana whenua	effect, improved sense of fairness.	do so but sense of fairness likely to depend on outcomes.	unknown but likely.
DLCs	Ongoing – access to a broader range of views to help inform decision-making, lower administrative cost as will not have to determine if an objector has standing.	Medium – should assist DLCs in their role.	Medium – benefits unknown but likely.
Wider community	Ongoing – benefits from decisions which have wider community input, resulting in decisions that better reflects their values and needs. Eventual reduction in alcohol-related harm.	Medium – contingent on decisions made.	Medium – benefits unknown but likely.
Consumers	Ongoing – reduction in availability of alcohol, leading to reduced harm.	Medium – contingent on decisions made.	Low – size of impact unknown.
<b>Total monetised benefits</b>	Monetised benefits are likely to occur downstream if licensing decisions become more reflective of community values and harm minimisation.	NA	NA
<b>Non-monetised benefits</b>	Improved democratic input and community participation in licensing decisions results in overall better decision making and harm minimisation	Medium	Medium

# Proposal B – How licensing hearings are run

## Section 1B: Diagnosing the policy problem

### What is the context behind the policy problem?

*Hearings must be convened if there is an objection to the application*

101. If an objection is filed by a person with standing, the DLC (or ARLA) must convene a public licensing hearing, rather than deciding the application on the paperwork alone (s202) (with some exceptions as detailed above at paragraph 49). A DLC's membership may include counsellors but it is an independent, inquisitorial and impartial body.<sup>45</sup>
102. At a hearing, the applicant, objectors, an inspector, a constable, and a Medical Officer of Health may appear and be heard, and call, examine, or cross-examine witnesses (s 204). The parties may be represented by counsel.
103. The framing of the Act is such that members of the community who make an objection must be opposing the application in some way. They may be opposing the issue of the licence or seeking that the licence be issued with conditions attached (e.g. around trading hours).

*The available data indicates that the community voice is not being heard*

104. Participants have said that the time they have invested in opposing applications has been in vain, as there is an assumption that licences will be granted regardless.<sup>46</sup>
105. This feeling is reflected in data from licensing hearings. In licensing hearings where community objectors were the only parties opposing the application (Police or Medical Officers of Health, for example, did not also oppose the licence and attend the hearing), only 2% of the applications for licences were declined. In comparison, when there was an objection by Police, Inspector or Medical Officer of Health (and no one else), their rate in having an application declined was 26%.<sup>47</sup>
106. We recognise that this data does not reveal what community objectors were seeking when objecting to the licence – “success” could have been asking for a reduction in trading hours. It also does not reveal information about applications agencies objected to and those they did not object to, and the reasons why they did not object to them.
107. However, we would expect the rate of declined applications to be closer to the declined application rate when Police, Inspectors and Medical Officers of Health were the only objectors: where there are both agency and public objections to the application, 33%

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<sup>45</sup> Health Promotion Agency. (October 2019). *Selecting and Appointing District Licensing Committees: a Guide for Councils*. Retrieved from: [https://resources.alcohol.org.nz/assets/3.1\\_AL1168\\_Selecting\\_and\\_appointing\\_DLCs.pdf](https://resources.alcohol.org.nz/assets/3.1_AL1168_Selecting_and_appointing_DLCs.pdf): para. 1.2.

<sup>46</sup> Maynard. (2022). *Te Tiriti o Waitangi and alcohol law*. Wellington, New Zealand: Te Hīringa Hauora, Health Promotion Agency: 32

<sup>47</sup> Auckland Regional Public Health Service. (2019, December 5). *Is the Community's Voice Being Heard?* Retrieved from: [https://www.arphs.health.nz/assets/Uploads/Resources/Alcohol/Is-the-communitys-voice-being-heard\\_alcohol-licensing-applications\\_FINAL.pdf](https://www.arphs.health.nz/assets/Uploads/Resources/Alcohol/Is-the-communitys-voice-being-heard_alcohol-licensing-applications_FINAL.pdf).

of licences are declined; communities have the lived experience of the way alcohol impacts the community.

108. In addition to the data which indicates the challenges objectors experience at hearings, one of the recurring themes we hear from stakeholders is that licensing hearings are formal and adversarial, and leave people feeling like they have not been heard.

*Licensing hearings are formal and adversarial*

109. Licensing hearings are formal, court-like processes, during which all parties have the opportunity to cross-examine the other parties involved.
110. Cross-examination is generally used to test observations, truthfulness, and to challenge the case. It can be used to applications, reasons for and against them, and, in this way, it can benefit decision-makers. We have heard from Police and Medical Officers of Health that cross-examination is useful; it is often during cross-examination that the unsuitability of the applicant is revealed – often applicants do not even know what is in their application, and are unable to show any knowledge of the specific harms from alcohol to that community.
111. The experience of some objectors who have participated in DLC hearings has been positive. For example, one participant said the hearing was “particularly good at dealing with elderly and other objectors who were nervous or not particularly confident.”<sup>48</sup>
112. However, the strong theme emerging from communities about DLC hearings is that the adversarial nature can be extremely intimidating. Some objectors have described as fearing being tricked under cross-examination to say something they did not intend to say, and/or that they will be punished for their views.<sup>49</sup>
113. In our conversations with stakeholders, we heard that the presence of lawyers is thought to contribute to the intimidating environment. If lawyers are present, they are generally there to represent applicants. This places those who are not represented are at a disadvantage, particularly if they have little or no experience of licensing hearings – they may not have the skills to effectively cross-examine the other parties involved when they have the opportunity to do so.
114. This impact is felt most among community objectors in the poorest areas as they seldom have legal representation at DLC hearings.<sup>50</sup> These communities often have acute issues with a high density of off-licences, but the fewest resources to mount comprehensive opposition to a well-resourced industry.
115. Other parties involved in hearings, like Police or Medical Officers of Health, are often represented by people who have experience in licensing hearings. Even those who have experience in the process describe hearings as unfair, stacked in support of the applicant, disabling and disempowering.<sup>51</sup>

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<sup>48</sup> Health Promotion Agency. (2021). *Community Law Alcohol Harm Reduction Project: A formative evaluation*: 17.

<sup>49</sup> Maynard. (2022). *Te Tiriti o Waitangi and Alcohol Law*. Wellington, New Zealand: Te Hiringa Hauora, Health Promotion Agency: 32.

<sup>50</sup>

Health Promotion Agency. 2021. *Community Law Alcohol Harm Reduction Project: A formative evaluation*: 16.

<sup>51</sup> Maynard. (2022). *Te Tiriti o Waitangi and Alcohol Law*. Wellington, New Zealand: Te Hiringa Hauora, Health Promotion Agency: 32.

116. We also hear concerns about when and where hearings are held. We understand that most hearings are held in council buildings during business hours, which can make participating difficult, especially if your participation is voluntarily.<sup>52</sup>
117. The experience of licensing hearings is such that the process has been described as working for people other than the community who want to have their say.<sup>53</sup>

#### *The ability to cross-examine is an anomaly*

118. In addition to the quantitative and qualitative data, we also know that the ability to cross-examine appears to be an anomaly – we do not know of any other local authority hearings where cross-examination is permitted. For example, publicly notified resource consents hearings under the RMA do not involve cross-examination.

#### **How is the status quo expected to develop?**

119. Without legislative change, the nature of licensing hearings will continue. Cross-examination, which sets the tone for an adversarial process, will continue to be preserved in the Act.

#### **What is the overarching policy problem or opportunity?**

120. Community voices are failing to have the impact we would expect on licensing decisions. Licensing hearings are formal and adversarial, and the experience can be intimidating for those involved, particularly those who are inexperienced in licensing hearings and/or are not represented by a lawyer. This tends to affect community members who wish to object to licence applications. As a result, objectors feel that the process is stacked against them and that their views are stifled. This fails to fulfil community influence as intended under the Act.

#### **Stakeholder views**

121. Key stakeholders that this policy problem involves or would likely impact upon include communities experiencing alcohol harm, mana whenua, Police/Medical Officers of Health/Licensing Inspectors, and people who hold alcohol licences or apply for alcohol licences.
122. In our discussions with stakeholders on this issue, we heard that hearings can be off-putting for everyone, even professionals, and the process generally favours industry as they are typically the only parties represented by lawyers. We heard that the way hearings are run is highly dependent on the DLC.
123. We heard that Police and Medical Officers of Health value the ability to cross-examine during hearings because it can be useful to test the evidence of applicants. They recognised that it can also be useful to test the evidence of objectors, as their evidence is often lacking in detail. They said it helps to flesh out the evidence to help decision makers. It was generally recognised that there should be control of cross-examination in appropriate cases. There was a suggestion that the process should be less litigious so that people do not feel as dehumanised.
124. A suggestion that was put forward is for DLCs to have their own lawyer/someone who can ask questions on their behalf. They could ask questions of witnesses (trained so

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<sup>52</sup> Maynard. (2022). *Te Tiriti o Waitangi and alcohol law*. Wellington, New Zealand: Te Hiringa Hauora, Health Promotion Agency: 34. This theme also emerged during consultation.

<sup>53</sup> Gordon. (2019). *A Strong Legislative Framework? The 2012 Sale and Supply of Alcohol Act*. Retrieved from: <http://www.nzlii.org/nz/journals/NZLFRRp/2019/2.pdf>: 42.

that the questioning is inquisitorial not adversarial) and it would allow members of the DLC to focus on the answers provided. It was suggested that this could be funded through an increase in fees.

### What objectives are sought in relation to the policy problem?

125. The aim is to:

- **enhance community participation in alcohol licensing:** removing barriers that prevent effective participation in DLC hearings; ensuring that licensing hearings are fair
- **uphold the purpose of the Act:** the sale and supply should be undertaken safely and responsibly and the harm from excessive or inappropriate consumption of alcohol should be minimised.
- **improve the effectiveness and efficiency of decision-making:** enhancing the role of decision-makers in licensing applications
- **meet te Tiriti obligations:** The processes in place facilitate Māori participation in decision-making and support the Crown's obligation to positively promote equity and protect Māori against alcohol harm.

### Section 2B: Deciding upon an option to address the policy problem

#### What criteria will be used to compare options to the status quo?

126. The following criteria will be used to compare the options to the status quo:

- Enhancing community participation
- Upholding the object of the Act
- Improving the effectiveness and efficiency of decision-making processes
- Meeting te Tiriti obligations.

#### What scope will options be considered within

127. Cabinet agreed to introduce a Bill this year to improve community participation in alcohol licensing procedures.

128. In response to this policy problem, the Minister of Justice provided clear commissioning on the options officials were to pursue. We were asked to make the process less formal and adversarial. We were asked to look at the example of s 39 of the RMA under which hearings for resource consent applications are to be public and without unnecessary formality.

129. The scope of our analysis has been limited to this policy proposal. We have focused our efforts on the implementation cost, benefits, risks, and transitional arrangements.

130. We have not considered other policy approaches to achieve our stated objectives. We are aware that there are other settings and broader levers which could improve outcomes against our objectives. However, due to the direction and timeframes, these have been ruled out of scope for this paper.

### *Hearings before ARLA are not within scope*

131. DLCs are committees appointed by territorial authorities to consider applications for alcohol licences. ARLA is a tribunal tasked with hearing appeal cases from DLC decisions.
132. Both DLCs and ARLA can hear licensing decisions at first instance. Licensing decisions are usually decided by DLCs, but DLCs can refer cases to ARLA rather than hearing the matter themselves (s 187(f)). We understand that this happens rarely and guidance from ARLA is that it will be slow to grant leave to hear matters at first instance because the intention of the Act is to allow local communities to have a greater say in licensing.<sup>54</sup>
133. The Minister directed that the existing, more formal approach to the way hearings are conducted should be retained in hearings before ARLA. This is to reflect that in the more judicial setting, formal procedures and cross-examination is to be expected, and that this is consistent with natural justice.
134. This distinction is also consistent with the distinction between council-run hearings for resource consents and hearings before the Environment Court in the RMA. Hearings for resource consents are heard at the council level, they are informal, and cross-examination is not allowed. Appeals, on the other hand, are heard by the Environment Court, which has a more formal process and permits cross-examination.<sup>55</sup>

### **What options are being considered?**

#### **Option 1 – status quo**

135. The status quo, as described above, continues.

#### **Option 2 – parties cannot be represented by lawyers at DLC hearings**

136. The status quo but parties cannot be represented by lawyers at DLC hearings.

#### **Option 3 – DLC hearings are conducted without unnecessary formality**

137. Under this option DLC hearings:
  - are conducted without unnecessary formality – for example, DLCs should consider choosing the venue to suit the number of participants and ensuring it is not intimidating. The layout should allow participants to hear and see the panel and speaker, and to present their evidence without inconvenience. The DLC should ensure the venue is easily accessible, including for people with disabilities and community objectors, many of whom may have to take time off work to attend. It may be appropriate to consider a marae as the venue. DLCs should also consider the timing of the hearings so as not to inadvertently exclude people who wish to be involved;<sup>56</sup>

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<sup>54</sup> Alcohol Regulatory and Licensing Authority, Minute in the case of: *Kaikoura District Licensing Committee v Murray Alexander Boyd* [2022] NZARLA.

<sup>55</sup> Section 39 of the RMA; Ministry of Justice (2022, September). *Overview of the Environment Court's processes*. Retrieved from: <https://environmentcourt.govt.nz/court-process/at-the-hearing/>.

<sup>56</sup> Ministry for the Environment. (2001). *Keeping It Fair: Conducting Hearings Under the RMA - overview*. Ministry for the Environment: Wellington. Retrieved from: <https://docs.niwa.co.nz/library/public/keeping-it-fair-overview-jul01.pdf>.



- do not permit those who appear at hearings to question any party or witness – this would mean that DLC members could ask questions and parties who have points of clarification for other parties could direct these to the chair to be asked by them at their discretion;
- do not permit cross-examination;
- can be conducted by telephone, audio-visual link, or other remote access facility where appropriate and the facilities are available.

#### **Option 4 – option 3 with a prohibition on legal representation**

138. This option is the same as option 3 except that, in addition, parties would not be able to be represented by a lawyer at the hearing.

## How do the options compare to the status quo?

Key					
---	much worse than the status quo	0	about the same as the status quo	+++	much better than the status quo
--	worse than the status quo			++	better than the status quo
-	slightly worse than the status quo			+	slightly better than the status quo

	Option 1 – status quo	Option 2 – no lawyers	Option 3 – remove unnecessary formality	Option 4 – remove unnecessary formality plus no lawyers
<b>Community participation is enhanced</b>	0	+	+++	++
		<p>The experience of hearings is likely to improve for objectors, who tend to appear without legal representation.</p> <p>This could result in an increase in the number of people who object to licences.</p> <p>Those who have little experience in licensing hearings may be at a disadvantage compared with those who, though not lawyers, attend regularly (e.g. Police and Medical Officers of Health or applicants if</p>	<p>The experience of hearings is likely to improve, as it can be tailored to the circumstances. Likely to make the hearing more inclusive, less intimidating, and fairer (including for those who do not consider hearings to be culturally safe).</p> <p>More people may be inclined to object to licences.</p> <p>Timing and location of hearing should facilitate participation.</p>	<p>The experience of hearings is likely to improve, as it can be tailored to the circumstances. Likely to make the hearing more inclusive, less intimidating, and fairer (including for those who do not consider hearings to be culturally safe).</p> <p>This may mean more people are inclined to object to licences, although some people may still be put off if they are unfamiliar with the licensing hearing process and cannot have assistance (at the hearing) from a lawyer. This would create inequality between those</p>

		these are representatives of large nationwide businesses).		experienced in hearings and those who are not.  Timing and location of hearing should facilitate participation.
<b>The object of the Act is upheld</b>	0	0	++  Likely to improve consistency with the Act, as it could result in enhanced community participation.  Impact could be fewer licences being granted, which goes to harm reduction.	++  Likely to improve consistency with the Act, as it could result in enhanced community participation.  Impact could be fewer licences being granted, which goes to harm reduction.
<b>Decision-making is effective and efficient</b>	0	-  Uneven experience of licensing hearings by those participating could lead to poorer decision-making.  Lawyers have professional experience and expertise that is helpful for extracting information.	++  Places more onus on DLCs to draw out the evidence to ensure they have the information they need to make decisions (which may already happen in some cases, depending on the chair). Parties could direct questions to other parties to the DLC, who could ask those questions at their discretion.  Less formal hearings should make people feel more comfortable, which should help people give their evidence.	+  Places more onus on DLCs to draw out the evidence to ensure they have the information they need to make decisions. (This may already happen in some cases, depending on the Chair.)  Parties could direct questions to other parties to the DLC, who could ask those questions at their discretion. There may be unevenness in the ability of parties to suggest questions for asking other parties to direct to the DLC. Those who are experienced in licensing hearings are likely to be experienced over those not experienced.

				<p>Less formal hearings should make people feel more comfortable, which should help people give evidence.</p> <p>Removal of lawyers may negatively impact on the evidence given by those who would otherwise be represented (through questioning, the lawyer assists them give evidence).</p>
<b>Te Tiriti obligations are met</b>		<p style="text-align: center;">+</p> <p>The experience of hearings is likely to improve for Māori participants but they may be at a disadvantage compared to other participants (e.g. Police/Medical Officers of Health), depending on their experience in licensing hearings.</p>	<p style="text-align: center;">++</p> <p>Flexibility to determine the process will better allow for hearings to reflect local tikanga in the way they are run.</p> <p>Will allow for greater recognition of Māori perspectives and values in alcohol licensing.</p>	<p style="text-align: center;">++</p> <p>Flexibility to determine the process will better allow for hearings to reflect local tikanga in the way they are run.</p> <p>Will allow for greater recognition of Māori perspectives and values in alcohol licensing.</p>
<b>Overall assessment</b>	<b>0</b>	<b>1</b>	<b>9</b>	<b>7</b>

### What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

139. We consider that option 3 best addresses the problem. It will lead to the highest benefits and support community participation in licensing decisions. However, given that decisions about granting licences is made by an independent committee, the extent of the benefits cannot be accurately quantified.
140. The changes will make hearings more inclusive and fairer. This will improve the experience of hearings for those involved, particularly objectors who may have less experience in licensing hearings compared with other parties.
141. In considering formality, DLC should look to the location and timing of the hearings. The changes will also allow people to participate to participate virtually. These changes should lead encourage participation. As we mentioned in relation to proposal A, DLCs would have tools available to manage an increase in hearings.
142. Having the flexibility to determine the process will better allow for hearings to reflect local tikanga in the way they are run, and allow for greater recognition of Māori perspectives and values in alcohol licensing.

#### *Some stakeholders have raised concerns about the removal of cross-examination*

143. During conversation with Police and Medical Officers of Health, concerns were raised about removing cross-examination entirely from hearings. They consider cross-examination to be an effective way to test the suitability or otherwise of applicants to hold a licence. They raise the concern that removing it will undermine abilities to prevent inappropriate applicants from obtaining licences. Police proposed limiting or prohibiting cross examination of objectors only.
144. The changes proposed do not remove the ability to test evidence, as this can be achieved in a more inquisitorial way. The option places more onus on DLCs to draw out evidence, to ensure they have the information they need to make informed decisions. We recognise that this may already happen in cases, depending on the individual Chair. However, people will still be able to direct questions to the Chair to ask of other parties, at the Chair's discretion.
145. We do not consider it feasible to remove the ability to cross-examination for some parties only, as this would create an inequality that would be difficult to justify, particularly from a natural justice perspective.

#### *We do not recommend removing lawyers from hearings*

146. Option 3 is preferred over the other options which involve the removal of lawyers from hearings. Some told us that the involvement of lawyers is one of the reasons why the hearing can be intimidating.
147. However, we do not favour removing lawyers at this stage. We do not consider this would best promote community participation because we think it would favour those who have experience in licensing hearings over those who may not have any experience. They may not feel as disadvantaged if they are represented by a lawyer. Although we recognise this does not happen in many cases, we do not consider the option of being represented, if possible, should be removed at this stage. Removing cross-examination, which can be used in an intimidating way, will improve the hearing environment for all.

*The proposed approach was recommended by the Law Commission*

148. The Law Commission proposed that DLCs be constituted similarly to those which undertake resource consent hearings under the RMA which, as we describe above, are conducted without unnecessary formality.
149. We understand that RMA hearing panels are generally able to question evidence sufficiently to make decisions without cross-examination.
150. The Law Commission envisaged that members would need to be trained in a similar way to the way that counsellors holding hearings under the RMA have been trained (Making Good Decisions Programme developed by the Ministry for the Environment and Local Government New Zealand). “In its decision-making processes on licences, the committee would have to function judicially. The experience requirements for committee members and additional training should ensure DLCs are well-equipped to undertake their functions.”

*Constraints which will limit the extent of benefits*

151. The benefits of the preferred option will be limited by other matters relating to DLCs and the broader context of alcohol regulation.

The training and experience of DLCs

152. There is no particular qualification or training become a DLC member. Remuneration of DLC members is relatively low (their fees are set by the Cabinet Fees Framework), which is likely to influence who puts themselves forward for appointment. The Law Commission recommended that members of DLCs should have particular knowledge and experience specified in the statute, such as in public health, social issues of the community or the liquor industry.<sup>57</sup>
153. We understand that there is a range of experience across the membership of DLCs. During our consultation, concerns were raised about the ability of some DLCs to run a high-quality inquisitorial hearing. We heard that licensing hearings tend to be dominated by the lawyers present (who tend to represent applicants) or by agency representatives.
154. The extent of the benefits of the preferred option will be limited by these factors. To support DLCs adapt to the change in procedure, the existing training and guidance DLC members receive from local councils will need to be updated, including to ensure that they are trained in questioning.
155. Other matters around DLC membership will be considered in the second phase of alcohol work.

The broader context of alcohol regulation

156. Changes proposed aim to redress the balance between parties. However, we recognise that the scale of the alcohol industry means that there is always likely to be a difference in the resources available to parties to participate in the alcohol licensing process.

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<sup>57</sup> The Law Commission. (2010). *Alcohol in our Lives: Curbing the Harm*, NZLC R114: 10.11.

## What are the marginal costs and benefits of this option?

<b>Affected groups</b>	<b>Comment</b> <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Applicants, objectors, agencies	Ongoing – will be unable to use cross-examination to undermine evidence of other parties.	Low – mitigated by the fact that applicants will also not be cross-examined	Medium – extent unknown but almost certain to apply.
Applicants, objectors, agencies	Ongoing - costs to be involved in hearings (on the assumption that there will be an increase in hearings).	Low – mitigated by changes to hearings possible (e.g. location/time) will lower impact, removal of cross-examination will shorten the time needed to attend hearing.	Medium – costs unknown but highly likely.
Applicants	Ongoing – increased number of objectors to licences may increase uncertainty to businesses (on assumption there will be an increase)	Low – contingent on individual applications, objections made, and the decisions made at licensing hearings and is not an immediate cost of this proposal.	Medium – the increased uncertainty and impact on licences issued is unknown but highly likely.
Government	Ongoing - administrative costs to Government	Low - likely to be minimal increase to status quo.	High – value unquantified, but administrative costs will be incurred.
Local Government	One-off and ongoing – costs involved in training DLCs (updating training and ongoing delivery)	Low – already incurring costs to train DLC members.	High – size unknown but certain to apply.
Judiciary	Ongoing – increased appeals to ARLA by parties dissatisfied with DLC decisions	Low – applicants could use appeals more often, particularly given concerns raised about DLCs’ ability to hold more inquisitorial hearings, but risk mitigated with e.g. training of DLCs	Low – size unknown.

Consumers	Ongoing – reduction in the availability of alcohol.	Medium – contingent on decisions made.	Low – size unknown.
<b>Total monetised costs</b>	NA	NA	NA
<b>Non-monetised costs</b>	Licensing hearings are likely to be more costly to administrators and parties involved.	Low	Medium

<b>Affected groups</b>	<b>Comment</b> <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional benefits of the preferred option compared to taking no action</b>			
Applicants, objectors, agencies	Ongoing – shorter hearings without cross-examination.	Low – impacted by the likely increase in number of hearings.	Medium – value in unknown but almost certain to occur.
Objectors, including mana whenua	Ongoing – increased satisfaction that their input in the process is valued, improved sense of fairness	Medium – greater opportunities to participate in the process if they wish to do so but sense of fairness likely to depend on outcomes.	Medium – benefits unknown but likely to occur.
DLCs	Ongoing – shorter hearings without cross-examination, access to a broader range of views to help inform decision-making.	Low – impacted by the likely increase in number of hearings.	Medium – benefits unknown but likely.
Wider community	Ongoing – benefits from decisions which have wider community input, resulting in decisions that better reflects their values and needs. Eventual reduction in alcohol-related harm.	Medium – contingent on decisions made.	Low – size of impact unknown.



Consumers	Ongoing – reduction in the availability of alcohol, leading to reduced harm.	Medium – contingent on decisions made.	Low – size of impact unknown.
<b>Total monetised benefits</b>	NA	NA	NA
<b>Non-monetised benefits</b>	Improved community participation in licensing decisions results in overall better decision making and harm minimisation.	Medium	Medium

# Proposal C – The ability to adopt and apply local alcohol policies

## Section 1C: Diagnosing the policy problem

### What is the context behind the policy problem?

#### *LAPs enhance community input into local alcohol regulation*

157. Territorial authorities can develop and adopt a local alcohol policy (LAP) for their area, taking into account the characteristics of the local community.
158. LAP relate to the sale, supply, and consumption of alcohol in their area. They set policies over-and-above the national provisions in the Act about the location of licensed premises, licence density, maximum trading hours, conditions on licences, and one-way door restrictions.<sup>58</sup> Trading hours in LAPs can be more or less restrictive than the default national maximum trading hours set out in the Act.
159. The objective of LAPs is to enhance community influence into local alcohol regulation. DLCs (appointed by territorial authorities to decide applications for licences) must have regard to a relevant LAP in licence application decisions. However, LAPs are not binding – DLCs can issue licences even if they would be inconsistent with LAPs.
160. LAPs can also have a harm reduction role, particularly as evidence shows the harmful effects of high alcohol outlet densities and long trading hours<sup>59</sup> – all matters that can form part of LAPs. International research supports the development of alcohol policy at the local level to reduce consumption, underage use, and related harms.<sup>60</sup>

#### *Territorial authorities can adopt a LAP in consultation with the community*

161. The steps to developing a LAP include:
  - drafting one by considering matters such as the number of alcohol licences in the area, the location and opening hours of licensed premises, the demography of the area, local health indicators and the nature and severity of alcohol-related problems arising in the area
  - consulting with Alcohol Licensing Inspectors (police officers) and Medical Officers of Health in the process.
  - consulting publicly, using the special consultative procedure set out in the Local Government Act 2002.

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<sup>58</sup> A one-way door restriction is a requirement that during stated hours no persons is to be admitted (or re-admitted) into the licensed premises unless they are exempt (an exempt persons includes, for example, the licensee or an employee) and no person who has been admitted or re-admitted while the restriction applies is to be sold or supplied with alcohol.

<sup>59</sup> Campbell et al. (2009). The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms, *American Journal of Preventative Medicine*, 37(6): p. 556-569; Babor et al. (2010). *Alcohol: No ordinary commodity: Research and public policy* (2<sup>nd</sup> ed), Oxford: Oxford University Press; Hahn et al. (2010). Effectiveness of policies restricting hours of alcohol sales in preventing excessive alcohol consumption and related harms, *American Journal of Preventative Medicine*. 39(6): 590-604.

<sup>60</sup> Giesbrecht, Bosma, Juras, and Quadri. (2014). Implementing and Sustaining Effective Alcohol-Related Policies at the Local Level: Evidence, Challenges, and Next Steps, *World Medical and Health Policy*. 6:3 (203-230).

- 162. Where there is no LAP, communities have less input into how licensing decisions will be made in their area, and territorial authorities have fewer criteria on which to make decisions on licence applications.
- 163. The result is that licensing application decisions are often made without consideration of questions such as the optimum number of, or density of, outlets in a given area, and where these should be situated. Evidence-based criteria that should guide decision-making to minimise the harm from alcohol may not be considered because there is no LAP in place.

*Parties can appeal against the provisional LAP, preventing it coming into force*

- 164. The Act provides the ability to appeal any element of a provisional LAP on the grounds that the element is unreasonable in light of the object of the Act. The appeal is heard by ARLA. This is intended to provide a mechanism by which LAPs may be moderated to ensure they support the object of the Act.
- 165. No part of the LAP can come into effect until all appeals have been decided.
- 166. Territorial authorities can discontinue the development of a LAP at any point until the LAP is adopted.

*The appeal mechanism is an anomaly when compared with similar regulatory systems*

- 167. The Gambling Act 2003, whose purpose includes preventing and minimising harm from gambling and facilitating responsible gambling – requires policies to be developed for class 4 venues (i.e. pubs, clubs, and TABs). These policies specify matters such as whether and where class 4 venues may be established, and restrictions on the number of pokie machines in any venue. Class 4 venue policies are developed using the same special consultative procedure as LAPs. However, there is no appeals mechanism against class 4 venue policies.

*Appeals may also not be entirely appropriate for challenging LAPs*

- 168. The Legislation Design and Advisory Committee (LDAC) guidance advises that an appeals process is appropriate where the rights and interests of a particular person are affected by a decision.
- 169. LAPs are not decision that directly affect the rights and interests of any particular person. Rather, they are frameworks, which DLCs must have regard to when making licensing decisions. LDAC guidance advises that the appropriate mechanism for disputing such a process or product is judicial review.
- 170. The ability to appeal could be seen as cutting across the intended role of territorial authorities to make decisions on behalf of communities, and the opportunity for communities to influence the development of LAPs through consultation. LDAC guidance advises that the appropriate mechanism for disputing the process or product of a territorial authority is through local democratic processes, such as local elections.

*Data shows that many territorial authorities have developed LAPs ...*

- 171. Currently LAPs cover only 35% of the population of New Zealand. Of the 67 territorial authorities, 41 have adopted LAPs and 26 have not.<sup>61</sup>

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<sup>61</sup> In December 2013, regulations pertaining to the appeals process and public notification requirements came into effect. These allowed territorial authorities to progress LAPs beyond the drafting and consultation stage.

172. Of the 26 territorial authorities that do not currently have an LAP:
- 15 have not developed LAPs to draft or provisional stage
  - 6 have developed LAPs to draft or provisional stage, and
  - 5 have developed LAPs to provisional stage, but have halted or abandoned them following appeals.

*... but appeals are delaying and preventing the adoption of others*

173. Data shows that of the 33 provisional LAPs developed up to the end of 2017 (which includes those which have subsequently been adopted), 32 were appealed to ARLA.<sup>62</sup>
174. As at May 2022, 86% of provisional LAPs had been appealed by supermarkets and 72% by bottle stores.<sup>63</sup> Data collected up to 2017 showed that 28% of provisional LAPs were appealed by Police, health agencies, and/or community members.<sup>64</sup> The latter may appeal where the provisional LAP is more permissive around trading hours than the default national trading hours.
175. The authorities that have halted or abandoned LAPs following appeals include the four largest territorial authorities, accounting for 50% of the total population:
- **Auckland:** Provisional LAP has been in the appeals process for seven years, at a reported cost to the Council of over \$1 million in legal fees. The matter is currently before the Supreme Court, which has reserved its decision.
  - **Christchurch:** Has abandoned its provisional LAP, having reportedly spent five years and around \$1.1 million.
  - **Wellington:** Halted efforts to adopt its provisional LAP, having been appealed by eight parties and been found against by ARLA.
  - **Far North:** Has abandoned its provisional LAP, having reportedly cost the Council around \$200,000.
  - **Hamilton:** Abandoned its provisional LAP in 2018. The Council reportedly spent more than \$200,000 on the appeals process.

*Evidence also shows that appeals result in less restrictive LAPs*

176. LAPs are intended to provide an additional layer of regulation over the location of licensed premises, the number of licensed premises, their trading hours, the issue of licences, and one-way door restrictions, to further meet the object of the Act.
177. The most common elements of LAPs appealed are off-licence discretionary conditions, restrictions on off-licence hours and density, and restrictions relating to location of

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<sup>62</sup> Alcohol Healthwatch. (2017). *A Review of Territorial Authority Progress Towards Local Alcohol Policy Development*, 2nd edition. The LAP which was not appealed was developed by Ruapehu District Council. It excluded any restrictions on number and location of licensed premises, and proposed to implement the default national maximum off-licence trading hours. On-licence hours were also close to the default national maximum trading hours.

<sup>63</sup> Alcohol Healthwatch. (2022). *The Sale and Supply of Alcohol (Harm Minimisation) Bill*.

<sup>64</sup> Alcohol Healthwatch. (2017). *A Review of Territorial Authority Progress Towards Local Alcohol Policy Development*, 2nd edition.

outlets near sensitive areas (such as schools or churches). For example, the element that was Auckland Provisional LAP

178. Following appeals, 71% of the changes had the effect of making the LAP less restrictive, compared to the draft LAP, and 29% were more restrictive. Making LAPs less restrictive has the effect of increasing the availability of alcohol. 46% of all changes were in relation to trading hours for on-licences and off-licences.<sup>65</sup>

*Why were appeals included in the Act?*

179. During the legislative process, 23 submitters opposed including the ability to appeal provisional LAPs in the Act. They opposed the ability to appeal an LAP for the following reasons:

- The special consultative procedure is a robust and proven process for local decision-making.
- No other use of the special consultative procedure includes appeal rights.
- Appeals will add considerable additional cost, delays and complexity to the process and may discourage some from developing an LAP at all.
- Appeals favour the alcohol industry, which has the resources to argue appeals, over the community, which lacks such resources.
- Territorial authorities will make decisions on LAPs on behalf of the community as they are democratically elected to do. Appeals against these decisions undermine this democratic decision-making.
- The territorial authority will lack the mandate to change an LAP should an appeal be upheld, as they will not have consulted on that change.

180. At the time, officials recommended that the Act include the ability to appeal provisional LAPs. The departmental report states that the nature of alcohol laws with its sizable impact on public health, community safety and the economic viability of businesses requires the additional safeguard that the ability to appeal provides. The report also notes that, in mitigation of the submitters' concerns, the grounds for an appeal is limited and those who may appeal is limited to those who made a submission as part of the special consultative procedure.

181. We have now had 11 years of experience administering the Act and have gathered a large volume of evidence about its operation. We have observed many of the reasons against allowing appeals in 2011 have proven to be valid. Moreover, some of the reasons put forward to include the ability to appeal have proven to be reasons to remove the ability to appeal.

*An associated issue about the way LAPs apply in licence renewal applications*

182. A DLC must not take any inconsistency between a LAP and a licence into account when deciding whether to allow a renewal of licence application (s 133).<sup>66</sup> In other words, the application cannot be declined because issuing it would be inconsistent with

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<sup>65</sup> Alcohol Healthwatch. (2017). *A Review of Territorial Authority Progress Towards Local Alcohol Policy Development*, 2nd edition.

<sup>66</sup> Licensing committees may, however, impose conditions on the licence being renewed (around trading hours) to make it more consistent with a LAP.

the relevant LAP. This is different to the way that LAPs apply in new licence applications – the DLC may decline to issue a licence if it would be inconsistent with the relevant LAP.

183. The effect of this setting is that new LAPs have less impact on licensing than they might otherwise do. This undermines the objective of LAPs to enable communities to influence alcohol regulation in their area. However, it gives licensees greater certainty about renewing their licence, so long as they continue to abide by the conditions and otherwise meet the criteria for renewal.

#### How is the status quo expected to develop?

184. Without legislative intervention, parties will continue to appeal against provisional LAPs. This will slow down and, in some cases, halt, the development and adoption of LAPs, undermining the devolved nature of LAPs and reducing community input into alcohol regulation in their area. A flow on effect is that the appeals process is lessening the harm reduction potential of LAPs.
185. These impacts will continue, as territorial authorities are required to renew LAPs at least every 6 years, using the special consultative procedure, which means that the opportunity to appeal recurs.
186. Without legislative intervention, the status of LAPs in licence renewal applications will continue to be different to the status of LAPs in new licence applications. This will continue to impact how effective LAPs are at bringing community influence into alcohol regulation.

#### What is the overarching policy problem or opportunity?

187. LAPs are intended to regulate the sale, supply, and consumption of alcohol in the local area. Appeals are used frequently by parties with strong interests in alcohol regulation, including commercial and financial interests, who often have substantial resources and skills to endure long and potentially costly appeals processes. LAPs cannot have the intended effect when territorial authorities struggle or are unable to adopt them.
188. Even when LAPs are enacted by territorial authorities, DLCs cannot decline to renew an application that is inconsistent with the relevant LAP. These settings undermine the devolved nature of LAPs and reduce the community's influence in the process, and this has the flow on effect of lessening the harm reduction potential of LAPs.

#### Stakeholder views

189. The ability to appeal LAPs is undermining key features of the regime. We hear strong and persistent calls for the removal of the ability to appeal LAPs, including from public health experts and local government.
190. The stakeholders who operationalise the regime have advised that they generally support the proposal to remove the ability to appeal provisional LAPs.
191. We have not had the opportunity to test these policy proposals with industry stakeholders directly. The impacts will affect a range of businesses that apply for licences, including small, medium, and large businesses. We anticipate that these stakeholders are unlikely to be supportive as they are the parties most likely to appeal LAPs, and changing the settings relating to renewal of licences could cause some uncertainty among businesses.

## What objectives are sought in relation to the policy problem?

192. The aim is to:

- **Enhance community participation:** Community input into LAPs informs decision-making because, where territorial authorities desire to have LAPs, they can be developed and adopted without undue cost and delay
- **Uphold the purpose of the Act:** The sale and supply should be undertaken safely and responsibly and the harm from excessive or inappropriate consumption of alcohol should be minimised.
- **Improve the effectiveness and efficiency of decision-making:** decisions informing the contents of LAPs (which include community input through the special consultative process) are implemented by passing LAPs without undue delay or barriers.
- **Meet te Tiriti obligations:** LAPs are one of the ways that hapū and iwi can have a say in alcohol licensing; LAPs have a role in promoting equity, as they can influence the availability of alcohol through location, density and trading hours.

## Section 2C: Deciding upon an option to address the policy problem?

### What criteria will be used to compare options to the status quo?

193. The following criteria will be used to compare the options to the status quo:

- Enhancing community participation
- Upholding the object of the Act
- Improving the effectiveness and efficiency of decision-making
- Meeting te Tiriti obligations
- Access to judicial recourse: if the appeals mechanism is removed, what impact will this have on appeals currently before the courts
- Certainty for business: whether a licence that has been approved will be renewed in the future.

### What scope will options be considered within

194. We have been instructed to remove the ability to appeal provisional elements of LAPs to ARLA. This would be a relatively discrete but impactful amendment enabling more LAPs to be adopted and improving community influence.

195. We have also considered an additional change to the Act closely related to appeals. That is, amending the Act so that LAPs are taken into account by DLCs in renewal of licence applications, bringing this in line with settings relating to new licence applications.

196. Lastly, we've considered transitional requirements – specifically, whether any appeals before ARLA when the Act comes into force should continue.

197. The scope of our analysis has been limited to these policy proposals. We have focused our efforts on the implementation cost, benefits, risks, and transitional arrangements.

We have identified several approaches to removing the ability to appeal provisional LAPs with different implications (captured by options 3, 4 and 5 below).

198. We have not considered other policy approaches to achieve our stated objectives. We are aware there are other settings in the LAP process which could improve outcomes against our objectives and there are broader levers within the licensing process which could support our objectives. However, due to Cabinet direction and timeframes, these have all been ruled out of scope for this paper.
199. For the avoidance of doubt, removal or limitation of judicial review (protected by s 27 of the New Zealand Bill of Rights act 1990) is out of scope.

### **What options are being considered?**

#### **Option 1 – status quo**

200. The status quo, as described above, continues.

#### **Option 2 – remove the appeals mechanism**

201. Remove the ability to appeal against provisional LAPs to ARLA. All other stages of the process for developing and adopting LAPs would remain the same, including consulting using the special consultative procedure.
202. When the changes are enacted, any appeals in the process of being heard would continue to be heard until they are complete or discontinued by the territorial authority.

#### **Option 3 – option 2 plus require that renewal applications be considered against the relevant LAP**

203. This is the same as option 2 but that DLCs would also be required to take into account the relevant LAP when deciding whether or not to grant a renewal of licence application. DLCs would have discretion as to whether or not to issue a renewal of licence application if the licence would be inconsistent with the relevant LAP.

#### **Option 4 – existing appeals do not continue**

204. Option 4 is an additional option that may be chosen to supplement option 2 or 3.
205. When the changes are enacted, any appeals currently before ARLA (including appeals before any superior court as a result of ARLA decisions) are dismissed when the Bill comes into effect.



## How do the options compare to the status quo/counterfactual?

### Key

---	much worse than the status quo	0	about the same as the status quo	+++	much better than the status quo
--	worse than the status quo			++	better than the status quo
-	slightly worse than the status quo			+	slightly better than the status quo

	Option 1: status quo	Option 2: remove the appeals mechanism	Option 3: option 2 plus require that renewal applications are considered against any relevant LAP (preferred option)	Option 4: existing appeals do not continue
<b>Community participation is enhanced</b>	0	++ Allows greater community influence over LAPs.	+++ Allows greater community influence over LAPs.  Enhances community influence in licence renewal decisions.	+ Would ensure timeliness in progressing provisional LAPs and remove the dilution effect of the appeal for those LAPs.
<b>The object of the Act is upheld</b>	0	+ LAPs can help to reduce harm. Removing appeals will make it easier for territorial authorities to implement them, where they wish to do so.	++ Changing the status of LAPs in relation to renewal applications would have a greater and more timely impact on harm.	0 LAPs for affected territorial authorities affected could be progressed more quickly.
<b>Decision-making is effective and efficient</b>	0	+ Removes the barrier created by lengthy appeals, which is holding up	+ Removes the barrier created by lengthy appeals, which is holding up	+ Allows territorial authorities to adopt their LAP more quickly,

		progression of LAPs, meaning they do not affect decision-making.	progression of LAPs, meaning they do not affect decision-making.	should they choose to do so. It would have no effect on draft or future LAPs.
<b>Te Tiriti obligations are met</b>	0	<p style="text-align: center;">++</p> <p>Hapū and iwi can have greater influence in alcohol licensing.</p> <p>Removing barrier in the way of adopting LAPs means that individual LAPs can have a greater role in promoting equity (contingent on the contents of the LAP).</p>	<p style="text-align: center;">+++</p> <p>Hapū and iwi can have greater influence in alcohol licensing.</p> <p>Enhances influence in licence renewal decisions.</p> <p>Removing barrier in the way of adopting LAPs means that individual LAPs can have a greater role in promoting equity (contingent on the contents of the LAP).</p>	<p style="text-align: center;">+</p> <p>Would ensure timeliness in progressing provisional LAPs and remove the dilution effect of the appeal for those LAPs.</p>
<b>Access to judicial recourse (relating to dismissing current appeals)</b>	0	<p style="text-align: center;">-</p> <p>Reduces the recourse to judicial process for interested parties.</p>	<p style="text-align: center;">-</p> <p>Reduces the recourse to judicial process for interested parties.</p>	<p style="text-align: center;">--</p> <p>A strong interference in judicial processes by lawmakers, and has substantial implication for the separation of powers.</p>
<b>Businesses have certainty</b>	0	<p style="text-align: center;">0</p> <p>Provides no greater or lesser certainty to business</p>	<p style="text-align: center;">-</p> <p>Considering licence renewals against future LAPs reduces business certainty in the renewal process (depending on the contents of the LAP in place).</p>	<p style="text-align: center;">-</p> <p>Affects businesses that are currently appealing. Results in businesses bearing the cost of making the appeal with no beneficial outcome.</p>
<b>Overall assessment</b>	<b>0</b>	<b>5</b>	<b>7</b>	<b>0</b>

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

206. Option 3 best addresses the problem and yields the highest net benefits. Option 3 will allow the community input from the special consultative procedure to carry over into LAPs, which could be adopted undue delay or dilution as a result of industry-focused appeals. This is most likely to minimise harm in those communities and align more closely with the object of the Act.
207. Option 3 will also have the positive ongoing effect of requiring DLCs to consider any relevant LAP when deciding whether or not to allow a licence renewal application. They would have discretion to decline the application where the licence would be inconsistent with the relevant LAP, consistent with the approach taken for the issue of new licences. This option enhances community influence in alcohol regulation.
208. Implementing option 3 will bring the Act more in line with LDAC guidance on the appropriateness of appeals, better recognises the role of territorial authorities, and removes the anomaly of appeals.
209. We acknowledge that this option does not examine whether the consultative procedure facilitates effective consultation with Māori. We recognise, for example, that the Local Government Act 2002 does not require authorities to consult with Māori as part of the special consultative procedure. Where limits exist, limitations on the ability for Māori to participate and be heard in decision-making will apply.
210. Under option 3, when the amendments come into effect, existing appeals will continue to be heard until they are complete (or the territorial authority discontinues the development of the LAP). This respects the separation of powers and parties' legitimate expectations at the time notice of appeal is made, which is why it is preferred over option 4 as an additional option to option 3.
211. In reaching this conclusion, we have weighted two of our five objectives: 1) enhancing community input, and 2) upholding the object of the Act. Our preferred option removes the appeals process with minimal immediate cost and uncertainty to industry, and provides an immediate solution to the problem identified.

### *Territorial authorities will still have the choice about developing a LAP*

212. Removing the ability to appeal LAPs will not guarantee that every territorial authority develops a LAP, as LAPs are not compulsory. However, this change will enable and streamline the process for those authorities that wish to adopt a LAP.
213. The question of whether LAPs should be compulsory could be part of a broader, and more systematic, reform of the Act and we will provide advice on this to the Minister of Justice.

### *Option 3 will not end all litigation*

214. Even without an appeal right in the Act, we envisage that some parties could seek to challenge a territorial authority's LAP by bringing judicial review proceedings. However, the scope for challenge is reduced and bringing a judicial review proceeding does not automatically prevent a LAP from coming into force as the appeal is decided.

215. However, we note that have not been any judicial review proceedings taken against provisional LAPs directly. (There have been two judicial review proceedings against ARLA's decisions in appeals against LAPs).<sup>67</sup>

### *Costs associated with option 3 and how they can be mitigated*

#### Communities would also lose the ability to appeal

216. Removing the ability to appeal LAPs removes the ability for all parties to do so, including community members and others who advocate for harm reduction. However, we consider that communities would be better served by removing the ability to appeal. Appeals create an inequity of access that favours well-resourced parties. The costs, delays, and lack of finality takes power away from communities, meaning that the harm reduction potential of LAPs is weakened. This is supported by the evidence showing which parties appeal LAPs and that LAPs tend to be less restrictive following an appeal.

217. The Act provides a range of other mechanisms that allow parties to moderate LAPs, including:

- requiring the use of the special consultative procedure to develop LAPs, ensuring that parties have a change to provide input,
- enabling licences to be granted even when an application is inconsistent with a relevant LAP, and
- providing for objections, hearings and appeals of individuals licensing decisions to ARLA.

218. Judicial review is also available to address any errors in process and to ensure that the territorial authorities act within their powers.

219. We recognise that there are aspects of each of these provisions that have limitations and/or are not working as intended. For example, the special consultative procedure may not provide an effective opportunity for all types of community voices. Some of these mechanisms sit in the Act and could be looked at as part of future reform.

#### There would be some business uncertainty

220. The key feature of option 3, compared with option 2, is giving discretion to DLCs to decline licence renewal applications if they are inconsistent with the relevant LAP. This creates more uncertainty for licensees.

221. We can imagine a scenario where a territorial authority enacts a LAP, and an existing licence is inconsistent with that LAP. This could occur because of the location of the licensed premise (for example, in close proximity to a sensitive location,<sup>68</sup> which is disallowed by the LAP). This could impact on large businesses, such as supermarkets and nationwide bottle stores, small businesses, including long-established businesses with communities, and hospitality.

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<sup>67</sup> Alcohol Healthwatch. (2017). *A Review of Territorial Authority Progress Towards Local Alcohol Policy Development*, 2nd edition.

<sup>68</sup> In existing LAPs, sensitive areas are defined as educational facilities, alcohol treatment centres, spiritual facilities, and recreational facilities.

- 222. Evidence provided to us by territorial authorities that have enacted LAPs indicates that very few licences have been issued or renewed that are inconsistent with an existing LAP. Therefore, although it is difficult to estimate the impact this change will have, this suggests that this change may only impact a small number of businesses.
- 223. There are also several important mitigating factors to balance this risk.
- 224. Firstly, any licence renewal is considered by the DLC which would have the discretion to decline an inconsistent licence renewal application. This aligns with new licence applications. It means that a DLC could allow the renewal application even if the licence would be inconsistent with the relevant LAP.
- 225. Secondly, a licence renewal application requires a report from the Police, a licensing inspector and a Medical Officer of Health. These regulators are familiar with individual premises and have good understanding of their track record and compliance with their licence conditions. We consider their expertise will ensure the decision to decline a licence renewal is made with good information about the licensee as an individual operator.
- 226. Lastly, licensees can appeal decisions of DCLs to ARLA if they are dissatisfied with the DLC's decision. ARLA will reconsider the merits of the DLC's decision. We consider having access to this appeal ensures decisions are likely to be fair and well considered.

**What are the marginal costs and benefits of this option?**

<b>Affected groups</b>	<b>Comment</b> <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	LAPs adopted because of this change may reduce the sale and supply of alcohol, but this is contingent on the contents of the LAP and is not an immediate cost of this proposal.	Low – contingent on territorial authorities adopting LAPs.	Low – size of impact unknown.
Interested parties	Ongoing – reduced access to judicial recourse.	Low – access to judicial review continues and other mechanisms available to input into alcohol licensing.	High – size of impact unknown but will occur.
Business	Ongoing - uncertainty to businesses upon licence renewal if new LAPs come into effect.	Medium – contingent on territorial authorities adopting LAPs, content of	Low – size of impact unknown.

		LAPs, and decisions of DLCs.	
Government	Ongoing - administrative costs to Government	Low - likely to be minimal increase to status quo.	High – value unquantified but administrative costs will be incurred.
<b>Total monetised costs</b>	NA	NA	NA
<b>Non-monetised costs</b>	Costs will likely result from the actual LAPs and future licensing decisions rather than this proposal per se. The reduction to judicial recourse is mitigated by continued access to judicial review.	Low	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Territorial authorities	Ongoing – fewer barriers to adopting LAPs	Medium	High - value unquantified but will occur.
Judiciary	Ongoing – reduced case load on ARLA	Low - minimal compared to the status quo.	High - value unquantified but will occur.
Community	Ongoing – greater reflection of community input in LAPs and licensing renewals	Medium – contingent on decisions of territorial authorities and DLCs	Medium - value unquantified but likely to occur.
Wider community, consumers	Ongoing - increased harm minimisation	Medium – contingent on decisions made.	Low – size unknown.
<b>Total monetised benefits</b>	NA	NA	NA
<b>Non-monetised benefits</b>	The appeal is a barrier to implementing LAPs. The benefits are realised once territorial authorities chose to adopt LAPs after the change has taken effect.	Medium	Medium/High

## Section 3: Delivering an option

### How will the new arrangements be implemented?

#### *The Ministry of Justice*

227. The Ministry of Justice will issue communications and develop guidance for territorial authorities, Police, and Medical Officers of Health to advise them of the changes.

#### *The courts and tribunals*

228. The Ministry of Justice will advise ARLA and relevant courts of the changes and work with them on implementation. There may be some impact on caseloads – likely a decrease for ARLA and potentially an increase for the higher courts.
229. There would be no implications for provisional LAP appeals before the courts or future licence renewals. This proposed change will shorten the LAP adoption process should territorial authorities chose to adopt LAPs and shorten the review process for territorial authorities who already have LAPs.

#### *Local government*

230. The fees regime is intended to recover the costs of the licensing functions of local government, including the DLCs.
231. To prepare DLC members, existing training and guidance DLC members receive from local councils will need to be updated, specifically, around the changes to the test for objectors and about running effective hearings (including ensuring they are trained in questioning).
232. Much of what territorial authorities will chose to do as a result of the changes around LAPs is speculative as we have not consulted extensively to learn why some territorial authorities have chosen not to draft an LAP. It could be that more territorial authorities choose to develop and adopt LAPs.
233. Territorial authorities with halted provisional LAPs, or provisional LAPs before the courts may wish to discontinue development of the LAP (permitted under s 88), and recommence work towards adopting a LAP.

## How will the new arrangements be monitored, evaluated, and reviewed?

234. The Ministry of Justice has stewardship responsibilities for the alcohol regulatory system. We have good visibility over the objectives in our ongoing regulatory stewardship. We have not planned a formal evaluation of this proposal.
235. Indicators we expect to be able to monitor from our ongoing monitoring and relationships with stakeholders are:
- the number of objections made to licensing applications,
  - the number of licensing hearings convened to determine licensing applications,
  - the outcome of the licensing hearings,
  - the number of appeals made against DLC decisions,
  - whether or not territorial authorities are adopting LAPs,
  - the number of appeals made against DLC decisions to ARLA, and
  - the number of judicial review proceedings against territorial authorities in respect of the development of provisional LAPs.
236. We are aware that several NGOs already have a keen interest in alcohol licensing, including the status of LAPs. Their ongoing research in this area has been a valuable tool in assessing changes proposed. Any changes to the regulatory settings are likely to be high profile within the alcohol NGO space.
237. It is less clear how we will measure whether the changes implemented are effective in minimising harm. Currently, we rely on NGOs who actively research and study alcohol-related harm. We do not however, have clear measures broken down by territory that we could use to establish causation between legislative changes and the resulting changes in alcohol-related harm. We can monitor the number of active alcohol licences over time, which will provide a measure of the availability of alcohol in the country.



## Appendix One: Sample data on licensing applications from local authorities

<b>Wellington</b>			
<b>2020-21</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	62	62	0
Off-Licence	15	15	0
Club Licence	0	0	0
Licence Renewals	224	224	0
<b>2019-20</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	65	65	0
Off-Licence	17	16	1
Club Licence	2	2	0
Licence Renewals	191	190	1
<b>2018-19</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	78	78	0
Off-Licence	10	10	0
Club Licence	0	0	0
Licence Renewals	254	254	0
<b>2017-18</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	66	66	0
Off-Licence	22	19	3
Club Licence	1	1	0
Licence Renewals	Not reported		
<b>2016-17</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	82	82	0
Off-Licence	16	16	0
Club Licence	0	0	0
Licence Renewals	Not reported		

<b>Auckland</b>			
<b>2020-21</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	1093	1109	3
Off-Licence	442	440	2
Club Licence	206	206	0
Licence Renewals	1258	1254	4
<b>2019-20</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	410	410	0
Off-Licence	155	153	2
Club Licence	6	6	0
Licence Renewals	1243	1242	1
<b>2018-19</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	838	836	2
Off-Licence	317	317	0
Club Licence	31	31	0
Licence Renewals	1173	1169	4
<b>2017-18</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	485	484	1
Off-Licence	138	137	1

Club Licence	7	7	0
Licence Renewals	1296	1294	2
<b>2016-17</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	1223	1223	0
Off-Licence	441	441	0
Club Licence	110	110	0
Licence Renewals	985	985	0

<b>Christchurch</b>			
<b>2020-21</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	Not reported		
Off-Licence			
Club Licence			
Licence Renewals			
<b>2019-20</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	105	105	0
Off-Licence	32	32	0
Club Licence	0	0	0
Licence Renewals	314	314	0
<b>2018-19</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	146	146	0
Off-Licence	33	33	0
Club Licence	1	1	0
Licence Renewals	391	390	1
<b>2017-18</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	145	145	0
Off-Licence	35	31	4
Club Licence	4	4	0
Licence Renewals			
<b>2016-17</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	128	127	1
Off-Licence	40	38	2
Club Licence	5	5	0
Licence Renewals			

<b>Invercargill</b>			
<b>2020-21</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	5	5	0
Off-Licence	2	2	0
Club Licence	1	1	0
Licence Renewals	34	34	0
<b>2019-20</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	13	13	0
Off-Licence	1	1	0
Club Licence	3	3	0
Licence Renewals	34	34	0
<b>2018-19</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	6	6	0

Off-Licence	7	7	0
Club Licence	0	0	0
Licence Renewals	50	50	0
<b>2017-18</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	7	7	0
Off-Licence	0	0	0
Club Licence	1	1	0
Licence Renewals	34	34	0
<b>2016-17</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	8	8	0
Off-Licence	0	0	0
Club Licence	0	0	0
Licence Renewals	36	36	0

<b>Porirua</b>			
<b>2020-21</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	3	3	0
Off-Licence	3	2	1
Club Licence	1	1	0
Licence Renewals	22	22	0
<b>2019-20</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	4	4	0
Off-Licence	7	7	0
Club Licence	5	5	0
Licence Renewals	29	29	0
<b>2018-19</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	4	4	0
Off-Licence	3	3	0
Club Licence	1	1	0
Licence Renewals	28	28	0
<b>2017-18</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	74	4	0
Off-Licence	2	2	0
Club Licence	0	0	0
Licence Renewals	34	34	0
<b>2016-17</b>	<b>Applied for</b>	<b>Granted</b>	<b>Refused</b>
On-licence	3	3	0
Off-Licence	10	10	0
Club Licence	5	5	0
Licence Renewals	21	21	0

## Appendix Two: Additional information on the cases referenced

<p><i>Janhurst Holdings Limited</i> [2013] NZARLA 826</p>	<p>The objector was concerned about the proximity of the licensed premise in respect of the objector’s house. Although the objector lived closer to the licensed premise than the 1 kilometre ‘rule of thumb’, ARLA concluded standing was not established. An arterial road served as an “effective barrier” between the premises and the home of the objector, who also had no line of sight to the premises. The objector therefore did not have <i>a greater interest than the public generally</i>. The objection was dismissed.</p>
<p><i>Utikere v I S Dhillon and Sons Ltd</i> [2014] NZHC 270</p>	<p>The matter was appealed after the respondent was granted an off-licence by ARLA to operate a liquor store in Palmerston North. The Court found that the objector, who was a city councillor, met the ‘enhanced interest’ requirement and thus had standing to object, regardless of where he lived.</p> <p>Objectors to the licence were concerned a new off-licence would lead to increased alcohol abuse and related crimes, and that there were too many off-licences in the area already. The High Court found ARLA had correctly dismissed the objections, concluding that the number of off-licences already granted could not be a basis for an objection.</p> <p>The appeal was dismissed.</p>
<p><i>General Distributors Ltd t/a Countdown Cable Car Lane</i> [2018] NZDLCWN 907</p>	<p>The applicant sought to renew an existing off-licence within supermarket premises. Objectors believed the existence of the off-licence was leading to ‘crime and disorder’. Although the objectors lived 1.2 kilometres from the site, they were not found to have status to object because they could not show the issue of the licence would affect them personally. The Wellington licensing committee found that to establish standing to object, they would have to show “... <i>an increase in drunken behaviour, vandalism or litter on his or her property or [that] he or she [would] be personally affected by noise from the premises.</i>”</p> <p>The committee noted that it did “<i>not appear to be enough for an objector to be concerned generally about the adverse effects of alcohol on his or her community, nor for a person to demonstrate that they have a specialist interest in addressing such harm.</i>”</p> <p>The case was dismissed.</p>
<p><i>GRD Trading Limited - Liquorland Papatoetoe v Communities Against Alcohol Harm Inc</i> [2019] NZARLA 222</p>	<p>In this case, Liquorland Papatoetoe was declined an application for the renewal of an off-licence by the Auckland DLC. Communities against Alcohol Harm (CAAH) objected to the renewal of the licence as the premises could be reached directly from a petrol station. The matter was appealed to ARLA, which held it was not sufficient for CAAH to be a responsible public interest group operating nearby - their offices were situated outside the 1-2 km radius of the licensed premises. Though CAAH had members living in the area and regularly carried out work in the area, this was not considered to provide them with standing to object. ARLA noted that “<i>the interest of the [CAAH] must not only be greater than that of the public generally, but [CAAH] must have interest</i></p>

	<p><i>greater than that of the public in respect of this particular application</i>". The appeal by Liquorland was allowed.</p>
<p><i>Gisborne Liquormart Ltd v Ka Pai Kaiti Trust</i> [2018] NZARLA 316</p>	<p>In this case, the Gisborne DLC declined an application by Gisborne Liquormart Limited for a new off-licence (they owned 18 other off-licence bottle stores at the time of this application). The DLC received 21 objections to the application. Of those, only a spokesperson for Ka Pai Kaiti Trust appeared before the DLC. Ka Pai Kaiti held concerns that the area was already saturated with enough liquor outlets and worried that alcohol price competition would have a detrimental effect on whānau and community. The matter was appealed to ARLA.</p> <p>ARLA held Ka Pai Kaiti Trust did not have standing simply because it was a responsible public interest group representing a relevant aspect of the community. The question of status was a matter of judgment, and the burden of establishing status was to be discharged by the person or body asserting it. The appeal by Gisborne Liquormart Limited was allowed.</p>
<p><i>A One Limited 'Taupiri Wine Shop' v Waikato District Licensing Committee</i> [2021] 10/2021</p>	<p>In this case, an application was made by A One Limited to open an off-licence in Gordonton. One objection was received by Hāpai Te Hauora, a Māori public health service that advocates for Māori health rights. The DLC did not agree that the public health service would be affected by the granting of the application and therefore the organisation could not show any <i>greater interest than the public generally</i> in respect of this application. The Committee concluded Hāpai Te Hauora did not have standing to object under s 102 of the Act. The licence was declined and is currently being appealed to ARLA.</p>