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ALCOHOL: LOCAL CONTROL OR ENDLESS APPEAL?  
AN ANALYSIS OF LOCAL ALCOHOL POLICIES IN AOTEAROA IN LIGHT OF  
*AUCKLAND COUNCIL v WOOLWORTHS* AND THE SALE AND SUPPLY OF  
ALCOHOL (HARM MINIMISATION) AMENDMENT BILL

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## *A Abstract*

This paper discusses Local Alcohol Policies (LAPs), one decade since their promotion through the Sale and Supply of Alcohol Act 2012. It argues that although LAPs were envisioned as a way to allow local input on alcohol policies in communities, this process has been derailed by wealthy industry actors such as supermarkets. This is concluded through reference to previous literature, as well as in depth analysis of the case of *Auckland Council v Woolworths* [2021] NZCA 484. Why has legislation which sought to minimize alcohol-related harm instead invited years of litigation concerning what evidence is allowed?

The paper then discusses potential reforms to LAPs, given the need for reform. Special consideration is given to the recently-introduced Supply of Alcohol (Harm Minimisation) Amendment Bill, which seeks to amend the appeals process. The paper concludes that this Bill would not sufficiently remove the risk of judicial review. It then considers the legislative framework in Ireland, England and Wales, and Australia, noting that upcoming discussion of the LAP framework should include consideration of the Western Australian model.

*Key words:* local alcohol policies, local input, alcohol policy, Sale and Supply of Alcohol Act 2012, *Auckland Council v Woolworths*, local government

## *I Introduction*

### *B Background*

New Zealanders are a people who like to drink alcohol. Around 80% of adults drink alcohol each year,<sup>1</sup> and their consumption totalled 500 million litres in 2021.<sup>2</sup> Alcohol is key to the livelihood of many New Zealanders, from the thousands employed in the 2 billion dollar industry<sup>3</sup> to those observing cultural events, such as 21<sup>st</sup> birthdays.<sup>4</sup>

Yet alcohol can be a dangerous substance when used incorrectly. Alcohol use contributed to the deaths of 206 people in 2018.<sup>5</sup> Around one third of all arrests involve alcohol,<sup>6</sup> and an estimated \$7.85 billion in societal costs each year result from alcohol misuse.<sup>7</sup>

Accordingly, alcohol has its own system of regulations, currently found in the Sale and Supply of Alcohol Act 2012. The object of the Act is to ensure that the sale, supply, and consumption of alcohol is done safely and responsibly, and to minimise harm caused by excessive or inappropriate consumption.<sup>8</sup>

One such mechanism to achieve this object is the ability for territorial authorities to set Local Alcohol Policies (LAPs.) Territorial authorities may set LAPs which relate to the

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<sup>1</sup> Health Promotion Agency “Key Facts about Drinking in New Zealand” (May 2019) Amohia te Waiora <[www.alcohol.org.nz](http://www.alcohol.org.nz)>.

<sup>2</sup> Statistics New Zealand “Alcohol Available for Consumption: Year Ended December 2021” (24 February 2022) Stats NZ <[www.stats.govt.nz](http://www.stats.govt.nz)>.

<sup>3</sup> Beatrice Hazlehurst “Why Does Turning 21 in New Zealand Still Mean Smashing a Yardie?” *Vice* (Online, 27 October 2016).

<sup>4</sup> Beatrice Hazlehurst “Why Does Turning 21 in New Zealand Still Mean Smashing a Yardie?” *Vice* (Online, 27 October 2016).

<sup>5</sup> Drug Foundation “State of the Nation 2022” (February 2022) Drug Foundation <[www.drugfoundation.org.nz](http://www.drugfoundation.org.nz)>.

<sup>6</sup> New Zealand Police “Drunken Behaviour Has to Stop” (8 September 2010) New Zealand Police <[www.police.govt.nz](http://www.police.govt.nz)>.

<sup>7</sup> Alcohol HealthWatch “Cost of Alcohol to Society” ActionPoint <[www.actionpoint.org.nz](http://www.actionpoint.org.nz)>.

<sup>8</sup> Sale and Supply of Alcohol Act 2012, s 4.

sale, supply, or consumption of alcohol within an area;<sup>9</sup> however, before these are implemented, they must be drafted through consultation, and then become a Provisional Local Alcohol Policy (PLAP).<sup>10</sup> PLAPs can be appealed to the licensing authority<sup>11</sup> on the ground that the PLAP is unreasonable when considering the object of the Act,<sup>12</sup> and judicial review of this decision is available.<sup>13</sup> Theoretically, this process allows communities to submit their views on alcohol regulations in their areas and ensure local control,<sup>14</sup> while ensuring the object of the Act is followed.

A decade on from the Act's enactment, it is clear that this process is not as smooth as hoped. Auckland Council issued its PLAP in May 2015.<sup>15</sup> Following submissions from over 2600 residents, this policy included a reduction in the hours venues could open depending on location and a ban on new off-licences in priority areas.<sup>16</sup> However, seven years later, Auckland's PLAP is still not in force, and will soon after this paper's submission be litigated in the Supreme Court.<sup>17</sup> A system designed to facilitate local control and consultation appears stymied by bureaucracy and appeals by large industry actors, leaving Auckland without an LAP in 2022.

### *C Thesis*

This essay considers two central questions. Firstly, is the LAP system working effectively to allow for local input while meeting the object of the Act? Secondly, does the Sale and

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<sup>9</sup> Section 78(1).

<sup>10</sup> Andrew Green and John Young, *Laws of New Zealand* (online ed) Local Alcohol Policies.

<sup>11</sup> Sale and Supply of Alcohol Act, s 82.

<sup>12</sup> Section 81(4).

<sup>13</sup> Section 84(1)(d).

<sup>14</sup> Health Promotion Agency "Influence Your Alcohol Policy" Amohia te Waiora <[www.alcohol.org.nz](http://www.alcohol.org.nz)>.

<sup>15</sup> Auckland Council "Provisional Auckland Local Alcohol Policy" (May 2015) Auckland Council <[www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)>.

<sup>16</sup> Maria Slade "Auckland Alcohol Rules to Get Tougher" Stuff (New Zealand, 13 May 2015).

<sup>17</sup> Adam Jacobson "Supermarkets Set to Appeal Alcohol Sale Limits to Supreme Court" Stuff (New Zealand, 14 April 2022).

Supply of Alcohol (Harm Minimisation) Amendment Bill sufficiently resolve concerns with the Act, or are further reform measures needed instead?

This essay contends that the LAP system is not working as intended. Due to lengthy appeals, industry pressure, and inadequate consultation, the objects of the Act to minimise harm and adequately reflect local views are not being met and need further reform.

It also concludes that Chlöe Swarbrick MP's proposed Members' Bill could help alleviate these issues to some extent, but that ultimately further legislative change to mitigate the risk of appeal is needed.

#### *D Scope and Structure*

This essay is not policy-focussed or health-focussed. Several articles have been released over the past decade focussing on the scientific impacts of LAPs and alcohol law generally, some of which is referenced where relevant. However, this is a legal essay and focusses as much as possible on the administrative and consultative aspects of this legal framework.

This paper begins by outlining historical background of LAPs, the 2012 Act, and how this framework operates in practice, especially the appeals process. Part IV then details some of the issues which have arisen under the Act, from lengthy appeals to unequal input. Part V looks more closely at the case of *Auckland Council v Woolworths New Zealand Limited* [2021].<sup>18</sup> Ultimately, this discussion concludes that the current legislative framework does not achieve its goals and further reform is needed.

The rest of this paper discusses potential reforms of the legislative regime which could better balance local input and consultation with responsible control of alcohol. One such proposal is Chloe Swarbrick MP's proposed Sale and Supply of Alcohol (Harm Minimisation) Amendment Bill. Other reforms discussed include relatively minor changes

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<sup>18</sup> *Auckland Council v Woolworths* [2021] NZCA 484.

that would improve public participation, as well as wider structural reforms. Is having alcohol policy under local jurisdiction a mistake?



## II Legislative History

### A The 1989 Act

For much of the 20<sup>th</sup> century in New Zealand, alcohol regulations were relatively strict. In response to the “widespread drunkenness” of colonial society,<sup>19</sup> and the rise in opposition to alcohol coinciding with granting women the right to vote in 1893,<sup>20</sup> New Zealand employed strict measures such as 6pm closing times for pubs.<sup>21</sup>

Local control of alcohol was important; the Alcoholic Liquor Sale Control Bill 1893 established licensing polls in electorates every three years.<sup>22</sup> If the requisite proportion of voters in an area voted to either go ‘dry’, continue as normal, or reduce the number of licences by 25%, the relevant local Licensing Committee needed to follow this vote.<sup>23</sup> Eden, Roskill, and Tawa remained ‘dry’ until 1999.<sup>24</sup> This demonstrates that although the 2012 Act and its promotion of LAPs are relatively historically recent, the concept of local communities deciding how they wished to regulate alcohol in their areas is not new.

Alcohol regulations liberalised slowly from the 1960s onwards, social attitudes relaxed;<sup>25</sup> 6pm closing times would be extended to 10pm through referendum in 1967.<sup>26</sup> However, in the 1980s a Working Party on Liquor found that the then-current legislation was still

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<sup>19</sup> P.F. McKimmey “The Temperance Movement in New Zealand 1835-1894” (MA Thesis, University of Auckland, 1968).

<sup>20</sup> Benoit Dostie and Ruth Dupré “Serial Referendums on Alcohol Prohibition” (2016) 40(3) *Social Science History* 491 at 496.

<sup>21</sup> New Zealand Parliament “The Six O’Clock Swill: How Drinking Law Reforms Shaped New Zealand Society” New Zealand Parliament <[www.parliament.nz](http://www.parliament.nz)>.

<sup>22</sup> Dostie and Dupré, above n 20, 496.

<sup>23</sup> J Cocker “The First Colonial Local Option Poll” in J Murray and J Cocker *Temperance and Prohibition in New Zealand* (Epworth Press, London, 1930) 71 at 72.

<sup>24</sup> Bruce Murray *A History of Tawa* (Tawa Historical Society, Wellington, 2014) at 229.

<sup>25</sup> Paul Christoffel “Liquor Laws - Loosening of Liquor Laws” (5 September 2013) Te Ara - the Encyclopedia of New Zealand” <[www.teara.govt.nz](http://www.teara.govt.nz)>.

<sup>26</sup> Natasha Frost “The Six O’Clock Swill Was an Hour of Drunken Anarchy” *Atlas Obscura* (online, 4 April 2018).

marked by conflict between prohibition and business, and recommended reform.<sup>27</sup> It argued that increasing the availability of alcohol would not increase resultant harm.<sup>28</sup>

The Sale of Liquor Act 1989 (henceforth referred to as the 1989 Act) followed this advice by liberalising its sale. Accordingly, the Act represented a shift from the prevailing method of reducing liquor abuse by limiting the proliferation of licences or the length of trading hours as had been done previously.<sup>29</sup> Business owners no longer needed to argue to Commissions that opening a new liquor outlet was “necessary or desirable.”<sup>30</sup> Wine was introduced to supermarkets; this was followed soon by beer in a 1999 amendment<sup>31</sup> which also decreased the purchase age of alcohol to 18.

Passed in the context of the Fourth Labour Government’s neoliberal market and economic liberalisation reforms,<sup>32</sup> the object of the Act was to “establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse.”<sup>33</sup> However, the Act had the opposite effect. Per capita alcohol consumption increased by around 10% from 1998 to 2008.<sup>34</sup>

Studies have since shown that increased density of alcohol outlets is associated with antisocial behaviour, property damage, sexual offences, and violence.<sup>35</sup> Despite some

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<sup>27</sup> Linda Hill and Liz Stewart “The Sale of Liquor Act, 1989: Reviewing Regulatory Practices” (1996) 7 *Social Policy Journal of New Zealand*.

<sup>28</sup> Hill and Stewart.

<sup>29</sup> Linda Hill and Liz Stewart “Responsive Regulation Theory and the Sale of Liquor Act” (1998) *Social Policy Journal of New Zealand* 49-96.

<sup>30</sup> Hill and Stewart.

<sup>31</sup> Geoffrey Palmer “Alcohol, Health, and the Law Commission’s Liquor Review” (2009) 2022(15) *Victoria University of Wellington Legal Research Paper*.

<sup>32</sup> Doug Sellman, Jennie Connor, Geoffrey Robinson and Sam McBride “Alcohol Reform - New Zealand Style: Reflections on the Process from 1984 to 2012” 15(1) (2017) *Psychotherapy and Politics International* e1398.

<sup>33</sup> Sale of Liquor Act 1989, s 4.

<sup>34</sup> Sellman et al, above n 32.

<sup>35</sup> Michael Cameron, William Cochrane, Craig Gordon and Michael Livingston “The Locally-Specific Impacts of Alcohol Outlet Density in the North Island of New Zealand, 2006-2011” (2013) *Health Promotion Agency* <[www.hpa.org.nz](http://www.hpa.org.nz)>.

positive changes, it was clear that the liberalisation of the 80s and 90s had not provided enough controls. In 2008, proliferation of alcohol stores and rising violence in South Auckland caused the Government to establish a review of the 1989 Act.<sup>36</sup>

### *B 2009 Law Commission Report*

In July 2009, the Law Commission published its report as a result of this review.<sup>37</sup> Interestingly, its President at the time was Sir Geoffrey Palmer, who had been the architect of the 1989 Act.<sup>38</sup> However, the Law Commission decided that some policy settings needed to be revised to.<sup>39</sup>

Among the report's findings were that liquor licences had increased from 6,295 in 1990 to 14,183 in June 2009,<sup>40</sup> alcohol was more affordable than in 1989,<sup>41</sup> 68% of alcohol was consumed off-licence or away from licensed premises,<sup>42</sup> and young people in particular had increased their binge drinking since liberalisation.<sup>43</sup> The report also found that this increased alcohol abuse was linked to violent and property offending,<sup>44</sup> antisocial behaviour,<sup>45</sup> and negative health impacts.<sup>46</sup> Ultimately, the Commission found that there was a case for changes to the 1989 Act.<sup>47</sup>

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<sup>36</sup> Sellman et al, above n 32.

<sup>37</sup> Law Commission *Alcohol in our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009).

<sup>38</sup> At iii.

<sup>39</sup> At iv.

<sup>40</sup> At 17.

<sup>41</sup> At 24.

<sup>42</sup> At 25.

<sup>43</sup> At 38.

<sup>44</sup> At 48.

<sup>45</sup> At 51.

<sup>46</sup> At 69.

<sup>47</sup> At 102.

The Commission issued a wide range of proposals, one of which was widespread adoption of Local Alcohol Policies. Several councils already had LAPs in place regulating trading hours, locations, and operation of premises, and explaining how the law would be enforced.<sup>48</sup> However, decision-makers were not bound by these local alcohol policies, and not all authorities had implemented them.<sup>49</sup> The Commission believed that communities should have more say and input into alcohol decision-making,<sup>50</sup> noting that decision-making by “local personnel... has obvious merit.”<sup>51</sup>

Commented [JM1]: Spelling?

The Commission considered that “every District Council should have a local alcohol policy.”<sup>52</sup> LAPs were intended to be produced through consultation (but not under any special consultative procedure)<sup>53</sup> with the public, relevant health authorities and Police, and then approved by both the Council and the Licensing Authority.<sup>54</sup> Licensing Authorities would then be able to refuse a licence on the ground that it would be inconsistent with the relevant LAP, widening the grounds upon which to refuse licences.<sup>55</sup> However, the Commission argued that Licensing Authorities should not be bound by the LAP, enabling a degree of flexibility and expertise.<sup>56</sup>

The Commission’s recommendations relating to LAPs were to some extent adopted by the Government, and eventually became part of the new Sale and Supply of Alcohol Act, which passed in 2012.<sup>57</sup>

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<sup>48</sup> At 126.

<sup>49</sup> At 126.

<sup>50</sup> At 125.

<sup>51</sup> At 145.

<sup>52</sup> At 222.

<sup>53</sup> At 127.

<sup>54</sup> At 127.

<sup>55</sup> At 221.

<sup>56</sup> At 126.

<sup>57</sup> New Zealand Parliament “Sale and Supply of Alcohol Bill” *New Zealand Parliament* <[www.parliament.nz](http://www.parliament.nz)>.

### *III Local Alcohol Policies: The Legal Framework*

#### *A What are LAPs?*

The overall purpose of the 2012 Act is to put in place a reasonable system of control over the sale and supply of alcohol, and reform alcohol law so that it helps to achieve the object of the Act.<sup>58</sup> This object is that:

- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
- (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.<sup>59</sup>

LAPs can relate to the sale, supply, and/or consumption of alcohol within a district.<sup>60</sup> In doing so, LAPs may include policies on the location of licensed premises, whether any further licences can be issued in an area, maximum trading hours, discretionary conditions for issuing licences, and/or one-way door restrictions, but no other matters.<sup>61</sup> LAPs are not compulsory, which goes against the Commission's recommendation that all councils should adopt them.<sup>62</sup> No reasoning for this change can be found in an explanatory note or Hansard, but given the small size of some territorial authorities, it is logical that they are not mandated to adopt LAPs.

Territorial authorities who *do* choose to create an LAP must first produce a draft policy, having regard to a range of factors including the district plan's objectives, existing bylaws, demography, health indicators, and any alcohol-related problems in the district.<sup>63</sup>

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<sup>58</sup> Sale and Supply of Alcohol Act, s 3.

<sup>59</sup> Section 4.

<sup>60</sup> Section 75.

<sup>61</sup> Section 77.

<sup>62</sup> Law Commission, as above n 37, at 222.

<sup>63</sup> Section 78.

Authorities must have also consulted with Police, inspectors, and Medical Officers of Health.<sup>64</sup>

If a territorial authority wishes to continue with the LAP creation process, it must then produce a provisional policy (PLAP).<sup>65</sup> The “special consultative procedure” must be used by the authority throughout this process.<sup>66</sup> This procedure is defined in s 5(1) of the Local Government Act 2002,<sup>67</sup> and requires authorities to accept written submissions and ensure all meetings relating to the policy are public.<sup>68</sup> This is interesting because the Law Commission had recommended that the special consultative procedure should not be used due to the burden this would place on councils.<sup>69</sup> Parliament’s reasoning for this is not obvious; the only mention of the procedure in the Hansard debates is a comment by Denis O’Rourke MP of New Zealand First that “public buy-in should be provided for.”<sup>70</sup>

A PLAP is adopted 30 days after public notification, unless an appeal has been made.<sup>71</sup> Once adopted, LAPs are one of the compulsory matters licensing authorities must have regard to when issuing licences.<sup>72</sup> Licences may also be refused,<sup>73</sup> or conditions imposed upon them,<sup>74</sup> because the licensing committee believes an LAP requires this. This offers some degree of flexibility to decisionmakers, as the Law Commission recommended,<sup>75</sup> but does mean that LAPs will be highly influential in liquor licensing decisions. Accordingly, a successfully implemented LAP could be a useful tool to minimise alcohol-related harm, developed using community input.

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<sup>64</sup> Section 78(4).

<sup>65</sup> Section 79.

<sup>66</sup> Section 79(1).

<sup>67</sup> Section 5.

<sup>68</sup> Local Government Act 2002, s 83.

<sup>69</sup> Law Commission, as above n 37, at 127.

<sup>70</sup> (24 October 2012) 685 NZPD.

<sup>71</sup> Sale and Supply of Alcohol Act, s 87.

<sup>72</sup> Section 105.

<sup>73</sup> Section 108.

<sup>74</sup> Section 109.

<sup>75</sup> Law Commission, as above n 37, at 65.

## B Appeals of LAPs

However, the Act allows for provisions of LAPs to be appealed to the Alcohol Regulatory and Licensing Authority (ARLA). The existence of this special appeal authority is unique to LAPs, as other bylaws are typically appealed through judicial review to the High Court.<sup>76</sup> This special process has been criticised, as noted in Part IV, and is the target of considerable discussion in Part VI.

Section 81 grants the right of appeal only to the Police, Medical Officers of Health,<sup>77</sup> and anyone else who engaged in the special consultative procedure.<sup>78</sup> Appeals may only be made on the ground that an element of the PLAP is unreasonable in light of the object of the Act,<sup>79</sup> i.e., the appellant believes that an element of the policy is unreasonable given the Act is intended to minimise alcohol-related harm and provide for safe and responsible sale, supply, and consumption of alcohol.

When determining what is unreasonable, ‘proportionality’ is a key factor; ARLA will balance the interference with rights against the benefits sought to be achieved by the provision<sup>80</sup> to the inhabitants of the area.<sup>81</sup> ARLA will consider whether any invasion of rights outweighs the benefit of an element in minimising alcohol-related harm.<sup>82</sup>

Although the territorial authority does not need to be sure the element will minimise harm and can apply a precautionary approach,<sup>83</sup> the approach must apply to the facts of the locality, not the nation as a whole.<sup>84</sup> Despite this, there is some flexibility: in *Tasman District Council*, a provision reducing opening hours in the Tasman PLAP was reasonable,

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<sup>76</sup> Local Government Act, s 219.

<sup>77</sup> Sale and Supply of Alcohol Act, s 81(2).

<sup>78</sup> Section 81(1).

<sup>79</sup> Section 81(4).

<sup>80</sup> *Hospitality New Zealand Inc v Tasman District Council* [2015] NZAR 156 (ARLA) at [47].

<sup>81</sup> *Carter Holt Harvey Limited v North Shore City Council* [2006] 2 NZLR 787 (HC) at [102].

<sup>82</sup> *Hospitality New Zealand Inc*, above n 80, at [51].

<sup>83</sup> At [54].

<sup>84</sup> At [55].

as nearby Motueka had experienced a reduction in alcohol-related harm as a result of premises closing at 2am instead of 3am.<sup>85</sup> Accordingly, it was not unreasonable to believe that a reduction of hours in Tasman would also reduce harm, and because any economic disadvantages comparatively paled in significance, the element was overall reasonable.<sup>86</sup>

If ARLA is not satisfied that the element is unreasonable in light of the object of the Act, as in *Tasman District Council*, it must dismiss the appeal.<sup>87</sup> The appellant cannot appeal this decision,<sup>88</sup> aside from through judicial review following the Judicial Review Procedure Act 2016.<sup>89</sup>

However, if it is satisfied that the element is unreasonable in light of the object of the Act (and the appellant is a party who can appeal this), the authority must ask the council to reconsider this element of the PLAP.<sup>90</sup> If this occurs, the territorial authority can choose to resubmit the policy with the element deleted,<sup>91</sup> amended,<sup>92</sup> abandon the PLAP altogether,<sup>93</sup> or appeal this finding to the High Court.<sup>94</sup>

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<sup>85</sup> At [62].

<sup>86</sup> At [67].

<sup>87</sup> Sale and Supply of Alcohol Act, s 83(1).

<sup>88</sup> Section 83(4).

<sup>89</sup> Section 83(5).

<sup>90</sup> Section 83(2).

<sup>91</sup> Section 84(1)(a).

<sup>92</sup> Section 84(1)(b).

<sup>93</sup> Section 84(1)(d).

<sup>94</sup> Section 84(1)(c).



## *IV Auckland Council*

### *A Introduction to this Part*

The Court of Appeal issued its judgment of *Auckland Council* in 2021, despite Auckland Council issuing its PLAP in May 2015.<sup>95</sup> Auckland's PLAP is still not in force, and large supermarket chains appealed it earlier this year to the Supreme Court.<sup>96</sup> This makes the case useful for this paper for two purposes. Firstly, it serves as a useful case study of how the PLAP appeal process works in action. Secondly, it highlights a key issue with the current legislative framework, that lengthy appeals have been expensive for councils and prevented implementation of public input. No other paper discussing LAPs has paid close attention to this case, and thus the legal aspects of this discussion allow this paper to add to the existing literature on this topic.

### *B Auckland's PLAP and ARLA*

Auckland Council's PLAP was publicly notified on 19 May 2015.<sup>97</sup> This contained a range of provisions, some of which were objected to by Woolworths and Foodstuffs, two leading supermarket operators.<sup>98</sup> ARLA considered appeals on these elements but ultimately the parties were unsuccessful in appealing four of them.<sup>99</sup>

Issue One concerned the provisions restricting maximum trading hours for off-licence outlets, shifting closing times earlier than the default time of 11pm, to 9pm.<sup>100</sup> Because the appellants' stores operate later than 9pm, after this they would need to close off access to

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<sup>95</sup> Auckland Council, above n 15.

<sup>96</sup> Jacobson, above n 17.

<sup>97</sup> *Redwood Corporation Ltd v Auckland City Council* [2017] NZARLA PH247254 at [1].

<sup>98</sup> *Woolworths New Zealand Ltd v Alcohol Regulatory and Licensing Authority* [2020] NZHC 293 at [8].

<sup>99</sup> At [8].

<sup>100</sup> At [9].

their alcoholic beverages.<sup>101</sup> The Council stated that this was aimed at preventing opportunity to “pre-load” on alcohol, i.e. consume cheap alcohol before going to a licensed venue.<sup>102</sup> Off-licence purchases after 10pm were twice as likely to be made by heavier drinkers,<sup>103</sup> and a majority of alcohol-related presentations in hospital had most recently consumed alcohol from an off-licence venue.<sup>104</sup> Because 65% of off-licences would be impacted by the 9pm closing time, the Council believed that this would be effective in reducing alcohol-related harm.<sup>105</sup> ARLA agreed, deciding that despite the lack of specific evidence showing harm is reduced from limiting off-licence trading hours, there was enough evidence when applying the ‘precautionary principle’ that the element was reasonable.<sup>106</sup>

Issue Two concerned the PLAP’s recommendation of a temporary freeze on new off-licence outlets in select areas, including the city centre and areas which were of high risk.<sup>107</sup> Following the end of this freeze, there would be a rebuttable presumption against any new off-licence outlets in those areas.<sup>108</sup> The appellants objected to this for several reasons. They argued that the rebuttable presumption is ultra vires the Act as it does not come under any of the categories allowed under s 77(1).<sup>109</sup> ARLA disagreed, stating that it comes under s 77(1)(d), as it is a policy advising decisionmakers on whether a licence should be granted in an area.<sup>110</sup> The appellants also argued that this element was vague as the circumstances which rebut this presumption are not specified.<sup>111</sup> ARLA again disagreed, finding that the presumption could be “considered on a case by case basis” and would likely mean that greater justification for a new licence would be needed.<sup>112</sup>

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<sup>101</sup> At [9].

<sup>102</sup> *Redwood Corporation Ltd*, above n 97, at [133].

<sup>103</sup> At [134].

<sup>104</sup> At [138].

<sup>105</sup> At [143].

<sup>106</sup> At [146].

<sup>107</sup> *Woolworths New Zealand Ltd*, above n 98, at [10].

<sup>108</sup> At [10].

<sup>109</sup> *Redwood Corporation Ltd*, above n 97, at [105].

<sup>110</sup> At [115].

<sup>111</sup> At [105].

<sup>112</sup> At [117].

The appellants argued that the freeze is unreasonable because it only targets off-licences, and not on-licences.<sup>113</sup> They submitted that on-licences are equal contributors to alcohol-related harm,<sup>114</sup> that this ignores the important social and economic role that supermarkets have for communities,<sup>115</sup> and that the benefits of the freeze would be limited as most of the affected areas already have a supermarket or grocery store.<sup>116</sup> ARLA disagreed, finding that density of off-licence venues is associated with a range of offences regardless of what type of off-licence,<sup>117</sup> and that the targeted areas were mostly residential.<sup>118</sup>

Issue Three was that the PLAP required local impact reports to be prepared by licensing inspectors, and for those reports to be taken into account by District Licensing Committees (DLCs) and ARLA.<sup>119</sup> The appellants objected to this, arguing that this was not one of the permitted policies under s 77(1) of the Act.<sup>120</sup> ARLA denied this appeal, finding that these reports are merely information,<sup>121</sup> and is therefore neither a policy or precluded by s 77(1).<sup>122</sup>

Issue Four was that the PLAP allowed for a range of discretionary conditions to be applied to off-licences, such as taking steps to ensure intoxicated individuals do not enter the premises and keeping a register of alcohol-related incidents, unless there was good reason to do so.<sup>123</sup> The appellants objected to this, claiming that this is unreasonable because the element is ultra vires s 77(1)(f) of the Act, which relates to issuing licenses subject to

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<sup>113</sup> At [106].

<sup>114</sup> At [106].

<sup>115</sup> At [108].

<sup>116</sup> At [107].

<sup>117</sup> At [120].

<sup>118</sup> At [118].

<sup>119</sup> *Woolworths New Zealand Ltd*, above n 98, at [11].

<sup>120</sup> *Redwood Corporation Ltd*, above n 97, at [89].

<sup>121</sup> At [91].

<sup>122</sup> At [93].

<sup>123</sup> *Woolworths New Zealand Ltd*, above n 98, at [193].

discretionary conditions.<sup>124</sup> ARLA disagreed, arguing that the wording “unless there is a good reason not to” meant the conditions were still discretionary in nature.<sup>125</sup>

### *C High Court*

Although the appellants did not have a right of appeal against these decisions, judicial review of the decision was still allowed.<sup>126</sup> Woolworths pleaded that ARLA committed four errors of law when deciding on the four previously mentioned issues.<sup>127</sup>

Duffy J found on Issue One that the hour restrictions were unreasonable, as Parliament considered that “in general 11pm closing hours will meet the object” of the Act.<sup>128</sup> The Judge found that the evidence of particular bottle stores meant that this policy would be beneficial for the full Auckland region, and ARLA’s use of the precautionary principle was an error of law.<sup>129</sup>

Duffy J also found that ARLA’s decision on Issue Two to uphold the temporary freeze and rebuttable presumption, and its application to all off-licence types, were unlawful because of the lack of reasons given to support it.<sup>130</sup>

Her Honour also found that ARLA erred in law on Issue Three, because local impact reports are not mentioned in s 77(1).<sup>131</sup>

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<sup>124</sup> *Redwood Corporation Ltd*, above n 97, at [201].

<sup>125</sup> At [202].

<sup>126</sup> Sale and Supply of Alcohol Act, s 83(5).

<sup>127</sup> *Woolworths New Zealand Ltd*, above n 98, at [11].

<sup>128</sup> At [96].

<sup>129</sup> At [97].

<sup>130</sup> At [156].

<sup>131</sup> At [207].

Finally, the Judge found on Issue Four that ARLA was incorrect in allowing the ‘discretionary conditions’ to be applied unless there was good reason for them not to be,<sup>132</sup> because they replicate mandatory obligations elsewhere in the Act, and thus they “leave no room for the proper and purposeful exercise of discretion.”<sup>133</sup>

The overall outcome of the High Court decision was thus that ARLA had erred in law on all four decisions, and that all four related provisions were unreasonable in light of the objects of the Act.<sup>134</sup> These decisions were accordingly remitted back to ARLA for reconsideration.<sup>135</sup>

#### *D Court of Appeal*

This decision was appealed by the Auckland Council, on all but Issue Three. The Court overall found for the Council and ARLA, finding ARLA did not err in law on any of the issues, and that the relevant elements of the PLAP were reasonable in light of the Act.<sup>136</sup>

On Issue One, the Court found that Duffy J had “insisted the evidence meet a higher standard than the legislation requires.”<sup>137</sup> The Court found that ARLA’s reasoning that earlier closing hours would lead to reduced alcohol-related offending was adequate.<sup>138</sup> It also found that ARLA’s application of the precautionary principle was acceptable due to “the effects of specific licensing measures on alcohol abuse” being difficult to measure.<sup>139</sup>

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<sup>132</sup> At [208].

<sup>133</sup> At [202].

<sup>134</sup> At [210].

<sup>135</sup> At [216].

<sup>136</sup> *Auckland Council*, above n 18.

<sup>137</sup> At [104].

<sup>138</sup> At [111].

<sup>139</sup> At [63].

The Court also found that ARLA had in fact reviewed evidence at length with relation to Issue Two,<sup>140</sup> including whether the relevant evidence applied to all off-licence venues.<sup>141</sup> The Court considered that off-licence density leads to an increase in alcohol-related harm, regardless of whether this is a liquor store or supermarket.<sup>142</sup>

Finally, the Court concluded that the Judge was incorrect in deciding against ARLA on Issue Four, as “there is no reason why a policy cannot include a preference about how the discretion to impose a condition should be exercised.”<sup>143</sup>

### *E Implications*

One conclusion from this case study is that there are several contentious issues in interpreting the Act. Most obvious is ARLA’s application of the precautionary principle, which was rejected by the High Court and yet allowed by the Court of Appeal. Issues such as whether the precautionary principle may be applied and how, what level of reasoning is required for decisions, and how to apply s 77 remain contentious. To some extent, this is due to the Act being relatively new, however the Supreme Court’s decision on this case should hopefully clarify these issues. While they remain contentious and the law is unclear, authorities will not be confident in its application to their PLAPs, and supermarkets will continue to challenge these provisions, delaying or successfully preventing LAP adoption.

Another conclusion is that ARLA and the Court of Appeal have shown some degree of leniency towards the Auckland Council, and willingness to accept presumptions. This can most clearly be seen through the application of the precautionary principle, and ARLA’s categorisation of impact reports as mere information. This suggests a willingness to allow

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<sup>140</sup> At [118].

<sup>141</sup> At [117].

<sup>142</sup> At [118].

<sup>143</sup> At [125].

local communities to regulate alcohol so long as this is responsible, despite challenges from supermarkets.

The final, most obvious conclusion is that this case highlights the ability of industry actors to delay LAPs through prolonged litigation. After 7 years, Auckland is still without any local alcohol policy, with parties debating evidentiary requirements and relevant factors, while alcohol-related harm continues. In ensuring the object of the Act is being followed, it is actually being undermined through prevention of harm minimisation or local input. This suggests the need for reform.

## *V Issues with this System: Generally*

### *A Introduction to Part*

Although *Auckland Council* is an obvious example of the system not working, other literature and studies have highlighted issues generally with other LAPs. These include lengthy appeals which in some instances have led to a lack of progress, wealthy industry actors such as supermarkets having undue influence on LAPs, and inadequate public consultation, especially of Māori and Pasifika.

This Part analyses these purported issues. Is there evidence of these issues? If so, to what extent is reform needed to solve them? And do these issues undermine the object of the Act?

### *B Lengthy Appeals and Lack of Progress*

Previous literature points to the issues with the Auckland Council PLAP being a wider issue. A review of progress towards establishing LAPs throughout the country in December 2017 found that by August 2017, 40 (76%) of New Zealand's territorial authorities had released a draft LAP.<sup>144</sup> Of these 40, 33 had progressed to a PLAP. However, all but one of these PLAPs were appealed, and 30 were appealed by supermarkets.<sup>145</sup> Some Councils, such as Christchurch City, had decided to abort the LAP process, while Wellington City had not progressed any developments since its 2014 hearing.<sup>146</sup>

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<sup>144</sup> Nikki Jackson and Heather Robertson, *A Review of Territorial Authority Progress Towards Local Alcohol Policy Development* (Alcohol Healthwatch, December 2017), at 13.

<sup>145</sup> At 16.

<sup>146</sup> At 17.



In the five years since, there has been further progress implementing LAPs. As of May 2022, 41 territorial authorities have adopted LAPs.<sup>147</sup> Of the 30 without LAPs, 15 have not released a draft LAP at all.<sup>148</sup> Authorities not attempting to adopt an LAP forgo an opportunity to minimise harm with local input, but their implementation is optional. The remaining 15 authorities who have published a draft LAP yet still not adopted one are of greater concern. Auckland, Palmerston North City and Whangarei have released PLAPs yet these have still not been adopted,<sup>149</sup> removing local input from alcohol policy.

Furthermore, although a majority of authorities have adopted LAPs, these only cover 35% of the New Zealand population due to the lack of LAP in many major urban areas,<sup>150</sup> in particular, Auckland. Auckland's retail sales totalled \$10.6 billion in the March 2022 quarter,<sup>151</sup> so it is logical that the alcohol industry has targeted the region's PLAP. In 2017, areas with high proportions of Māori and low-income residents were more likely to not have developed LAPs,<sup>152</sup> but Alcohol Healthwatch have not conducted more recent research on this.

Overall, despite appeals only continuing to prevent a minority of authorities from establishing LAPs, these authorities include vulnerable populations and some of the most populous cities in New Zealand. This is still a serious issue, limiting authorities' ability to minimise alcohol-related harm in their districts, and thus undermining the object of the Act, suggesting the need for reform.

### *C High Influence from Wealthy Industry Actors*

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<sup>147</sup> Alcohol HealthWatch "Local Alcohol Policies" Alcohol Healthwatch <[www.actionpoint.org.nz](http://www.actionpoint.org.nz)>.

<sup>148</sup> Alcohol HealthWatch "Status of Local Alcohol Policies, May 2022" Alcohol Healthwatch <[www.actionpoint.org.nz](http://www.actionpoint.org.nz)>.

<sup>149</sup> Alcohol Healthwatch.

<sup>150</sup> Alcohol Healthwatch, above n 147.

<sup>151</sup> Statistics New Zealand "Retail Trade Survey: March 2022 Quarter" (24 May 2022) Stats NZ <[www.stats.govt.nz](http://www.stats.govt.nz)>.

<sup>152</sup> Jackson and Robertson, above n 144, at 18.

Another issue is that appeals are disproportionately from industry actors. Jackson and Robertson found in 2017 that in 94% of cases, at least one of the appellants of PLAPs were supermarket retailers.<sup>153</sup> In comparison, only 28% of appealed policies were appealed by the Police, health agencies, or community members.<sup>154</sup> This suggests that business interests were more likely to appeal PLAPs. One potential reason for this is that lodging an appeal requires payment of a \$517.50 fee,<sup>155</sup> which could be too costly for a typical resident but a necessary business expense for supermarkets which sell alcohol.

Because appeals are disproportionately from business interests, the appeal process necessarily loosens restrictions contained in PLAPs. “Strong measures” aimed at controlling where alcohol is physically available were often successfully appealed.<sup>156</sup> So too were measures controlling when alcohol was available; however, it was more common for later closing times to be introduced through the consultation process between draft LAP and PLAP.<sup>157</sup> Overall appeals appear to have “blunted” the impact of LAPs by loosening them and delaying their implementation.<sup>158</sup>

Even the fear of appeals caused authorities to be wary of excessive restrictions. The Mayor of the Hauraki District Council claimed in 2014 that Progressive Enterprises (now known as Woolworths New Zealand) had “made it clear... legal action would result if the off-licence hours were not what it wanted.”<sup>159</sup> Because it would have cost at least \$20,000 to defend the Council’s decision in a District with only 18,000 residents,<sup>160</sup> this encourages councils to be less restrictive. Another example of this is Tasman Council, which considered that strict temporal restrictions would not be justified due to the “cost and time

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<sup>153</sup> At 16.

<sup>154</sup> At 16.

<sup>155</sup> At 56.

<sup>156</sup> At 53.

<sup>157</sup> At 35.

<sup>158</sup> Stephen Randerson, Sally Caswell and Taisia Huckle “Changes in New Zealand’s Alcohol Environment Following Implementation of the Sale and Supply of Alcohol Act (2012)” (2018) 131 NZ Med J 14-23.

<sup>159</sup> Waikato Times, “Countdown Heavies Small Towns” *Waikato Times* (New Zealand, 1 March 2014).

<sup>160</sup> Waikato Times.

that may be associated with defending an appeal against the LAP.”<sup>161</sup> Limited monetary resourcing of local governments means even the threat of appeal by supermarkets is powerful.<sup>162</sup>

Aside from appeals, supermarkets and the hospitality industry enjoy significant influence. Some authorities chose not to impose certain measures due to their “negative economic consequences,” demonstrating the influence of corporate and economic interests.<sup>163</sup> Desires to seek a compromise between business commercial interests and minimising alcohol-related harm were common.<sup>164</sup> New Zealanders who participated in the decision-making process commonly expected that the views of bar and supermarket owners would be prioritised.<sup>165</sup> A 2012 study validates this belief, finding that industry leaders such as supermarkets had strong influence on alcohol policy, in most cases being the most powerful group.<sup>166</sup> Maclennan et al hypothesise that this is because name recognition is the primary factor in being elected to local government,<sup>167</sup> and thus funding and support from local groups and businesses could sway councillors.<sup>168</sup>

This outsized influence from business interests clearly runs counter to the object of the Act. The Act does not aim to balance the business interests of supermarkets and liquor stores with public safety. Its object is strictly to ensure alcohol is sold, supplied, and consumed in a safe and responsible manner, and minimise harm. For LAPs to truly reflect this object, they should, within reason, be focussed on this aim, not balancing that aim with commercial interests or the threat of appeal. The appeals process has been weaponised by industry

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<sup>161</sup> Tasman District Council “Summary of Information and Statement of Proposal: Draft Tasman District Council Local Alcohol Policy” (2013).

<sup>162</sup> Jackson and Robertson, above n 44, at 56.

<sup>163</sup> At 54.

<sup>164</sup> Randerson et al, above n 158.

<sup>165</sup> Kypros Kypri, Brett Maclennan, Shawnee Brausch, Emma Wyeth and Jennie Connor, “Did New Zealand’s New Alcohol Legislation Achieve Its Object of Facilitating Public Input? Qualitative Study of Maori Communities” (2019) 38, 4 *Drug and Alcohol Review* 331-338.

<sup>166</sup> Brett Maclennan, Kypros Kypri, Robin Room, John Langley “Local Government Alcohol Policy Development: Case Studies in Three New Zealand Communities” 108, 5 (2012) *Addiction* 885-895.

<sup>167</sup> Richard Mulgan *Politics in New Zealand* (2nd ed, Auckland University Press, Auckland, 1997).

<sup>168</sup> Maclennan et al, above n 166.

actors to protect revenue, rather than used as a legitimate method to ensure PLAPs meet the object of the Act. It is clear that some degree of legislative reform is necessary to prevent this from occurring.

#### *D Inadequate Public Consultation*

A third commonly stated issue with the LAP process is that existing public consultation methods are inadequate. Although the process is designed to allow communities to submit their views on regulations in their area, many submitters believed that the status quo would prevail and individual submissions did not matter.<sup>169</sup> As previously stated, submitters often expected that the views of industry leaders would be prioritised.<sup>170</sup>

One study found a small increase in consultations relating to LAPs and bylaws, but this was not significant.<sup>171</sup> This increase was also concentrated among residents who were “older, wealthier and more European.”<sup>172</sup> Another study confirmed this finding, noting that interviewed Māori who had participated in the process were frustrated at a perceived lack of feedback or consultation following their input.<sup>173</sup> This is concerning for two reasons. Firstly, Māori are at most risk of alcohol-related harm, as the prevalence of hazardous drinking is higher among Māori than any other ethnic group,<sup>174</sup> and therefore it would be beneficial for this ethnic group to be adequately consulted in setting alcohol policy.

Secondly, Kypri et al argue that this breaches the Crown’s obligations under Te Tiriti o Waitangi.<sup>175</sup> They argue that the Crown has a responsibility to ensure that Maori are both

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<sup>169</sup> Brett Maclennan, Kypros Kypri and Jennie Connor, “Do New Zealand Communities Have Greater Input to Local Alcohol Policy?” 74 (2019) *International Journal of Drug Policy* 112-115.

<sup>170</sup> Kypri et al, above n 165.

<sup>171</sup> Maclennan et al, above n 170.

<sup>172</sup> Maclennan et al.

<sup>173</sup> Kypri et al, above n 165.

<sup>174</sup> Alcohol HealthWatch “Alcohol Harm to Māori” ActionPoint <[www.actionpoint.org.nz](http://www.actionpoint.org.nz)>.

<sup>175</sup> Kypri et al, above n 165.

adequately consulted about alcohol policy, an issue which deeply affects them, and actively protected from its harms.<sup>176</sup> Maori Warden David Ratu agrees with this point, arguing that the Act “fails to make provisions that will address the excess harm being done to Maori communities by alcohol.” This claim resulted in a report to the Waitangi Tribunal’s Wai 2575 - Health Services and Outcomes Inquiry in 2019.<sup>177</sup> This report concluded that LAPs are an “ineffective means of consulting Maori on issues of local alcohol control,” stating that the “Crown could take action” and supporting the creation of a national alcohol strategy.<sup>178</sup>

These findings are serious and demand administrative reform. A lack of consultation, especially of communities most at-risk, undermines the principle that LAPs allow for local input. If authorities do not engage in adequate consultation, this could also mean that their policies do not adequately minimise harm, as they would be operating under incomplete information. Accordingly, the LAP process should be reformed to allow for greater consultation.

### *E Conclusion on this Part*

There are several issues with the LAP system as it stands currently: lengthy appeals, slow process, outsized industry influence, inadequate regulation, and inadequate consultation. These are all issues which are serious and undermine the goals and object of LAPs and the Act generally. For harm to be truly minimised and local control over alcohol policy to be realised, legislative reform is needed.

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<sup>176</sup> Kypri et al, above n 165.

<sup>177</sup> Waitangi Tribunal *Health Services and Outcomes Inquiry* (Wai 2575, online overview) <[www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)>.

<sup>178</sup> Waitangi Tribunal *Issues of Tobacco, Alcohol and Other Substance Abuse for Māori* (Wai 2575, #B30).

## *VI Reform Idea 1: Swarbrick Members' Bill*

### *A Background*

Chlöe Swarbrick MP's Sale and Supply of Alcohol (Harm Minimisation) Amendment Bill was drawn from the private members' ballot in June 2022.<sup>179</sup> The Bill in part proposes to abolish appeals of LAPs to ARLA, in direct reaction to the appeals of Auckland's PLAP.<sup>180</sup>

Ms Swarbrick has called the appeals process "an anomaly in regulation... corporate interests have been able to override [rules] and tie them up in court."<sup>181</sup> The Bill's explanatory note argues that "communities have not been able to develop public health approaches to the provision of alcohol in their areas."<sup>182</sup> These assessments of the appeal system echo what has been outlined in Parts IV and V of this paper.

Auckland Council, perhaps understandably after its 7-year court battle, unanimously passed a motion supporting the Bill in March 2022.<sup>183</sup> Several other territorial authorities have since endorsed the Bill.<sup>184</sup>

### *B The Bill*

The Bill itself has two parts. Part 2 is of no interest to this paper, but would amend the law relating to alcohol advertising and sponsorship. Part 1 focusses on local alcohol policies.

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<sup>179</sup> Chlöe Swarbrick "Alcohol Harm Minimisation Bill Pulled From Biscuit Tin" Green Party of Aotearoa New Zealand <[www.greens.org.nz](http://www.greens.org.nz)>.

<sup>180</sup> Alcohol Healthwatch "The Sale and Supply of Alcohol (Harm Minimisation) Bill" (May 2022) Alcohol HealthWatch <[www.ahw.org.nz](http://www.ahw.org.nz)>.

<sup>181</sup> Johnny Blades, "Local Authorities Urge MPs to Support Alcohol Harm Minimisation Bill" *Radio New Zealand* (New Zealand, 9 June 2022).

<sup>182</sup> Sale and Supply of Alcohol (Harm Minimisation) Amendment Bill 2022 (147-1) (explanatory note).

<sup>183</sup> Green Party, "Auckland Council Pressures Parliament to Act on Community Alcohol Harm Reduction" *Scoop* (New Zealand, 24 March 2022).

<sup>184</sup> Blades, above n 182.

Section 79 is amended by replacing “provisional” with “final” and stating that authorities must consider whether to adopt this “final policy,” as opposed to it becoming a PLAP available for review. Sections 81 to 86 are repealed, and s 87 is amended so that a “final local alcohol policy” is adopted 30 days after public notification. These changes mean that LAPs cannot be appealed to ARLA and instead can only be judicially reviewed in Court like other local government decisions and bylaws.

### *C Analysis*

The Bill has considerable support from both health interest groups and territorial authorities, two key stakeholders who believe it will resolve the issues outlined by this paper. Dr Jackson of Alcohol Healthwatch states that “by removing the appeals process, finally our communities can have their voices heard.”<sup>185</sup> 95% of the 2018 Local Government New Zealand passed a remit seeking a review of the Act so it better supports community and local involvement.<sup>186</sup> Hamilton City Council had previously stopped progression of their PLAP in 2017 due to “industry pressure,” but are now considering revisiting development.<sup>187</sup> This support from relevant stakeholders is important, as territorial authorities would be the most likely to know what changes would bolster their ability to make their views heard on local alcohol policy.

Hamilton City Council submitted to the Governance Administration Select Committee that removing s 81 would “ensure consistency,” and “allow judicial review as the safeguard to check and balance the decision-making of a council.”<sup>188</sup> This first statement is somewhat false. It is true that most local authority decisions do not have a right of appeal to a specific body such as ARLA. However, ARLA is also the review body which considers other

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<sup>185</sup> Alcohol Healthwatch “Strong Momentum Across Local Government for Alcohol Law Change” (13 May 2022) New Zealand Doctor <[www.nzdoctor.co.nz](http://www.nzdoctor.co.nz)>.

<sup>186</sup> Auckland Council “Notice of Motion - Councillor Josephine Bartley - Support of Private Member’s Bill: Sale and Supply of Alcohol (Harm Minimisation) Amendment Bill” Auckland Council <[www.infocouncil.aucklandcouncil.govt.nz](http://www.infocouncil.aucklandcouncil.govt.nz)>.

<sup>187</sup> Alcohol Healthwatch, above n 187.

<sup>188</sup> Auckland Council, above n 188.

appeals of licensing committee decisions, such as individual licensing decisions.<sup>189</sup> Accordingly, it is already consistent that PLAP appeals come before this body. This also means that ARLA are experts in this area of law. Not only would removing their ability to consider PLAPs mean their wealth of knowledge and expertise is left unutilised, but it could actually decrease consistency across decisions as different High Court judges consider each appeal.

The second statement, that judicial review would remain as the check and balance on Council decision-making, is true. As with other regular bylaws, judicial review would be available to dissatisfied parties.<sup>190</sup> However, one key difference with the current PLAP appeal process is the standard of reasonableness attached to bylaws. In the *Tasman District Council* decision, ARLA noted that “when a by-law is enacted it is presumed to be reasonable.”<sup>191</sup> The authority compared this with PLAPs, which under the current framework are part of an ongoing process, so the Act considers that they may be unreasonable.<sup>192</sup> This suggests that the threshold to overturn a final LAP would be higher than it is currently with PLAPs, thus potentially discouraging judicial review. Not only this, but the High Court’s decision on appeal of a by-law is final.<sup>193</sup> This Bill would therefore remove the risk of protracted litigation and appeals to multiple courts as in *Auckland Council*, which could be of some benefit to local authorities.

However, because judicial review is still available, the Bill would not completely remove the threat of appeal from the LAP process altogether. Despite the reduced likelihood of supermarkets succeeding on a claim of judicial review, an argument that an element is unreasonable given the object of the Act could potentially be tweaked to a claim that the element was made for an improper purpose. For example, the *Auckland Council* litigation would likely not have been prevented, as the appellants would have just sought review of the PLAP itself, rather than the decision by ARLA. Supermarkets could therefore still

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<sup>189</sup> Sale and Supply of Alcohol Act, s 154.

<sup>190</sup> Local Government Act, s 219.

<sup>191</sup> *Hospitality New Zealand Inc*, above n 80, at [36].

<sup>192</sup> At [40].

<sup>193</sup> Local Government Act, s 219.



maintain significant influence over LAPs through the threat of judicial review, thereby not entirely mitigating this issue.

The only way to truly avoid the risk of judicial review would be through an ouster clause. Such clauses are statutory provisions which remove court jurisdiction from a matter.<sup>194</sup> Courts are generally reluctant to apply such clauses due to their interference with constitutional principles such as separation of powers;<sup>195</sup> the right to an appeal is fundamental in a just legal system.<sup>196</sup> Accordingly, the use of ouster clauses should generally be limited in use to cases when they are critical and proportionate to the legislation's objective.<sup>197</sup> However, due to the nature of local government as a non-sovereign body, if LAPs remain under local government jurisdiction, they will face judicial review and risk unsuccessful implementation unless such a clause is inserted into the Act.

## *VII Further Reform?*

### *A Introduction of Part*

The Sale and Supply of Alcohol (Harm Minimisation) Amendment Bill, as it stands would not sufficiently ameliorate concerns with excessive judicial review. These excessive appeals are also not the only issue identified with the LAP system, as outsized industry influence and inadequate public input remain.

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<sup>194</sup> Abdulfatai Sambo and Abdulkadir Abdulkadir, "Ouster Clauses, Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and Malaysia" 5(9) (2012) OIDA International Journal of Sustainable Development at 95.

<sup>195</sup> Nick Wrightson "Can You Devise an Effective Ouster Clause to Exclude a Category of Decision Making from Judicial Review?" (12 August 2021) Kingsley Napley <[www.kingsleynapley.co.uk](http://www.kingsleynapley.co.uk)>.

<sup>196</sup> Richard Nobles and David Schiff "The Right to Appeal and Workable Systems of Justice" 65 (2002) MLR 676-701 at 676.

<sup>197</sup> Legislation Design and Advisory Committee "Excluding or Limiting the Right to Judicial Review" (2018) Legislation Design and Advisory Committee <[www.ldac.org.nz](http://www.ldac.org.nz)>.

This Part therefore canvases a range of potential further reforms. This begins with a brief discussion of various minor ideas from New Zealand literature. Following this, wider reforms are considered through analysis of approaches taken by other jurisdictions and comparison with the New Zealand model.

### *B Minor Changes*

Maclennan et al suggest that issues of inadequate consultation should be ameliorated through the use of more “innovate approaches such as citizens’ juries.”<sup>198</sup> Such an approach brings randomly chosen citizens together for several days to hear from witnesses and discuss an issue.<sup>199</sup> This has the benefit of ensuring inclusivity and deliberation between various societal groups, and thus could ensure PLAPs are responsive to community needs.<sup>200</sup> This could be utilised to ensure effective Māori input. Alternately, mandatory consultation with Māori could be added as a step to the special consultative procedure to achieve this.

Randerson et al propose that the LAP development process should be protected from commercial influence.<sup>201</sup> This is undoubtedly a noble goal, but the article is not specific on how this might be achieved. Disallowing commercial actors from submitting throughout the PLAP process would remove the ability for such actors to appeal PLAPs. However, as stated earlier, the right to appeal is fundamental,<sup>202</sup> and it could be unfair and undemocratic for authorities to ignore local business concerns.

### *C Irish Approach*

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<sup>198</sup> Maclennan et al, above n 170, at 115.

<sup>199</sup> Graham Smith and Corinne Wales “Citizens’ Juries and Deliberative Democracy” 48(1) (2000) *Political Studies* 51-65 at 55.

<sup>200</sup> At 61.

<sup>201</sup> Randerson et al, above n 158, at 21.

<sup>202</sup> Nobles and Schiff, above n 198, at 676.

Ireland, although an Anglophonic nation of similar population to New Zealand,<sup>203</sup> takes a markedly different approach on alcohol policy. It takes a more liberal, pro-business approach,<sup>204</sup> and the alcohol industry has a strong influence on policy decision-making.<sup>205</sup> Ireland has a strong history of taking a ‘social partnership’ approach to governance, bringing all relevant actors together to build a consensus moving forward.<sup>206</sup> This approach has minimised regulation of alcohol policy, but has also allowed for health and industry perspectives to be jointly considered.<sup>207</sup> Rather than encouraging divisive local-level regulations, the Irish Government has instead employed consensus-driven measures such as the Intoxicating Liquor Act 2008,<sup>208</sup> which aimed to implement the National Alcohol Policy.<sup>209</sup>

The Irish approach has the obvious benefit of minimising conflict. Given New Zealand’s issues with ongoing divisive litigation and appeals, an approach which finds compromise is an attractive one. However, it is not one which the Government should consider, for several reasons. Firstly, national lobbying would not guarantee adequate consideration of public input. Secondly, as decisions would only be made at a national level, they would not be tailored to meet the needs of each community. For example, a nationally negotiated closing time of 3am to placate the Queenstown tourism industry would be counter-productive in low-income South Auckland.

Finally, such an approach would award even greater power to the alcohol industry, as has been documented in Ireland. The Intoxicating Liquor Act was criticised by Shane Butler of Trinity College as either mere “incremental progress” or “further evidence of

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<sup>203</sup> Worldometer “Ireland Population (2022)” Worldometer <[www.worldometers.info](http://www.worldometers.info)>.

<sup>204</sup> Ann Hope “The Influence of the Alcohol Industry on Alcohol Policy in Ireland” 23 (2006) *Nordic Studies on Alcohol and Drugs* at 469.

<sup>205</sup> At 470.

<sup>206</sup> Shane Butler “Obstacles to the Implementation of an Integrated National Alcohol Policy in Ireland: Nannies, Neo-Liberals and Joined-Up Government” 38(2) (2009) *Journal of Social Policy* 343-359 at 352.

<sup>207</sup> Hope, above n 206, at 478.

<sup>208</sup> Butler, above n 208, at 349.

<sup>209</sup> Hope, above n 206, at 471.

governmental unwillingness” to implement a truly powerful, integrated alcohol policy.<sup>210</sup> Ann Hope agrees, arguing that this approach simply allows for issues to be “parked, diluted or smoothed over resulting in avoidance of tough policy decisions.”<sup>211</sup> This is therefore not an approach which should be entertained in New Zealand. Although it would avoid issues of protracted litigation, it would undermine the object of the Act and not ensure responsible control of alcohol.

#### *D English Approach*

England and Wales, under the Licensing Act 2003, also uses a more liberal approach than New Zealand, with the “core principle that licensing authorities should principally act as mediators between stakeholders”<sup>212</sup>. However, the system differs from Ireland as local licensing authorities can develop ‘cumulative impact assessments.’<sup>213</sup> Cumulative Impact Assessments (CIAs) are optional tools that authorities can use if they are concerned that the cumulative impact of alcohol usage in an area raises concerns of crime, disorder, or public nuisance.<sup>214</sup> They are prepared as per s 5a of the 2003 Act, in consultation with local police, residents, business holders, and other organisations which could be affected.<sup>215</sup> Following the publishing of an Assessment,<sup>216</sup> it creates a presumption against any new licence applications or variations in the select area, although authorities can override this on a case-by-case basis.<sup>217</sup>

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<sup>210</sup> Butler, above n 208, at 350.

<sup>211</sup> Hope, above n 206, at 478.

<sup>212</sup> John Holmes, Yelan Guo, Ravi Maheswaran, James Nicholls, Petra Meier and Alan Brennan “The Impact of Spatial and Temporal Availability of Alcohol on Consumption and Related Harms: A Critical Review in the Context of UK Licensing Policies” 33 (2014) *Drug and Alcohol Review* 515-525 at 516.

<sup>213</sup> At 522.

<sup>214</sup> Cambridge City Council “Cumulative Impact Assessment: 2nd March 2021 to 1st March 2024” Cambridge City Council <[www.cambridge.gov.uk](http://www.cambridge.gov.uk)> at [3].

<sup>215</sup> At [2.1].

<sup>216</sup> At [4.1].

<sup>217</sup> At [4.7].

Assessments therefore have many similarities with LAPs. They are special guidelines, crafted by an authority through extensive consultation, aimed at reducing the influx of outlets in an area. However, there are three main differences. Firstly, CIAs focus merely on alcohol's impacts on crime and social order, as opposed to taking a public health approach. English health authorities have found it even more difficult to communicate evidence,<sup>218</sup> especially as it is difficult to sufficiently "demonstrate causal links between individual outlets or geographic areas and harmful outcomes."<sup>219</sup> This suggests that England does not employ the precautionary principle.

Secondly, CIAs do not appear to require any prescribed special consultative procedures when establishing them. Finally, CIAs take a more flexible, compromise-driven approach than LAPs, specifically requiring consultation with business owners as opposed to only police and health agencies before the creation of a draft LAP. These two differences would *prima facie* suggest that CIAs would be an efficient method to regulate the alcohol industry in a district, given buy-in. However, the industry still challenges decisions made on a public health or social order basis in court, and this has caused other authorities to abandon their plans fearing legal challenge.<sup>220</sup> This suggests that the industry will challenge local authority decisions regulating them regardless of how stringent they are. Perhaps as a result, judicial review and protracted litigation cannot be avoided through any minor reform of the LAP framework.

### *E Australian Approach*

In Australia, alcohol policy is mostly a state matter, not federal. Accordingly, liquor licensing legislation varies by state.<sup>221</sup> Western Australia's system is somewhat similar to New Zealand's. Under the Liquor Control Act 1988, local governments can set liquor

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<sup>218</sup> Holmes et al, above n 214, at 522.

<sup>219</sup> At 516.

<sup>220</sup> At 522.

<sup>221</sup> Ann Roche and Tania Steenson "Key Features of Liquor Licensing Legislation in Australia" NCETA <[www.nceta.flinders.edu.au](http://www.nceta.flinders.edu.au)> at 1.

policies, and these authorities must approve of the location and maintenance of premises under ss 40 and 99.<sup>222</sup> However, these powers are less stringent than in New Zealand and mainly deal with local planning, rather than setting temporal, public-health-focussed guidelines.<sup>223</sup> Applications for licences are made to the Director of Liquor Licensing and the Liquor Commission, which is a state-wide body, rather than to local authorities themselves. Local governments do however have the ability to object to applications,<sup>224</sup> and to impose, vary, or cancel existing licence conditions.<sup>225</sup> Accordingly, Western Australia places primary decision-making authority with a state-wide Commission, but still gives local authorities significant power.

This top-down approach can also be seen in New South Wales, but from the state Parliament. An example of this is a 2014 Act which imposed a ‘lockout’ law in Sydney, requiring pubs, bars, and registered clubs within the CBD to refuse new patrons after 1:30 am, despite alcohol sales ceasing at 3am.<sup>226</sup> A similar mandatory last entry law was introduced in Newcastle in 2008.<sup>227</sup> This demonstrates that even greater power is vested in the state government, as local governments do not have the ability to override legislation.

New Zealand is, of course, a unitary state without federal subdivisions. However, an approach similar to that of either Western Australia or New South Wales could resolve some of the current framework’s issues. Taking the New South Wales approach, Parliament could pass individual legislation regulating liquor licensing in individual areas, removing any ability for industry actors to appeal such matters. Individual licence decisions could still be judicially reviewed, but this is of less concern than district-wide alcohol policies being reviewed. However, Parliament may not be the appropriate body to make such decisions. Parliamentarians are neither experts on alcohol policy or the affected areas, and

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<sup>222</sup> Western Australia Department of Local Government, Sport and Cultural Industries “Liquor Control Act 1988 A Guide for Local Governments <[www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au)>.”

<sup>223</sup> Western Australia Department of Local Government, Sport and Cultural Industries.

<sup>224</sup> Liquor Control Act 1988 (WA), ss 69(7)(c) and 74.

<sup>225</sup> Section 64(3)(ba).

<sup>226</sup> Shane Homan, “Lockout Laws or Rock Out Laws? Governing Sydney’s Night-Time Economy and Implications for the Music City” 25 (2019) *International Journal of Cultural Policy* 500-514.

<sup>227</sup> Homan, above n 226.

such an approach would necessarily undermine the goal of the 2012 Act to make alcohol policy responsive to the needs of communities.

An approach analogous to Western Australia could thus be a compromise between the competing goals of community input and avoiding litigation. ARLA could be reconfigured as an Alcohol Commission, setting alcohol policies for each district through consultation with local authorities. Parliament could recognise ARLA's expertise in the area and accordingly grant them a high level of discretion. This could reduce the likelihood of successful judicial review, which in turn could hopefully diminish industry willingness to pursue litigation. If the Swarbrick members' Bill does not alleviate these litigation concerns, Parliament should consider taking this alternative approach.

## *VIII Conclusions*

Local alcohol policies are a useful tool available to territorial authorities to regulate the substance in their communities. Local input on this issue is desirable and has been sought throughout New Zealand's history. If used successfully, LAPs can effectively help minimise alcohol related harm through local consultation, meeting the object of the Act. The tools look especially successful when comparing them with overseas jurisdictions such as Ireland, England, and Wales, whose compromising approaches have led to weak regulations. Some degree of conflict with the alcohol industry is inevitable if it is to be effectively regulated.

Yet the efficacy of this system has been hamstrung by challenges from this industry. *Auckland Council* demonstrates the ability and willingness of wealthy supermarkets to delay and water down policies. A system which after seven years is still debating evidentiary requirements is not one which can sufficiently minimise harm and reflect the views of a community. Part V highlighted that these lengthy and costly appeals are a wider problem, and there are also issues of ineffective public engagement and high influence from industry actors. This undermines the object of the Act and suggests reform is necessary.

Chloe Swarbrick MP's Harm Minimisation Bill looks to solve the appeal issues on the surface. However, the Bill would remove ARLA's ability to give its expert opinion on LAPs, and would not remove the threat of judicial review. The alcohol industry has shown its willingness to prevent the adoption of effective LAPs, and there is no indication that this Bill would change this attitude. It is my hope that this Bill's discussion in Parliament leads to wider debate on the nature of our LAP system, including the potential for the introduction of ouster clauses, and whether a more central government-led approach as in Western Australia would be beneficial.



## IX Bibliography

### A Cases

*Auckland Council v Woolworths* [2021] NZCA 484.

*Carter Holt Harvey Limited v North Shore City Council* [2006] 2 NZLR 787 (HC).

*Hospitality New Zealand Inc v Tasman District Council* [2015] NZAR 156 (ARLA).

*Redwood Corporation Ltd v Auckland City Council* [2017] NZARLA PH247254.

Waitangi Tribunal *Issues of Tobacco, Alcohol and Other Substance Abuse for Māori* (Wai 2575, #B30).

*Woolworths New Zealand Ltd v Alcohol Regulatory and Licensing Authority* [2020] NZHC 293.

### B Legislation

Liquor Control Act 1988 (WA).

Local Government Act 2002.

Sale and Supply of Alcohol (Harm Minimisation) Amendment Bill 2022 (147-1) (explanatory note).

Sale and Supply of Alcohol Act 2012.

Sale of Liquor Act 1989.

### C Books and Chapters in Books

Andrew Green and John Young, *Laws of New Zealand* (online ed) Local Alcohol Policies.

Bruce Murray *A History of Tawa* (Tawa Historical Society, Wellington, 2014).

J Cocker "The First Colonial Local Option Poll" in J Murray and J Cocker *Temperance and Prohibition in New Zealand* (Epworth Press, London, 1930) 71.

Richard Mulgan *Politics in New Zealand* (2nd ed, Auckland University Press, Auckland, 1997).

*D Journal Articles*

Abdulfatai Sambo and Abdulkadir Abdulkadir, "Ouster Clauses, Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and Malaysia) 5(9) (2012) OIDA International Journal of Sustainable Development.

Ann Hope "The Influence of the Alcohol Industry on Alcohol Policy in Ireland" 23 (2006) Nordic Studies on Alcohol and Drugs.

Benoit Dostie and Ruth Dupré "Serial Referendums on Alcohol Prohibition" (2016) 40(3) Social Science History 491.

Brett Maclennan, Kypros Kypri and Jennie Connor, "Do New Zealand Communities Have Greater Input to Local Alcohol Policy?" 74 (2019) International Journal of Drug Policy 112-115.

Brett Maclennan, Kypros Kypri, Robin Room, John Langley "Local Government Alcohol Policy Development: Case Studies in Three New Zealand Communities" 108, 5 (2012) Addiction 885-895.

Doug Sellman, Jennie Connor, Geoffrey Robinson and Sam McBride "Alcohol Reform - New Zealand Style: Reflections on the Process from 1984 to 2012" 15(1) (2017) Psychotherapy and Politics International e1398.

Geoffrey Palmer "Alcohol, Health, and the Law Commission's Liquor Review" (2009) 2022(15) Victoria University of Wellington Legal Research Paper.

Graham Smith and Corinne Wales "Citizens' Juries and Deliberative Democracy" 48(1) (2000) Political Studies 51-65.

John Holmes, Yelan Guo, Ravi Maheswaran, James Nicholls, Petra Meier and Alan Brennan "The Impact of Spatial and Temporal Availability of Alcohol on Consumption and Related Harms: A Critical Review in the Context of UK Licensing Policies" 33 (2014) Drug and Alcohol Review 515-525.

Kypros Kypri, Brett Maclennan, Shawnee Brausch, Emma Wyeth and Jennie Connor, "Did New Zealand's New Alcohol Legislation Achieve Its Object of Facilitating Public Input? Qualitative Study of Maori Communities" (2019) 38, 4 Drug and Alcohol Review 331-338.

Linda Hill and Liz Stewart "Responsive Regulation Theory and the Sale of Liquor Act" (1998) Social Policy Journal of New Zealand 49-96.

Linda Hill and Liz Stewart "The Sale of Liquor Act, 1989: Reviewing Regulatory Practices" (1996) 7 Social Policy Journal of New Zealand.

Nikki Jackson and Heather Robertson "A Review of Territorial Authority Progress Towards Local Alcohol Policy Development" (Alcohol Healthwatch, December 2017).

P.F. McKimmey “The Temperance Movement in New Zealand 1835-1894” (MA Thesis, University of Auckland, 1968).

Richard Nobles and David Schiff “The Right to Appeal and Workable Systems of Justice” 65 (2002) MLR 676-701.

Shane Butler “Obstacles to the Implementation of an Integrated National Alcohol Policy in Ireland: Nannies, Neo-Liberals and Joined-Up Government” 38(2) (2009) *Journal of Social Policy* 343-359.

Shane Homan, “Lockout Laws or Rock Out Laws? Governing Sydney’s Night-Time Economy and Implications for the Music City” 25 (2019) *International Journal of Cultural Policy* 500-514.

Stephen Randerson, Sally Caswell and Taisia Huckle “Changes in New Zealand’s Alcohol Environment Following Implementation of the Sale and Supply of Alcohol Act (2012)” (2018) 131 *NZ Med J* 14-23.

#### *E Government and Parliamentary Materials*

(24 October 2012) 685 NZPD.

Auckland Council “Provisional Auckland Local Alcohol Policy” (May 2015) Auckland Council <[www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)>.

Law Commission Alcohol in our Lives: An Issues Paper on the Reform of New Zealand’s Liquor Laws (NZLC IP15, 2009).

Tasman District Council “Summary of Information and Statement of Proposal: Draft Tasman District Council Local Alcohol Policy” (2013).

#### *F News Articles*

Adam Jacobson “Supermarkets Set to Appeal Alcohol Sale Limits to Supreme Court” *Stuff* (New Zealand, 14 April 2022).

Beatrice Hazlehurst “Why Does Turning 21 in New Zealand Still Mean Smashing a Yardie?” *Vice* (Online, 27 October 2016).

Green Party, “Auckland Council Pressures Parliament to Act on Community Alcohol Harm Reduction” *Scoop* (New Zealand, 24 March 2022).

Johnny Blades, “Local Authorities Urge MPs to Support Alcohol Harm Minimisation Bill” *Radio New Zealand* (New Zealand, 9 June 2022).

Maria Slade “Auckland Alcohol Rules to Get Tougher” *Stuff* (New Zealand, 13 May 2015).

Natasha Frost “The Six O’Clock Swill Was an Hour of Drunken Anarchy” *Atlas Obscura* (online, 4 April 2018).

Waikato Times, “Countdown Heavies Small Towns” *Waikato Times* (New Zealand, 1 March 2014).

### *G Internet Materials*

Alcohol HealthWatch “Alcohol Harm to Māori” ActionPoint <[www.actionpoint.org.nz](http://www.actionpoint.org.nz)>.

Alcohol HealthWatch “Cost of Alcohol to Society” ActionPoint <[www.actionpoint.org.nz](http://www.actionpoint.org.nz)>.

Alcohol HealthWatch “Local Alcohol Policies” Alcohol Healthwatch <[www.actionpoint.org.nz](http://www.actionpoint.org.nz)>.

Alcohol HealthWatch “Status of Local Alcohol Policies, May 2022” Alcohol Healthwatch <[www.actionpoint.org.nz](http://www.actionpoint.org.nz)>.

Alcohol Healthwatch “Strong Momentum Across Local Government for Alcohol Law Change” (13 May 2022) *New Zealand Doctor* <[www.nzdoctor.co.nz](http://www.nzdoctor.co.nz)>.

Alcohol Healthwatch “The Sale and Supply of Alcohol (Harm Minimisation) Bill” (May 2022) Alcohol HealthWatch <[www.ahw.org.nz](http://www.ahw.org.nz)>.

Ann Roche and Tania Steenson “Key Features of Liquor Licensing Legislation in Australia” NCETA <[www.nceta.flinders.edu.au](http://www.nceta.flinders.edu.au)>.

Auckland Council “Notice of Motion - Councillor Josephine Bartley - Support of Private Member’s Bill: Sale and Supply of Alcohol (Harm Minimisation) Amendment Bill” Auckland Council <[www.infocouncil.aucklandcouncil.govt.nz](http://www.infocouncil.aucklandcouncil.govt.nz)>.

Cambridge City Council “Cumulative Impact Assessment: 2nd March 2021 to 1st March 2024” Cambridge City Council <[www.cambridge.gov.uk](http://www.cambridge.gov.uk)>.

Chlöe Swarbrick “Alcohol Harm Minimisation Bill Pulled From Biscuit Tin” Green Party of Aotearoa New Zealand <[www.greens.org.nz](http://www.greens.org.nz)>.

Drug Foundation “State of the Nation 2022” (February 2022) Drug Foundation <[www.drugfoundation.org.nz](http://www.drugfoundation.org.nz)>.

Health Promotion Agency “Influence Your Alcohol Policy” Amohia te Waiora <[www.alcohol.org.nz](http://www.alcohol.org.nz)>.

Health Promotion Agency “Key Facts about Drinking in New Zealand” (May 2019) Amohia te Waiora <[www.alcohol.org.nz](http://www.alcohol.org.nz)>.

IBIS World “Pubs, Bars and Nightclubs in New Zealand - Market Research Report” (22 March 2022) IBISWorld <[www.ibisworld.com](http://www.ibisworld.com)>.

Legislation Design and Advisory Committee “Excluding or Limiting the Right to Judicial Review” (2018) Legislation Design and Advisory Committee <[www.ldac.org.nz](http://www.ldac.org.nz)>.

Michael Cameron, William Cochrane, Craig Gordon and Michael Livingston “The Locally-Specific Impacts of Alcohol Outlet Density in the North Island of New Zealand, 2006-2011” (2013) Health Promotion Agency <[www.hpa.org.nz](http://www.hpa.org.nz)>.

New Zealand Parliament “Sale and Supply of Alcohol Bill” New Zealand Parliament <[www.parliament.nz](http://www.parliament.nz)>.

New Zealand Parliament “The Six O’Clock Swill: How Drinking Law Reforms Shaped New Zealand Society” New Zealand Parliament <[www.parliament.nz](http://www.parliament.nz)>.

New Zealand Police “Drunken Behaviour Has to Stop” (8 September 2010) New Zealand Police <[www.police.govt.nz](http://www.police.govt.nz)>.

Nick Wrightson “Can You Devise an Effective Ouster Clause to Exclude a Category of Decision Making from Judicial Review?” (12 August 2021) Kingsley Napley <[www.kingsleynapley.co.uk](http://www.kingsleynapley.co.uk)>.

Paul Christoffel “Liquor Laws - Loosening of Liquor Laws” (5 September 2013) Te Ara - the Encyclopedia of New Zealand” <[www.teara.govt.nz](http://www.teara.govt.nz)>.

Statistics New Zealand “Alcohol Available for Consumption: Year Ended December 2021” (24 February 2022) Stats NZ <[www.stats.govt.nz](http://www.stats.govt.nz)>.

Statistics New Zealand “Retail Trade Survey: March 2022 Quarter” (24 May 2022) Stats NZ <[www.stats.govt.nz](http://www.stats.govt.nz)>.

Waitangi Tribunal Health Services and Outcomes Inquiry (Wai 2575, online overview) <[www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)>.

Western Australia Department of Local Government, Sport and Cultural Industries “Liquor Control Act 1988 A Guide for Local Governments” <[www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au)>.

Worldometer “Ireland Population (2022)” Worldometer <[www.worldometers.info](http://www.worldometers.info)>.

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