

Te Komiti Tuku Raihana-ā-  
Rohe o Tāmaki Makaurau

# Auckland District Licencing Committee Procedures



30 May 2024

(version 1.3, 16 September 2024)



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Version	Date	Change
1.0	16 May 2024	
1.1	27 May 2024	Amended dates on pages 1 and 23
1.2	4 July 2024	<ul style="list-style-type: none"> <li>- Adding in version control table</li> <li>- Additional wording to section 3.1.5</li> <li>- New section 3.2.2</li> <li>- Additional wording to section 4.1</li> <li>- Additional wording to section 8.0</li> </ul>
1.3	16 September 2024	<ul style="list-style-type: none"> <li>- New section 5 on Auckland Local Alcohol Policy</li> <li>- Amendment to section references as result of new section 5 being added</li> <li>- A definition of when proceedings commence in Section 7.0</li> </ul>

## 1.0 Introduction

The [Sale and Supply of Alcohol Act 2012 \(Act\)](#) embodies a shift from a liberal policy on licensing of alcohol outlets to a stricter regime aimed at reducing harm to the community from excessive consumption of alcohol.

The purpose ([s 3](#)) and object ([s 4](#)) sections of the Act are its cornerstones. They underpin decision-making and the evaluative process undertaken by people making decisions under the Act.

The **object of the Act** ([s 4\(1\)](#)) is that “the sale, supply, and consumption of alcohol should be undertaken safely and responsibly” and “the harm caused by the excessive or inappropriate consumption of alcohol should be minimised”. What amounts to “harm” is further defined in [s 4\(2\)](#) of the Act.

The **purpose of the Act** is, for the benefit of the community as a whole:

- to put in place a new system of control over the sale and supply of alcohol
- to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of the Act

The characteristics of the new system are that it is reasonable and its administration helps to achieve the object of the Act.

The [Sale and Supply of Alcohol \(Community Participation\) Amendment Act 2023 \(Amendment Act\)](#) was enacted on 30 August 2023. The Amendment Act makes it easier for communities to have a say in alcohol regulation in their area, by making targeted changes to the alcohol licensing process.

On 30 May 2024, a new s203A inserted by the Amendment Act comes into force. This section is:

### **203A Licensing committees must establish appropriate procedures**

- (1) *A licensing committee must establish appropriate procedures to consider applications.*
- (2) *When doing so, a licensing committee must ensure that those procedures—*
  - (a) *avoid unnecessary formality, including, for example (without limitation), by making appropriate provision about—*
    - (i) *the location and timing of the hearing:*
    - (ii) *the layout of the venue of the hearing:*
    - (iii) *the timetable for the hearing:*

- (iv) *the language and terminology to be used at the hearing;  
and*
  - (b) *do not permit parties or their representatives to question other parties or witnesses of other parties; and*
  - (c) *do not permit cross-examination; and*
  - (d) *allow for tikanga Māori to be incorporated into proceedings; and*
  - (e) *allow for persons to be heard, and to make submissions, in te reo Māori.*
- (3) *To avoid doubt, nothing in subsection (1) applies to the licensing authority.*

In compliance with s 203A, the Auckland District Licencing Committee has established procedures for its hearings. These are outlined in this document.

## 2.0 Auckland District Licensing Committee's Role

The Auckland District Licensing Committee (**ADLC**) was set up under the Act. Its prime responsibility is to issue alcohol licences and manager's certificates. While administered by Auckland Council, the ADLC is an independent and impartial quasi-judicial body whose decisions are subject to appeal to the Alcohol Regulatory and Licensing Authority – Te Mana Waeture Take Waipuro, a tribunal chaired by a District Court judge.

The ADLC has the powers of commissions of inquiry under the Commissions of Inquiry Act 1908. This means, for example, that the ADLC can issue summonses requiring the attendance of witnesses before it or the production of documents. It also has the power to rehear any matter that it has determined ([s 201\(4\)](#)).

The ADLC considers the application, agency reports, evidence and submissions presented to it against the criteria in the Act and any relevant case law. Having considered this information, it can objectively assess the application and make its decision.

The ADLC is currently made up of 7 chairs and 7 members. For more information on the membership, see the [Auckland Council Website](#).

## **3.0 Hearings**

An ADLC hearing is held when an application for a licence or a manager's certificate is objected to by a member of the public; or opposed by any of the Medical Officer of Health, the Police or a licensing inspector (collectively called the reporting agencies); or when the ADLC decides, on its own initiative, that a hearing is required.

In a hearing, the ADLC receives information about the application, listens to evidence and arguments for and against the application, and asks questions to all parties present. They will make a decision based on the information and evidence presented at the hearing, along with any legal considerations under the Act.

The hearing is as informal as possible. The ADLC does its best to make all parties, including community objectors, feel comfortable and welcome while maintaining an appropriate level of formality and process. The ADLC ensures that natural justice is respected and that every eligible person is given a fair opportunity to present their case and be heard.

The ADLC aims to deal with all applications fairly and consistently. However, no two hearings are identical and minor variations in approach and procedure can and will occur. The ADLC can adapt the hearing process according to what is most appropriate for the particular application and community. The ADLC has the power to control its own procedure under the Act.

ADLC hearings are open to the public and media may also attend. However, the ADLC may hold parts of the hearing in private if it thinks this is in the best interests of those appearing ([s 203\(3\)](#)). The ADLC can also make an order prohibiting publication of some or all parts of evidence. This does not extend to prohibition on publishing the names and descriptions of the parties or premises ([s 203\(5\)](#)).

### **3.1 General guidelines for hearings**

The ADLC follows the general guidelines outlined below noting that it may vary its procedures to fit the circumstances of each hearing.

#### **3.1.1 Location of hearings**

The ADLC will endeavour to hold hearings in the community where the premises are located to facilitate community participation. This includes the use of community halls. The choice of location is weighed against matters such as:

- Number of participants and size of room required
- Location of participants to the hearing to avoid undue travel times
- Facilities required at the location eg. a room for the panel to retire to
- Wifi availability for remote participation and access to electronic documents
- Amenities at the venue eg. heating in winter, near-by eateries, disabled access.

### 3.1.2 Timing of hearings

Hearings will be generally held during normal business hours.

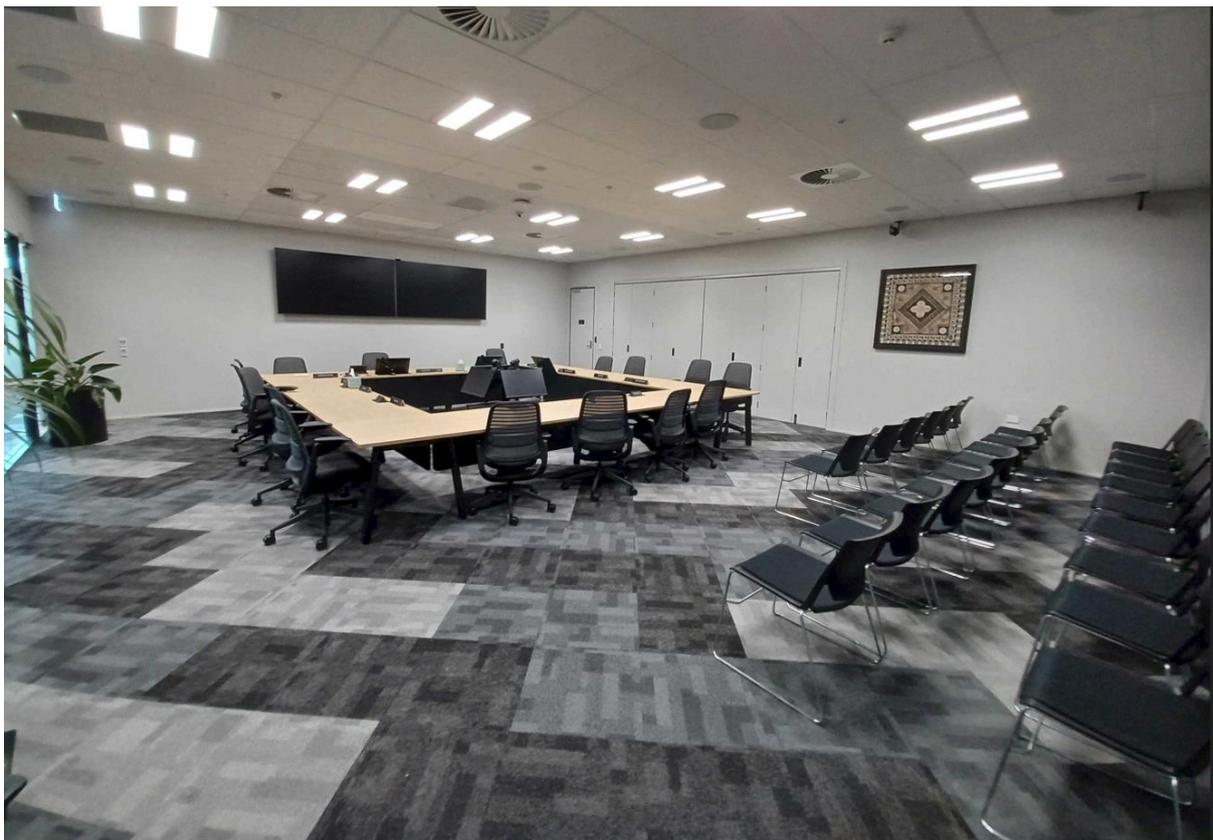
The ADLC will consider requests for a hearing to be held outside normal business hours. The request must include reasons for holding the hearing outside hours. The ADLC will determine whether to grant such a request, considering how it will affect all parties.

To enable community participation and to keep time off work to a minimum, virtual participation by audio-visual link (using MTeams) is available at most hearings. An approximate time can be given to objectors to appear. This time is subject to change depending on how the hearing progresses.

When cross-examination is permitted at hearings (see [section 7 on 'Cross-examination'](#) below), all participants are encouraged to be present (either in person or remotely) for the entire hearing. This allows parties to cross-examine and hear the evidence of the other parties throughout the hearing.

### 3.1.3 Layout of the hearing venue

The typical layout of a hearing venue is shown in the picture below:



Parties are seated around the table and remain seated to speak at the hearing.

The ADLC sits at the head of the room with the applicant directly opposite. The reporting agencies sit on one side of the table. Objectors sit on the other side. If there are more than

two or three objectors, some of them sit in the public gallery area and get invited to the table to speak to the ADLC when it is their turn. This will not remove their ability to cross-examine others (if required).

In most cases the applicant presents their case first. If needed, at the end of the applicants case, the chair may ask the applicant to move to the side to allow the objectors the opportunity to sit directly opposite the ADLC to present their cases.

If anyone is struggling to hear or see the proceedings, this should be raised with the Hearings Advisor at the first convenient opportunity.

#### 3.1.4 Timetable for hearings

A hearing schedule is provided to all parties at least one week prior to the hearing. This schedule provides the approximate speaking time for each party. It is important to note that the schedule is approximate only, the hearing may run ahead or behind time and parties may be called to present at a different time.

To assist the Hearings Advisor in the preparation of the hearing schedule, the applicant and all objectors attending the hearing must complete and return the attendance form that is sent to them with the hearing notice. Parties need to indicate how long they think they will require to present their case, who (if any) their witnesses are, whether they require the use of a projector, and whether they need an interpreter for te reo Māori or sign language.

#### 3.1.5 Language and terminology used at hearings

The ADLC expects all parties to use plain English in both their written documentation and verbally at the hearing. If using acronyms, they must be written in full in the first instance. The ADLC will not tolerate any obscene, discriminatory or abusive language in written or spoken communication. Any such language in a hearing may see the person removed or part or all of their evidence struck-out.

An objection can be written in te reo Māori and any party can present in te reo Māori at the hearing (see [section 9.0 Te reo me ona tikanga Māori](#) below).

If you require a sign language or te reo interpreter at the hearing, please inform the Hearings Advisor as soon as possible and at least 15 working days before the hearing so one can be engaged. If an interpreter is not available on the date of the hearing, the council will inform the party and discuss alternatives.

If you require an interpreter for any other language, you will need to bring your own interpreter. This could be a family member or friend.

#### 3.1.6 Who is involved in hearings?

- **ADLC chairperson** - runs the hearing and gives directions which all hearing participants must follow. The chairperson creates and maintains an environment with an appropriate level of formality. He or she outlines the order of proceedings, considers whether any part of the hearing needs to be held in private, ensures that all parties

treat each other with respect and that the correct procedures are followed. The chair also ensures that the principles of natural justice are respected. The chair closes the hearing once the ADLC has all the information required to make an informed decision. This could be at the end of a hearing or later if there are outstanding issues to be dealt with.

- **ADLC members** - two panel members sit on each ADLC with the chairperson and make the decision with the chairperson. Like the chair, they can ask questions to ensure they have all the information they need to make a decision before the hearing is closed.
- **Hearing advisor** – is the point of contact for all parties to a hearing. They organise the hearing, ensure the necessary equipment and information is available, support the ADLC during the hearing process and advise on correct processes, record the proceedings and distribute statements.
- **Applicant** – the person who made the application. The applicant may be a company or incorporated society. They may have a lawyer or support person, and witnesses present with them.
- **Objectors** - give their views on the application and may bring along witnesses to support them. They may have a lawyer or support person to assist them.
- **The reporting agencies:**
  - **Licensing inspector** - attends the hearing to oppose the application or assist the ADLC. They may have witnesses and a lawyer to assist them.
  - **Police** – may attend the hearing to oppose the application or assist the ADLC. They may have witnesses and a lawyer to assist them.
  - **Medical Officer of Health** – may attend the hearing to oppose the application or assist the ADLC. They may have witnesses and a lawyer to assist them.

## **3.2 The Hearing Process**

### **3.2.1 Appointment of the hearing panel**

The panel for a particular hearing is appointed by the ADLC Secretary. Auckland Council has a number of chairs and members. Their names can be found on the [council website](#).

The ADLC Secretary appoints the panel for each hearing considering the following matters:

- the availability of the members
- fair allocation of work to members
- members' knowledge or experience related to a particular application
- conflicts of interest
- whether the member has sat on previous hearings relating to the application.

An ADLC member who is also an Elected Member will not be appointed to a hearing for premises that are within their Ward.

Each ADLC member ensures they do not have a conflict of interest before accepting an appointment. They also complete a Disclosure of Interest form before sitting on each hearing. If there is a conflict, another ADLC member is appointed.

### 3.2.2 Pre-hearing meetings

A pre-hearing meeting can be used to clarify administrative matters or to try and reach an agreement by consensus between parties. Although it is standard practice for the ADLC not to hold pre-hearing meetings, the Committee may decide to hold one in specific circumstances. Any party to the application may also request a pre-hearing meeting by contacting the Hearings Advisor and outlining the outcome they seek to achieve. The ADLC will then decide if the pre-hearing meeting could be of benefit to the parties.

### 3.2.3 Notification of the hearing

The Hearings Advisor contacts the ADLC members appointed, applicant and agencies (if they are opposing the application) to confirm a date they are all available. The Hearings Advisor may also contact objectors to check their availability, particularly if they are being represented by counsel.

Once a date is set, the Hearings Advisor sends a hearing notification letter to all parties (applicant, agencies and objectors). This letter includes the date, time and location of the hearing as well as any other relevant information such as any Directions issued by the ADLC. Along with the hearing notification letter, applicants and objectors also receive the ADLC information pack which provides information to help them through the ADLC hearing process. Any applicant or objector who is going to attend the hearing should complete and return the attendance form that is sent to them.

If an objector is not going to attend the hearing, they should tell the Hearings Advisor at least five working days before the hearing. If there are no agencies opposing the application and no objectors attending the hearing, the hearing may be “vacated” (ie cancelled), and the decision may be made on the papers (that is without a public hearing being held).

A copy of the agenda is sent to all parties before the hearing. The agenda includes the application, reports from the Police, Medical Officer of Health, Auckland Council’s licensing inspector, any public objections and any other relevant information. All parties receive the agenda as a link to the [hearings page on the council website](#).

If the ADLC has issued any directions such as pre-disclosure of evidence<sup>1</sup>, these are provided to all parties either with the hearing notification letter or as soon as possible after receipt of that letter. If you receive a Direction from the ADLC, the instructions provided in it that are relevant to you, must be followed.

### 3.2.4 What parties should do in the days leading up to the hearing

If the application or objection is complex, parties may like to consider seeking advice from someone with relevant experience, such as a lawyer, consultant, or community advisory

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<sup>1</sup> This means that the ADLC requests that all evidence be prepared in writing before the hearing and circulated to all parties, so that all can prepare before hand and the hearing takes less time – see [section 4.4 below](#).

group. They will need to consider the costs of any advice as they are responsible for those costs.

In accordance with [s 204\(3\)](#), a person may appear and be heard at a hearing either personally or represented by counsel. Parties do not have to have legal counsel at the hearing. If a party does not have legal counsel and they wish to have someone else represent them such as an alcohol agent, they must seek permission from the ADLC ahead of the hearing for that person to speak on their behalf. This request must be made via the Hearings Advisor and should include information about the person they wish to represent them, their experience in the alcohol area and the reasons why they want them to be their representative.

All parties may call witnesses on the day to support their case. Ensure you know well ahead of the hearing who your witnesses are. Witnesses need to be able to present relevant evidence to support the application or objection to help the ADLC make its decision.

Parties should carefully prepare evidence to support their application or objection. See [section 4.0 Evidence at hearings](#) below for more information.

At the hearing the ADLC may ask for ideas on how the applicant can make changes to their application to address the concerns of the objectors. It is a good idea to prepare some reasonable conditions that could be applied if the ADLC decides to grant the licence.

### [3.2.5 What the ADLC does in the days leading up to the hearing](#)

The ADLC reads all the material provided to them before the hearing. This includes the agenda and any pre-disclosed evidence or submissions.

The ADLC may carry out a site visit before the hearing. The purpose of the site visit is for members to familiarise themselves with the area and identify the issues raised by the agencies and/or objectors in relation to the site and its surrounding environment. The ADLC does not engage with any of the parties to the hearing during the site visit (this includes the applicant, objectors, Police, inspector, or Medical Officer of Health).

The ADLC makes notes and prepares questions they wish to ask the parties at the hearing. All questions must be asked at the hearing. The panel members do not talk to anyone, except their fellow panel members, about the application outside of the hearing process. The ADLC does not make up its mind about the application before the hearing.

### [3.2.6 Adjournment prior to a hearing](#)

Any of the parties can seek an adjournment prior to a hearing if there are valid reasons, such as unavailability of key witnesses or continuing discussions between the parties.

A request for an adjournment must be made in writing to the ADLC Secretary. The ADLC issues a minute in response, either granting the adjournment or refusing it with their reasons. The minute is usually written by the chair and issued by the Hearings Advisor.

The ADLC can also adjourn the hearing before proceedings have commenced, or during proceedings. Any such adjournment is only done when absolutely necessary and the ADLC will provide their reasons for doing so.

### 3.2.7 Request to hold part of the hearing in private

Sometimes the ADLC, at its discretion, excludes the public from parts of the hearing. In making this decision, the ADLC has regard to the interests of the persons appearing and being heard and to the public interest.

Any party can request that a part of the proceedings be held in private and if the ADLC agrees, members of the public are excluded ([s 203](#)).

See [section 4.7 Sensitive or Confidential Evidence](#) below for more information.

### 3.2.8 The day of the hearing

Cell phones must either be turned off or on silent mode throughout the hearing.

Ensure your representative and all your witnesses are present either in person or virtually. Bring any notes you have prepared.

The parties should generally use 'Chair' or 'Member' when addressing the ADLC, unless invited to do otherwise by the Chair.

### 3.2.9 The hearing itself

The hearing is recorded using an audio recorder, and if there is a MSTeams link available, a MSTeams recording is also taken. The recording is available on the [hearings page on the council website](#) following the hearing, subject to any confidentiality or non-publication orders. All persons must speak clearly and slowly to allow everyone in the room to hear. If microphones are available, these must be used when speaking.

Questioning of other parties is not permitted. Only the ADLC can ask questions. A party can ask the ADLC to ask a question of another party, however, it is up to the ADLC to decide if that question should be asked or not. *NOTE: To find out if cross-examination is still permitted at the hearing– see [section 7.0 Cross-examination](#) below.*

For applications made on or after 30 May 2024, cross-examination is not allowed in the hearing. Therefore, the ADLC will ask more questions of all participants.

The parties are not expected to stand when the ADLC enters or leaves the room. They are also not expected to stand when speaking.

All persons giving evidence are asked to swear an oath (on a holy book such as the Bible) or give an affirmation (a solemn promise) that what they say will be the truth.

The order of speakers may vary but in general, hearings follow this format:

1. Opening and introduction

The chairperson introduces the ADLC members and invites the hearing participants to introduce themselves. The chairperson gives a brief outline of the hearing procedure including the order for the day. The chair or members of the ADLC can ask questions at any time.

2. Presentation from the applicant

The applicant (either in person or through legal counsel) introduces their application and presents their case. This may include evidence from witnesses. The ADLC may have questions for the applicant and witnesses. All witnesses are sworn in by the Hearings Advisor (through oath or affirmation) before presenting any evidence, including reading aloud any brief of evidence.

3. Presentation from the reporting agencies

The Police, Medical Officer of Health and Licensing Inspector (either in person or through legal counsel) make their submissions and present their evidence. The agencies may have discussed among themselves the order in which they will present, but ultimately this is the ADLC's decision. They too need to be sworn in (through oath or affirmation) and may be asked questions by the ADLC. In some cases, agencies may only attend the hearing to assist the ADLC. In this situation, they 'stand by' their report which is taken as read.

4. Presentation from objectors

Objectors who wish to speak are invited by the chair to talk about their objections. They can do this themselves or through legal counsel and they can also call witnesses. At the hearing, objectors cannot introduce new grounds for objecting, but can present evidence to support their reasons for objecting. If they want to present evidence, they are sworn in (through oath or affirmation). The ADLC may have questions for objectors and their witnesses.

5. Closing statements/submissions

Once objectors have finished, the applicant is invited to sum up their case and respond to arguments made during the hearing. No new evidence can be introduced at this stage. The applicant may choose, or the ADLC may request the applicant to either give verbal closing submissions on the day or provide them in writing at a later date. In most circumstances only the applicant is given the right to closing submissions. The chair will make the decision as to whether other parties can make closing statements/submissions.

If an applicant or objector does not appear in person (or through legal counsel), the matter is more than likely to be heard and determined in their absence. An objector does not have to attend and speak at a hearing however the objection will have less impact on the ADLC and will be given little to no weight. This is because the assertions made in an objection cannot be tested by either the ADLC or (where cross-examination is allowed), any other party. This is a practice that has been set by case law.

If objectors cannot attend the hearing in person, they can attend virtually via MSTeams. Contact the Hearings Advisor for the MSTeams link. Depending on the hearing venue, the quality of the virtual participation may vary. The applicant is expected to attend in person.

### 3.2.10 Other matters

Counsel and agents can examine and re-examine their own witnesses. They cannot cross-examine other witnesses. See [section 7.3 Examination and re-examination](#) below.

After hearing all the evidence, if the ADLC requires more information, the chair can issue a minute to the parties outlining the request. This often includes a timeframe for providing the information and outlines who, if anyone, can respond to the information.

Other persons may appear and be heard with “the leave” (permission) of the ADLC chair, whether personally or by counsel. These are:

- a member of the fire service authorised to undertake fire safety inspections
- a person authorised by any territorial authority
- any other person who satisfies the ADLC that he or she has an interest in the proceedings, apart from any interest in common with the public.

Evidence presented at the hearing may be placed on the council website following the hearing and therefore available for the public to view, subject to any confidentiality or non-publication orders.

A hearing is generally open to the public and this includes the media. If media wish to attend an ADLC hearing, they should inform the council’s communications team beforehand and let the Hearings Advisor know when they arrive. The media must not interfere in the proceedings. The ADLC, agencies and council staff may be photographed or filmed, however, permission should be sought from any objector or member of the public before they are photographed or filmed. If the media wish to film the proceedings, they should arrive well ahead of the hearing start time and follow the Hearings Advisors instructions on where to set up their camera.

### 3.2.11 What happens after the hearing.

After the hearing has finished, the ADLC meets privately to make its decision on the application. Sometimes the ADLC confers in private for a short time at the end of the hearing and delivers an oral decision on the day, with the written decision issued later. More commonly the ADLC takes time to consider its decision and a written decision is issued in due course. This is called a “reserved decision”.

The formal process of considering, discussing and deciding on a case is known as deliberations. Deliberations and decision-making must involve all members of the ADLC, and only the ADLC. It must not involve the Secretary, other council staff or any of the parties to the hearing.

The ADLC must review all the evidence presented at the hearing. It must then decide, based on its own knowledge and skills, whether the application meets the criteria in the Act and can be granted as sought, or subject to conditions, or should be refused.

To decide whether to issue a licence or a manager's certificate, the ADLC must have regard to the criteria set out in the following sections of the Sale and Supply of Alcohol Act 2012 (the Act):

- New licences (ss [105](#) and [106](#))
- Renewals (s [131](#))
- Special licences (s [142](#))
- Manager's certificates (ss [222](#) and [227](#))

The decision of the ADLC on an application must be in writing and must include:

- what the application was for
- a summary of the evidence presented by all parties at the hearing
- the ADLC's discussion on the evidence
- any relevant case law
- the reasons for the decision
- any conditions (if the application is granted).

If the ADLC decides to grant a licence or manager's certificate, it is required to consider both the mandatory conditions that must be applied and are set out in the Act, and any discretionary conditions that may be appropriate. Any condition must be reasonable, and the parties should have the opportunity to comment on any discretionary conditions before they are imposed.

The ADLC must write its own decision; it cannot delegate this to anyone else, including the Secretary or a staff member. The chair may ask any member of the ADLC to draft parts of the decision, but the chair is responsible for the decision writing overall.

Once the decision has been written all ADLC members proofread it and provide feedback to the chair, who then sends it to the Hearings Advisor for release. The decision must be either unanimous or a majority decision, meaning that at least two of the three members of the ADLC must agree with the decision. If a member has dissenting views, they are outlined in the decision.

The ADLC endeavours to release the written decision within 10 working days of the close of the hearing. Where a matter is complex, the decision is likely to take longer. A copy of the decision is sent to all parties and placed on the [council website](#).

### [3.2.12 How are decisions appealed?](#)

A decision of the ADLC can be appealed to the Alcohol Regulatory and Licensing Authority (**ARLA**) by any party. ARLA's decisions can be appealed to the High Court, and then, if leave is granted, to the Court of Appeal.

Appeals must be lodged with ARLA within 10 working days of the decision being notified to the party wanting to appeal the decision. Parties must also notify the other hearing parties and pay the applicable appeal fee. Further information is available at [www.justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority](http://www.justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority)

The Council cannot override a decision of the ADLC.

While the ADLC is not involved in the appeal process, below is some information on the appeal process.

### 3.2.12.1 Who may appeal?

Any party involved in the hearing has the right to appeal to ARLA if they are dissatisfied with the decision or any part of the decision ([s 154](#)).

If an objector withdrew their objection before the decision is released, they are no longer a party to the application and cannot appeal the decision.

### 3.2.12.2 Procedures for appeal

An appeal must be lodged with ARLA within 10 working days after the ADLC decision has been supplied to the aggrieved party, although ARLA may extend this time period where there is reasonable cause for failure to meet the deadline (ss [155\(1\)](#) and [\(2\)](#)).

The notice of appeal must be in writing, be sent to the secretary of ARLA, and specify the grounds for appeal in sufficient detail to fully inform ARLA and the parties of the issues in the appeal ([s 155\(3\)](#)).

The appellant must provide a notice of appeal to the secretary of ADLC and to the other parties to the ADLC hearing ([s 155\(5\)](#)).

As soon as possible after receiving the notice of appeal the ADLC secretary must send to the ARLA secretary any relevant information or exhibits relating to the case, as well as a copy of the decision ([s 155\(6\)](#)). This will comprise a copy of the complete ADLC file.

ARLA will also require a typed transcript of the hearing and the notes (if any) of the committee members.

### 3.2.12.3 What happens to the licence while the appeal is being heard?

Generally, the ADLC decision is suspended pending the outcome of the appeal. This means that the licence can't be used until the appeal is resolved.

If the application is:

- for a new licence, the licence is not issued until the decision of the appeal has been made and the applicant cannot sell or supply alcohol
- for a renewal, the current licence conditions apply until the outcome of the appeal is known. The premises will continue to operate on the same conditions that are on the existing licence

- for a variation, the current licence conditions apply until the outcome of the appeal is known
- for a renewal and is declined by the ADLC, the applicant may apply to ARLA for 'a stay' which means they can continue to trade until the outcome of the appeal is known.

#### 3.2.12.4 What does ARLA do?

ARLA hears from the appellant and may have some questions of the objectors and agencies who gave evidence. ARLA will be looking to ensure that the appellant was dealt with fairly and that the conclusion reached by the DLC was available to it based on the evidence produced.

ARLA will either deal with an appeal 'on the papers' or call a hearing to hear from the parties. ARLA can:

- confirm the decision of the DLC
- modify the decision of the DLC
- reverse the decision of the DLC
- refer the matter back to the DLC to consider it again (with some guidance on particular issues).

#### 3.2.12.5 How are ARLA hearings run?

ARLA hearings are similar to DLC hearings, but generally more formal, as they are run by a District Court Judge.

All parties or their legal representatives can appear and speak at the hearing. They can also call, examine and cross-examine witnesses. Parties to an application or appeal may be represented by an agent if ARLA gives approval beforehand.

The Authority will give its decision orally and/or in writing after the hearing.

#### 3.2.12.6 Can a decision of ARLA be appealed?

Appeals must be made to the High Court within 10 working days after notice of the decision has been given to that party.

## **4.0 Evidence at hearings**

### **4.1 What is evidence**

Evidence is the information presented at the hearing to prove or disprove a fact. It can include written or spoken testimony, and other material such as documents, photographs, maps and audio-visual materials.

The responsibility of the ADLC is to evaluate applications having regard to the criteria contained in the Act and the evidence produced at the hearing.

Submissions may also be given at the hearing by any party. These are usually given by legal counsel. Submissions outline the case, present the party's position, outline any evidence that will be given at the hearing and contain any legal arguments that are being made.

### **4.2 About evidence**

Evidence can be verbal, written or visual (such as photographs, drawings or videos). Videos can be provided to the Hearings Advisor either on a USB or by electronic means such as OneDrive or similar. To ensure audio visual compatibility, it is recommended to communicate with the Hearings Advisor prior to the hearing day if video evidence is going to be presented.

Evidence must be provided in accordance with any instructions issued by the ADLC. If evidence has been pre-filed ahead of the hearing, the ADLC may 'take it as read'. This means all parties have had the opportunity to read the evidence prior to the hearing and therefore does not require to be read out in full at the hearing. Parties should make sure they have read all the pre-filed evidence before the hearing starts. If the chair says your evidence is 'taken as read', you do not read your evidence in full, but you still have the chance to summarise and reiterate the main points in your evidence.

Evidence given before the ADLC should be:

- factual (or expert opinion where the expert's credentials have been established)
- as brief and to the point as possible
- directly related to the issue before the ADLC
- written material should be named and dated.

Evidence gathered over a period of time will usually be stronger than evidence gathered on a single occasion.

Parties need to demonstrate how their evidence relates to the application before the ADLC, or the grounds for their opposition under the Act, or the remedy they are seeking. While evidence should link to the application, it does not have to link specifically to the premises.

The ADLC makes its decision based on an assessment of the evidence provided against the criteria and object of the Act. In weighing all the evidence, the ADLC must look at the veracity of the evidence and the reliability of the witness producing it. The ADLC carries out

an evaluative assessment to decide what weight it will give to each piece of evidence presented to it.

The onus is on the applicant to demonstrate that the granting of the licence will meet the criteria and object of the Act. Objectors and agencies do not have to prove that it will not.

Where agencies provide notes from compliance checks as part of their evidence:

- full notes made at the time of compliance checks ('contemporaneous notes') can be used in evidence. If notes have been made days or weeks afterwards, their accuracy can be challenged at the hearing, and the potential exists for them to be given less weight than contemporaneously made notes
- contemporaneous notes, supplementary notes on non-compliance matters, renewal reporting outcomes, and any documents related to any graduated response enforcement can all be used as evidence. All notes and reports should be dated, clearly separated from other notes and presented chronologically
- the ADLC must be able to access a copy of any original report and notes where they have been provided with a supplementary report.

### **4.3 Managing exhibits**

Exhibits are any items of evidence used during a hearing. These can be photos, statements, diagrams, recordings, videos or any relevant object or material.

Where practical, copies of documentary evidence should be attached to the briefs of evidence by the parties. If this is not practical, then they should be made readily available e.g. in electronic form or the object itself. Reference should be made to these exhibits in the statement of evidence and sufficiently identified for easy reference.

Exhibits handed up to the ADLC become part of the evidence and form part of the file. The Hearings Advisor will label the exhibit and provide a copy to all parties, if practicable. A logical and complete index is kept as the hearing progresses so that the parties can refer to documents in an orderly fashion, and the ADLC can be assured it is referring to the correct document when it carries out its deliberations.

If the ADLC has considered confidential evidence it will remain confidential – see [section 4.7 'Sensitive or confidential evidence'](#) below. The decision will note that a particular piece of evidence, such as sales figures, has been removed from the record.

### **4.4 Pre-hearing disclosure**

The ADLC may direct that evidence is exchanged between the parties ahead of the hearing. Pre-hearing disclosure helps with expediency and efficiency at the hearing because all parties then get the chance to read the evidence in full, in their own time before the hearing. If the ADLC directs pre-hearing disclosure, parties must follow the instructions and provide their evidence no later than the date and time directed.

Generally, the applicant is directed to file its evidence first, followed by the agencies. Any objector who is being represented by legal counsel at the hearing will be directed to file its evidence followed by any statements in reply from the applicant. Any party who is filing evidence that they believe is sensitive in nature or confidential can refer to [section 4.7 'Sensitive or confidential evidence'](#) below.

Even if a party has filed their evidence ahead of the hearing, they must bring hard copies along to the hearing as outlined in the hearing notification letter.

#### **4.5 Repetition of evidence**

If the same or similar evidence is being repeated, the chair may ask the speaker to stop. The ADLC does not require individual objectors to make the same point others have already made.

#### **4.6 Copies of evidence / submissions**

Parties are required to bring along a certain number of hard copies of their evidence or submissions to the hearing. The number required is outlined in the hearing notification letter you will receive ahead of the hearing.

#### **4.7 Sensitive or confidential evidence**

Any party who is filing evidence that they believe is sensitive in nature or confidential should, before filing that evidence, seek direction and orders from the ADLC for any particular evidence or parts of the evidence to be restricted. The party must provide the reasons for requesting those restrictions.

The ADLC can, during the course of the hearing, under [s. 203\(3\)](#) of the Act, “...*hold any part of the sitting in private if, having regard to the interests of persons appearing and being heard and to the public interest, it thinks it proper to do so.*”

Evidence presented at the hearing may be placed on the council website following the hearing and therefore available for the public to view, subject to any confidentiality or non-publication orders.

## **5.0 Auckland Local Alcohol Policy**

Under s 75 of the Act councils may adopt a policy relating to the sale, supply or consumption of alcohol within its district. The Auckland Local Alcohol Policy (**LAP**) came into force on 16 September 2024.

The purpose of the LAP is to set out the Council's policy position on the following licensing matters for the Auckland region, pursuant to s 77(1) of the Act:

- (a) location of licensed premises by reference to broad areas;
- (b) location of licensed premises by reference to proximity to premises or facilities of a particular kind or kinds;
- (c) whether further licences (or licences of a particular kind or kinds) should be issued for premises in the district or any stated part of the district;
- (d) maximum trading hours; and
- (e) the issue of licences, subject to discretionary conditions.

The Policy does not contain matters that are:

- (a) not related to licensing; or
- (b) outside the scope of s 77(1) of the Act.

In accordance with the Act, the ADLC and ARLA must have regard to the Policy when issuing or renewing licences in the Auckland region.

The Policy can be [found here](#).

## **6.0 Auckland DLC best practice guidelines**

The ADLC has issued several best practice guidelines. These can be found on the [Auckland Council website](#) and may be updated from time to time.

The practice guidelines will help parties understand the ADLC's approach on the Act.

The guidelines cover various topics that may apply to an application for a licence or manager's certificate.

Below is an explanation of the practice guidelines.

### **Citation of Authorities**

Outlines the ADLC's expectations around the provision of bundles or casebooks of authorities that are referred to at hearings.

### **Confidentiality of objectors**

Provides the reasons why the ADLC cannot suppress the names and descriptions of objectors.

### **Off-licence premises external advertising**

Outlines conditions the ADLC will impose on off-licence premises to reduce the amount of external signage to improve the amenity and good order of localities.

### **Internal Signage**

Outlines a condition the ADLC will impose on licences to ensure internal signage is prominently displayed, readily noticeable and are easily seen and read by people using the premises, and in the case of an off-licence, easily read from each point of sale.

### **Managers – remote licences**

Outlines the ADLC's expectations around the amount of experience a person applying for a Manager's Certificate should have when they are selling remotely only.

### **Plans for supermarkets and grocery stores**

Provides supermarkets and grocery stores with two options on how they provide their plans to comply with s 113(2) of the Act.

### **Site visit protocol**

Provides guidance for the ADLC when carrying out site visits.

### **Social and host responsibility policies**

Outlines the ADLC's expectations around social and host responsibility policies.

### **Status of objectors**

Outlines the process that is followed when the status of an objector is questioned. This is no longer necessary for all applications lodged on or after 31 August 2023.

## 7.0 Cross-examination

### 7.1 When is cross-examination permitted

The tables below outline whether cross-examination will be permitted at the hearing or not.

<b>Application for new licence</b>	<b>Cross examination permitted at hearing</b>
An application is made before 31 August 2023 and the proceedings commenced* (objections closed) on or prior to 29 May 2024	Yes
An application is made on or after 31 August 2023 but before 30 May 2024 because the matter has not been completed in accordance with s33 of the Legislation Act*	Yes
An application is made before 31 August 2023 and the proceedings have not commenced (objections not closed) on or prior to 29 May 2024	No
An application is made on or after 30 May 2024	No

<b>Any other application</b>	<b>Cross examination permitted at hearing</b>
An application is made before 30 May 2024, no matter when the hearing is held because the matter has not been completed in accordance with s33 of the Legislation Act*	Yes
An application is made on or after 30 May 2024	No

\*S33 of the Legislation Act states:

#### **33 Effect of repeal or amendment on existing rights and proceedings**

- (1) *The repeal or amendment of legislation does not affect—*
- (a) *the completion of a matter or thing that relates to an existing right, interest, title, immunity, duty, status, or capacity (a **legal position**); or*
  - (b) *the commencing of a proceeding that relates to an existing legal position; or*
  - (c) *the completion of a proceeding commenced or in progress under the legislation.*

- (2) *Repealed or amended legislation continues to have effect for the purposes stated in subsection (1) as if the legislation had not been repealed or amended.*

\* The ADLC has determined that proceedings commence the day after the objection period has concluded. For applications that are not publicly notified such as Temporary Authority's and Special Licences, proceedings commence the day after the agency reports are due.

## **7.2 How does cross-examination work**

Before giving evidence, the party is asked to swear an oath or say an affirmation promising to tell the truth.

After the applicant or their witness has given their evidence, the applicant or their representative can ask additional questions of its witnesses (examination in chief).

The chair then invites the reporting agencies (Police, Medical Officer of Health and licensing inspector) and any objectors to ask questions (cross-examination).

After cross-examination the ADLC must allow the applicant's representative to ask clarifying questions of its witnesses (re-examination).

The agencies then present their evidence after being sworn or affirmed. The applicant and objectors can ask the agencies and their witnesses questions about their evidence (cross-examination). The agencies can undertake re-examination.

After each objector has given their evidence, the applicant and the reporting agencies can ask objectors and their witnesses questions (cross-examination). If the objector is being represented, the objector's representative can undertake re-examination.

Throughout all witness questioning, the ADLC must ensure due process is followed and no unfair or inappropriate questions are asked.

If the hearing takes an adjournment, such as a tea break, in the midst of presenting under oath, the person giving evidence must not speak to anyone else during that break period.

The ADLC may ask questions at any time during the hearing.

## **7.3 Examination and re-examination**

Where cross-examination is not permitted, Counsel and agents can still examine and re-examine their witnesses. Examination allows updating the evidence where necessary between the earlier filing of the evidence and the hearing. Re-examination provides an opportunity to put issues to witnesses and clarify any matters raised by other parties or the ADLC.

## **8.0 Decisions on unopposed applications**

When an application is unopposed by the agencies and there are no objections from the public, the application and reporting agencies' reports are sent to an ADLC chair. The ADLC chair will review the report and application and make a decision 'on the papers'.

There is no hearing and the ADLC chair has no direct contact with the applicant or inspector. If the ADLC chair has a question, it is sent via the ADLC Admin staff.

If the ADLC chair is of the mind to decline the application, it is set down for a hearing to allow the applicant to put their case forward as to why it should be granted.

## 9.0 Te reo me ona tikanga Māori

The ADLC recognises the importance of alcohol licencing processes and the environment being culturally appropriate and community friendly and seeks to ensure that hearings are easily accessible to Māori (iwi, hapū, whānau, hāpori) and the general public.

The ADLC needs to be able to competently consider the impacts of alcohol on local Māori communities and make licensing decisions appropriate to context. The ADLC does this by ensuring it understands te reo and tikanga Māori, issues of importance to local Māori communities, and Te Tiriti o Waitangi.

The ADLC is making a conscious effort to open hearings using te reo Māori.

An objection can be written in te reo Māori. Where possible, an English translation written by the objector is appreciated for use by the ADLC. This will ensure the intent of the objection is correctly translated.

The hearing may be held on a marae where appropriate.

Any party can present in te reo Māori at the hearing. If you wish to do so, and you do not wish to translate yourself, you must inform the Hearings Advisor as soon as possible and at least 15 working days before the hearing so a qualified interpreter can be present. Due to the low numbers of qualified te reo interpreters, as much notice as possible is requested. If an interpreter is not available on the date of the hearing, the council will inform the party and discuss alternatives.

Tikanga will be incorporated into the proceedings in appropriate cases. Tikanga is a fundamental aspect of te ao Māori (the Māori world). Tikanga can be best understood when considered within the wider context of a Māori world view. Tikanga is intertwined with values, including:

- manaakitanga (care)
- whanaungatanga (kinship, interpersonal connections)
- awhi (support)
- mana (authority)
- utu (reciprocation)
- ea (resolution or balance)
- tapu (sacred, or restricted), and
- noa (free from the extensions of tapu).

Appropriate tikanga is determined by mana whenua (iwi or hapū Māori who exercise historic and territorial authority over an area) and not the ADLC. This means what is 'tika', or correct, may differ depending on the tikanga recognised and practised by local iwi or hapū.

The Hearings Advisor will discuss what tikanga is appropriate with the parties where tikanga is relevant to the application.

## **10.0 Resources**

For more resources on alcohol licensing matters:

Auckland Council, *District Licensing Committees*

<https://www.aucklandcouncil.govt.nz/licences-regulations/business-licences/alcohol-licences-fines/Pages/district-licensing-committee.aspx>

Auckland Council, *Alcohol Harm Minimisation Strategy*

<https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/topic-based-plans-strategies/community-social-development-plans/Pages/alcohol-harm-reduction-strategy.aspx>

Auckland Council, *Alcohol licences and fines*

<https://www.aucklandcouncil.govt.nz/licences-regulations/business-licences/alcohol-licences-fines/Pages/default.aspx>

Auckland Council, *District licensing committee hearing information pack*

<https://www.aucklandcouncil.govt.nz/have-your-say/hearings/types-of-hearings/Pages/district-licensing-committee-hearings.aspx>

The Health Promotion Agency has useful information for applicants and objectors:

[Off-licensed premises toolkit for bottle stores](#)

[On-licensed premises toolkit](#)

[Objecting to a licence to sell or supply alcohol: A guide to objections and hearings](#)

## **11.0 References**

Alcohol.co.nz, *Alcohol licensing and hearings: A guide for DLC's*

<https://resources.alcohol.org.nz/alcohol-management-laws/administering-alcohol-law/alcohol-licensing-and-hearings-guide-for-dlcs>

Auckland Council, *District licensing committee hearing information pack*

<https://www.aucklandcouncil.govt.nz/have-your-say/hearings/types-of-hearings/Pages/district-licensing-committee-hearings.aspx>

Sale and Supply of Alcohol Act 2012

<https://www.legislation.govt.nz/act/public/2012/0120/latest/DLM3339333.html>

Sale and Supply of Alcohol (Community Participation) Amendment Act 2023

<https://www.legislation.govt.nz/act/public/2023/0060/latest/whole.html>