

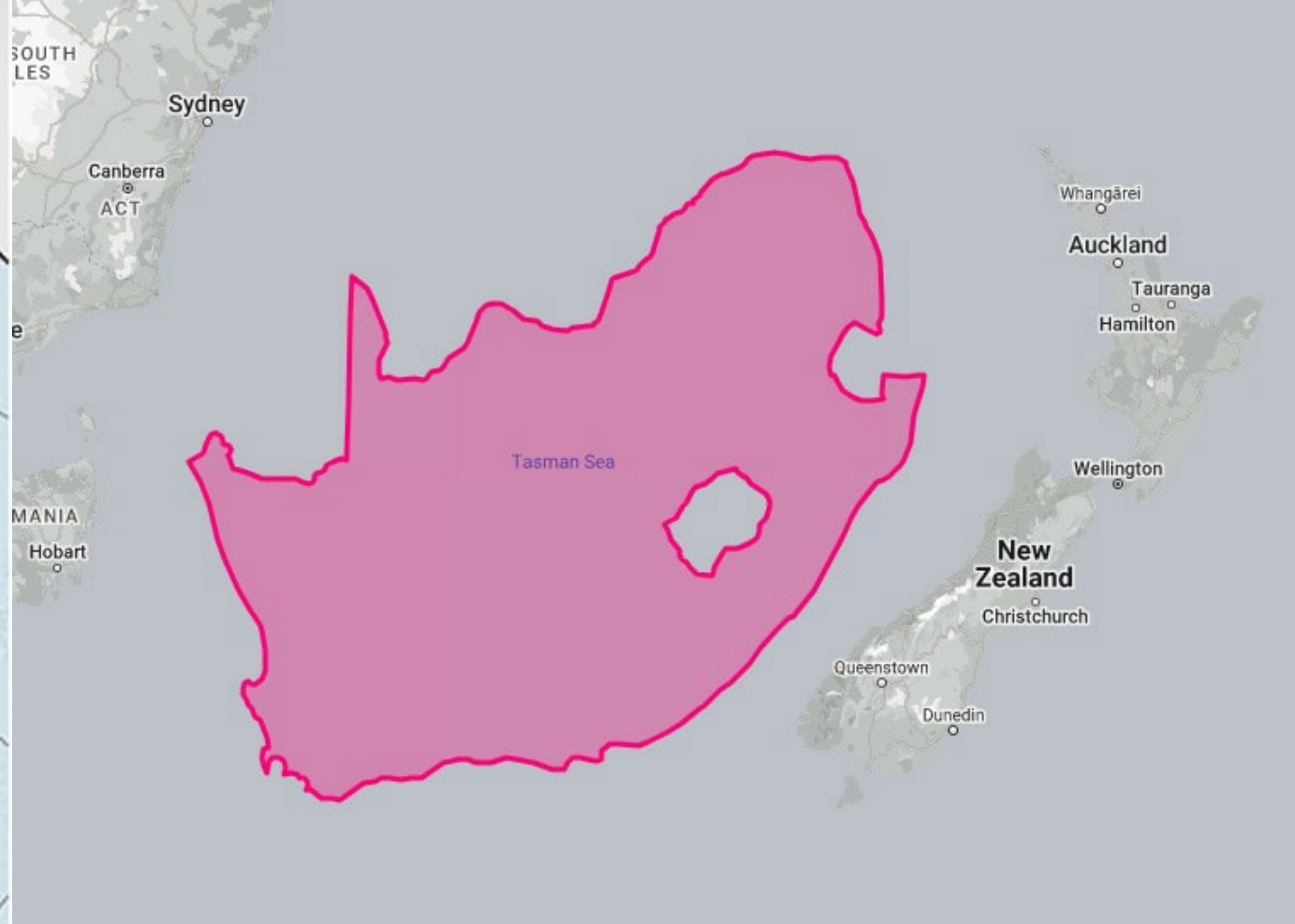
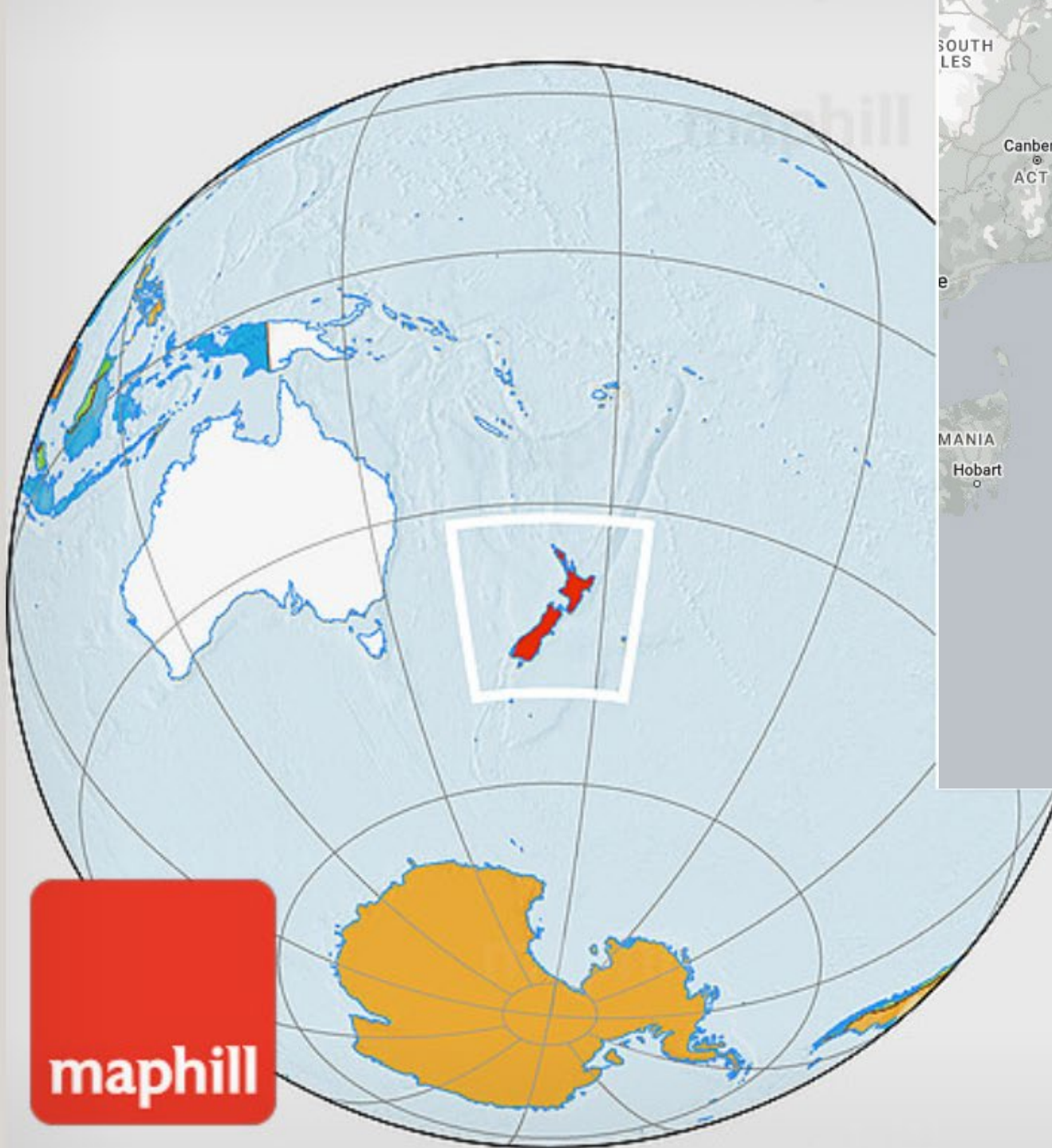


A critical legal analysis of the quasi-judicial alcohol retail licensing process in Aotearoa New Zealand

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NZ territory: 1/5 of South Africa territory
NZ population: 5 million (1/12 of SA)
17% Māori population
Part of Commonwealth
~75% of alcohol take-away
~1,000 alcohol 'bottle stores'




More alcohol availability in local communities → more harm

Harm includes negative impact on public spaces!

The right of local communities to oppose the sale of alcohol in their neighbourhoods increasingly affirmed in alcohol laws.



Reprint
as at 14 November 2018



Sale and Supply of Alcohol Act 2012
Public Act 2012 No 120
Date of assent 18 December 2012
Commencement see section 2

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S 3 Purpose: control sale of alcohol “for the benefit of the **community** as a whole”

S 4 Object: To minimise harm caused by excessive or inappropriate consumption of alcohol

START

Application made to District Licensing Committee (DLC)

Applications include relevant experience and plans for how the business will meet the Act's criteria and any LAP.



Public Objections

The public can object based on the criteria in the Act. Objectors need to have a 'greater interest' in the application than the public generally.



Licence Hearing

If valid objections are made a hearing is held before the DLC. At hearings the applicant, regulatory agencies and objectors speak for or against the application and answer questions.



The Licence Decision

The DLC evaluates the application and all information it has received against the criteria in the Act, and decides whether to grant the licence.



Public Notification

Applicants must place a notice about the application at the premises and in the local paper or a specific website.



Reporting

Police, Alcohol Licensing Inspectors and the Medical Officer of Health must review applications and report any concerns to the DLC.



Decision Without a Hearing

If no objections are made the DLC may decide the application without a hearing.

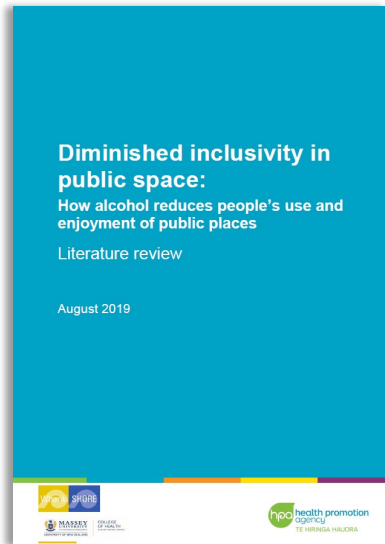


Appeals

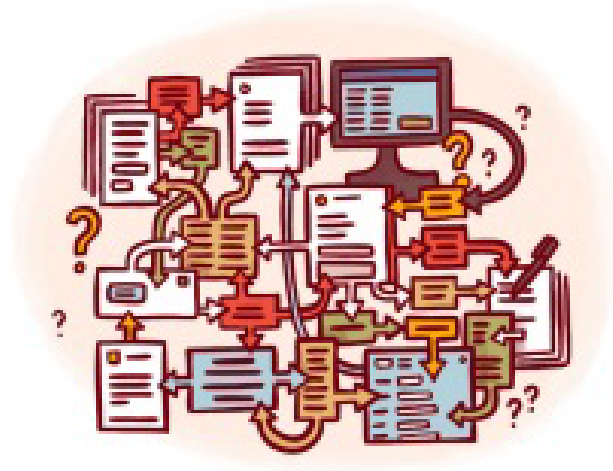
DLC decisions may be appealed to the Alcohol Regulatory Licensing Authority (ARLA). ARLA decisions may be appealed to the High Court.

RQ: What legal factors affect outcomes in the DLC hearings? (+ / -)

(1) Literature review: alcohol impact on inclusivity in public spaces



(2) Qualitative case studies in 8 communities which objected to the alcohol retail outlet (155 residents + 48 key stakeholders)



(3) Legal analysis of key licensing decisions:

- **Bottle stores**
- **New or renewals**
- **SSAA in force for 10 years...**



Criteria for license issue (s 105):

- whether **the amenity and good order of the locality** would be likely to be reduced to more than a minor extent:

(a) noise levels;
nuisance and vandalism

number of licensed premises

(b) the purposes for which land near
the premises concerned is used

Relates to the physical space, rubbish, effects of alcohol, loitering, disorder or damage.

Amenity and
good order

Main reason for objections

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Amenity and good order

Alcohol-related harm

Link between granting the licence and whether alcohol-related harm will be increased.

Object of the Act (minimise harm) must be considered when issuing the license.

→ Early case law developed in a narrow way: required a specific link (e.g. branded carry-on bags to link with the outlet!)

“Requiring proof of a “causative link is not only unrealistic but is contrary to the correct legal position”

Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd [2018] NZHC 1123

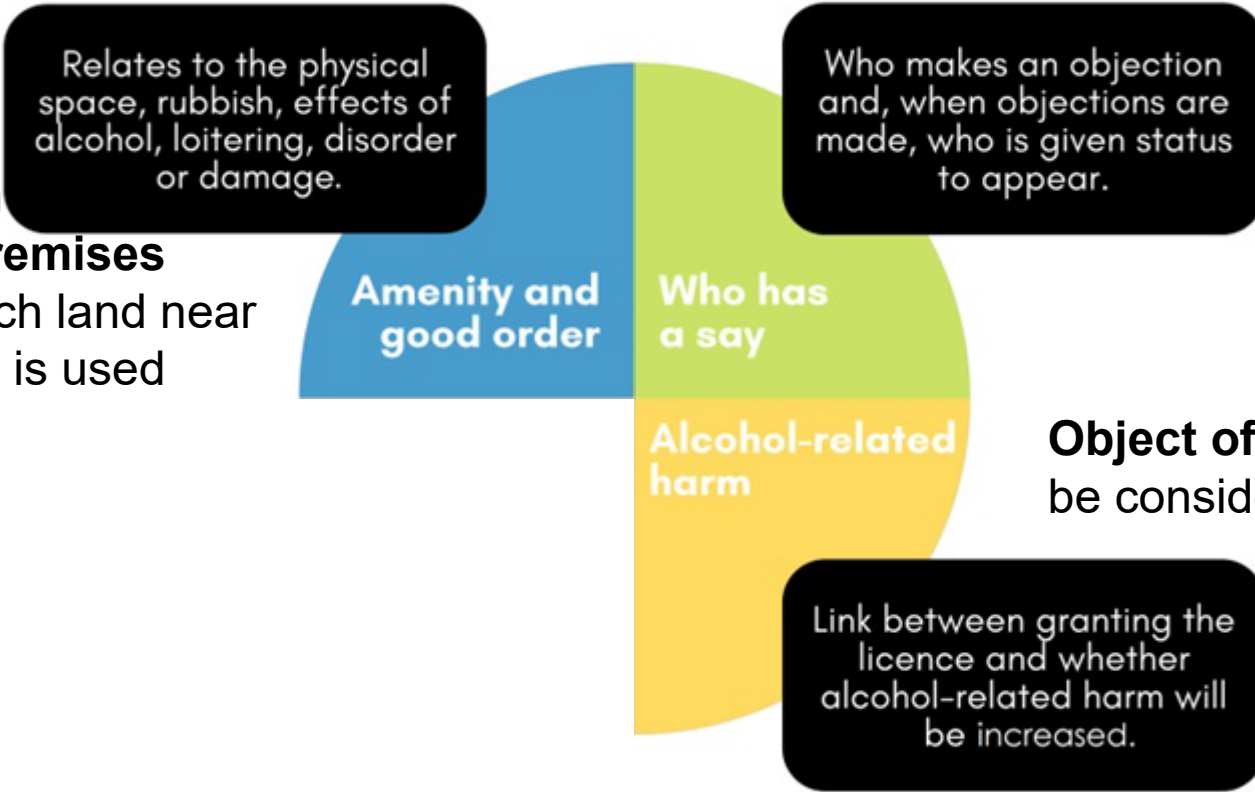
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S 102: “A person may object to the grant of a licence only if he or she has a greater interest in the application for the licence than the public generally”

Case law on legal standing:

- 1-2 km from premises
- Teachers, church some leeway; ‘enhanced interest’
- 2019 Liquorland Papatoetoe: NGOs no standing per se – interest in particular case

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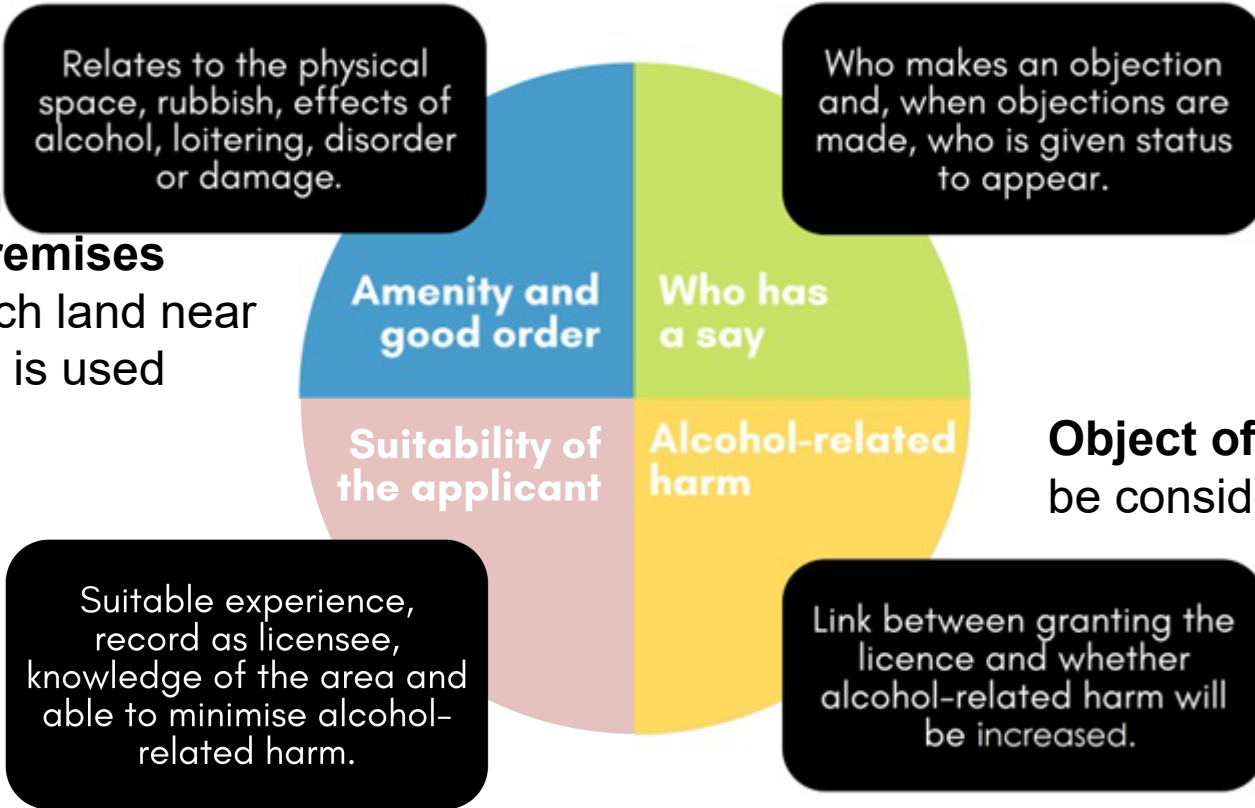
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Broad approach:

- ‘good management’
- applicants’ awareness of alcohol harm and vulnerability of the community

Must have a plan to minimize harm

... but not applied uniformly by local decisionmakers.



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Sale and Supply of Alcohol (Community Participation) Amendment Bill:

- “**Any person may object** to an application for the grant of a licence, whether as an individual or as a representative of a group or an organisation.” – only trade competition excluded (S 102)
- “A licensing committee must establish appropriate procedures to consider applications. When doing so, a licensing committee must ensure that those procedures:
 - (a) **avoid unnecessary formality**, including for example (...) the language and terminology to be used at the hearing; and
 - (b) **do not permit parties or their representatives to question other parties or witness** witnesses of other parties; (...) (can still examine your own witnesses!)
 - (d) allow submissions in te reo.”
- **Extended timeframe for objecting from 15 to 25 days**
- + appeals of **LAP** removed (judicial review on procedural ground still allowed).

CONCLUSIONS



- **Law is still highly contested** in many aspects: inconsistent across DLCs
- Successful outcomes: **community mobilisation!**
Still difficult for community to (1) contest suitability of the applicant
(2) gather evidence of risk of harm
- 2022/23 amendment addressed some procedural issues...