

# Objecting to a licence to sell or supply alcohol

A guide to objections and hearings

## Acknowledgements

The Health Promotion Agency wishes to acknowledge the Taranaki Alcohol Harm Reduction Group and its *Toolkit for making submissions on alcohol licence applications*. This guide has drawn heavily on content from the toolkit. We wish to thank the group for its generosity in allowing its material to be incorporated into this guide and be made available to a wider audience.

## Do you want to object to a licence to sell or supply alcohol?

If you're concerned about a proposal for a licensed premises (such as a bar or bottle shop) in your neighbourhood, you can make a formal objection to it.

Here you can find out:

- about the current law on alcohol licensing
- how to object to a licence
- how licensing hearings work
- how licensing decisions are made.

This guide is for people who are concerned about an application for a new or renewed alcohol licence in their community. It will help you to decide whether to make an objection to a licence, and lead you through the objection and hearings process under the Sale and Supply of Alcohol Act 2012.

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# How this guide can help you

*This guide will help you to decide whether to make an official objection to an application for a new or renewed alcohol licence in your community, and if you decide to go ahead, how to go about it. It sets out how to object to a licence to sell or supply alcohol, what to include in your objection, and the processes that you need to follow.*

The guide explains the intent of the Sale and Supply of Alcohol Act 2012 (the Act) and outlines who can make an objection, the grounds on which you can object, and how to get others in the community to support you. It includes a diagram of how the application and objection process runs.

You need to make a written objection to a licence application within 15 working days of a public notice appearing in your local newspaper or nominated internet site.

You can do this in the following ways:

1. As an individual, with a written objection
2. As a group, with a written objection
3. As a group, through a petition.

An objection can only be made by someone who has “a greater interest than the public generally” in the licence application. This is called ‘standing’ and you need to show that you have it when you lodge your objection.

If there are any objections to an application it must go to a district licensing committee hearing. If you make an objection in time, and have ‘standing’, you’ll have a chance to speak about your objection at a public hearing. We explain how hearings work and what you need to do to prepare for, and take part in, a hearing.

You can also find out about when the Alcohol Regulatory and Licensing Authority is involved in applications.

## Objecting in action: a real case study

Hi, my name is Michelle, I am a mum, wife and nurse.

In November 2013 I was sitting in my car outside school waiting for our seven-year-old to come out. While I was waiting I read the *South Taranaki Star* and came across an application for an off-licence.

My initial thought was, we already have three off-licences and three supermarkets selling alcohol in a community of 8,000 people. What we don't need is another one, particularly as it is just down the road from Hawera High School and opposite another off-licence and supermarket.

So.... What to do? My immediate reaction was to write a letter to the editor of the local paper to urge the Hawera community to oppose another off-licence. Prior to writing the letter I contacted the local council and spoke to the Licensing Inspector about how to oppose, as there are criteria to be met.

I then wrote a letter to the editor (which then became an article in the paper). I contacted the Principal at the high school, I emailed our local Member of Parliament, and I went and saw the Captain of the Salvation Army. I then went door knocking, and did a mail drop in the immediate residential area to inform the residents of the off-licence application (many had not seen the application in the paper). During my door knocking I also handed out the phone number and the contact person who people would need to talk to at the council to find out how they could oppose the application. In that handout I also provided some basic information on the harm that too many off-licences in a small town can do to a community and the timeframe people needed to object by.

I was also in touch with Jill, who is a Health Promotion Officer in the Public Health Unit at Taranaki Base Hospital, who provided me with some excellent information to support my objection. I also discussed my concerns with Sergeant Smith at the Hawera Police Station.

On a positive, fabulous note we had six community objections and the application was withdrawn.

Communities can make a difference.

*Michelle Bird*

# The Sale and Supply of Alcohol Act 2012: what you need to know

*The Act aims to minimise harm from alcohol by managing the way it's sold, supplied and consumed.*

The Act's aims are to:

- ensure the safe and responsible sale, supply and consumption of alcohol
- minimise the harm from excessive and inappropriate drinking, including crime, disorder, public nuisance and negative public health outcomes.

For more detail on the object of the Act, see Figure 1.

The Act provides for community input to local alcohol licensing decisions through public objections. An objection must be based on the specific criteria set out in the Act. These are the only valid grounds for objection. There are more grounds for objecting to a new licence application than to the renewal of an existing licence.

The Act also empowers local councils to implement new licensing laws and, if they wish, develop local alcohol policies for their regions. For example, a council's local alcohol policy may:

- restrict or extend the hours when alcohol is available
- impose conditions on licences, such as a one-way door policy that stops patrons entering licensed bars or clubs after a certain time

- limit the location and/or number of licensed premises according to factors such as their proximity to schools, churches, marae, recreational facilities and high-crime areas.

It also establishes an alcohol licensing system that includes two new decision-making bodies:

- 1. district licensing committees,** which are administered by local councils and consider and decide on all applications for alcohol licences within their local areas
- 2. the Alcohol Regulatory and Licensing Authority,** which deals with most enforcement actions (eg, if someone sells alcohol in breach of the Act or their licence) and also decides on appeals against decisions of district licensing committees.

The Act sets out the criteria for assessing licence applications (Figure 3). Decision-makers (members of district licensing committees or the Alcohol Regulatory and Licensing Authority) must take into account a range of matters, including the:

- object of the Act (Figure 1)
- provisions in any relevant local alcohol policy (Figure 2)
- impacts that a licence would have on 'amenity and good order' in the area (see Figure 4).

## Types of alcohol licence

There are four main types of licence:

1. An on-licence to sell alcohol at a business for people to drink there (eg, pub, restaurant, cafe, bar)
2. An off-licence to sell alcohol from a business for people to take away and drink somewhere else (eg, bottle store, supermarket, grocery store)
3. A club licence (eg, sports club, RSA, working men's club)
4. A special licence for an event (eg, a food and wine festival, a wedding in a council hall).

### Figure 1

#### The object of the Sale and Supply of Alcohol Act

Section 4 of the Act states in Subsection (1) that the object of the Act is that—

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

Section 4 goes on to say:

- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
  - (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
  - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

## Figure 2

### Local alcohol policies

A local alcohol policy is a set of rules made by a council in consultation with its community about the sale and supply of alcohol in its local area. Local alcohol policies are developed under the Act and **must** be regarded in all decisions about alcohol licences. If a local alcohol policy exists, you may wish to consider what it says about the licence being applied for, in addition to what the Act says. Local alcohol policies aren't mandatory; councils can choose whether to develop them.

Local alcohol policies can cover the following:

- Limiting the location of licensed premises in particular areas, such as near schools, community centres, playgrounds or churches
- Controlling the density (or total number) of licensed premises by stating whether new licences can be issued in an area
- Imposing conditions on particular types of licence as well as the conditions already provided for in the Act (see Figure 8), such as a 'one-way door' condition that would allow patrons to leave premises but not enter or re-enter after a certain time
- Restricting or extending the maximum trading hours set in the Act, which are:
  - 8am to 4am for on-licences (such as pubs and restaurants)
  - 7am to 11pm for off-licences (such as bottle stores and supermarkets).

Check your council's website to see if it has a local alcohol policy in place.

For further information on local alcohol policies, see [www.alcohol.org.nz](http://www.alcohol.org.nz) (see Alcohol management & laws)

# Getting involved in the licence application process

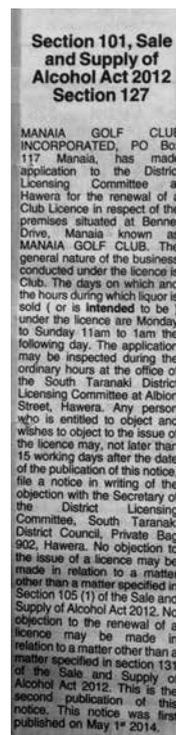
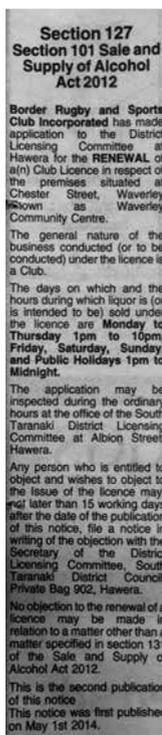
## How will you hear about a licence application?

An applicant must notify the public of every application for an on-, off- or club licence (Not all special licences need to be publicly notified – see Figure 5 for more information).

The applicant may be required to put a notice in a local newspaper or to advertise their application on the local council's website. Where an applicant is required to notify the public, they must also place an A4-size copy of the public notice on or next to the site of the proposed licence.

Different rules apply to a special licence application: the secretary of the district licensing committee decides whether it's in the public interest to notify the application.

It's worth getting in touch with your local council to clarify how to find out about applications.



## Who can make an objection?

Anyone can object to an application for a new or renewed alcohol licence, as long as they can show that they have a 'greater interest' in the application than the public generally (section 102(1) of the Act). This usually means that they live near the proposed or existing premises to which the licence will apply, or have a direct link with alcohol-related harm in their community.

For example, a person with a greater interest could be:

- someone who lives 'within close proximity' to the proposed or existing premises. To learn more about the meaning of 'within close proximity', visit [nzlii.org](http://nzlii.org) and look up '*PH 826/2013 Janhurst Holdings Limited*' and '*Decision No. PH 1189/2009 Liquor World Limited*'
- a member of the board of trustees of a marae or youth or education facility that's located nearby
- a person or group who works in the area of alcohol-related harm in your community, such as the Salvation Army or a nurse working in the local hospital emergency department.

Someone who's concerned about the effects of alcohol on the community in general but lives in a different area is unlikely to meet the criteria for 'greater interest'.

The district licensing committee decides whether a person has a 'greater interest' so that the person has what is referred to as 'standing' to make a public objection to an application.

## What if you don't have a 'greater interest'?

If you don't have a greater interest but are still concerned about an application for a new or renewed alcohol licence, you can try to encourage others to take up the cause.

For example, you could:

- contact community organisations that are actively involved with alcohol-related harm, family violence, youth groups etc. Your local council will have a directory of the key groups and contact people
- talk to people in the neighbourhood who could be directly affected by the proposed alcohol licence eg, those living in neighbouring properties. They may need to be nudged into action or may need you to help them
- arrange a meeting with a school's board of trustees if the proposed alcohol licence is near their school, or talk to parents at the school gate
- offer to be a witness for someone who does have 'standing' if you have helpful evidence to support their objection.

## Considering a petition?

If you decide to make a group objection via a petition, you must make sure that:

- you appoint a lead coordinator to manage the petition process
- the petition clearly states the issue(s), so that people know exactly what they're agreeing to
- you clearly link your objection to the relevant criteria in the Act
- everyone who signs the petition has a 'greater interest' than the general public
- everyone who signs the petition provides their details in full, including name and address, on the petition – and is aware that these details will be shared with the applicant
- the information included in the petition is readable and correct, or it may not be accepted. For more information on this see the Crown Liquor Limited decision at [aucklandcouncil.govt.nz/SiteCollection/Documents/aboutcouncil/hearings/crownliquorlimiteddrpt20141014.pdf](https://aucklandcouncil.govt.nz/SiteCollection/Documents/aboutcouncil/hearings/crownliquorlimiteddrpt20141014.pdf)

## How much does it cost to object?

There is no fee for making an objection.

## Figure 3

### Criteria for assessing applications

When deciding whether to issue an on-, off- or club licence, a district licensing committee or the Alcohol Regulatory and Licensing Authority must have regard to:

- the object of the Act
- the suitability of the applicant
- any relevant provisions in any local alcohol policy that exists and is in force
- the proposed days and hours of sale
- the design and layout of the premises
- the sale of other goods such as non-alcohol and low-alcohol drinks and food
- the provision of other services
- how the 'amenity and good order' of the area would be affected if the licence were or were not granted (see Figure 4)
- whether the applicant has systems, staff and training to comply with the law
- any matters in reports by the Police, the licensing inspector or the Medical Officer of Health.

The decision-makers can't take into account the impacts of the licence on business conducted under any other licence – this makes it clear that the potential for competition that might have negative impacts on another licensee is not a relevant consideration.

## Figure 4

### Amenity and good order

District licensing committees and the Alcohol Regulatory and Licensing Authority have to consider 'amenity and good order' when deciding whether to grant a new licence or renew an existing one. For a new licence they must consider whether granting the application would reduce the amenity and good order of the locality to more than a minor extent (section 105(1)(h) of the Act). For a renewal they have to consider whether declining to renew the licence would increase the amenity and good order of the locality by more than a minor extent (section 131(1)(b)).

Amenity and good order is described in the Act (section 5) as the extent to which, and ways in which, the locality in which the premises is situated is pleasant and agreeable.

In deciding whether amenity and good order would be reduced or increased by more than a minor extent, the decision-makers must take into account (section 106):

- current, and possible future, levels of noise, nuisance and vandalism
- the number of other licensed premises in the area
- the compatibility of the proposed use with the current and future use of surrounding properties.

## Figure 5

### Special licences

Special licences are treated slightly differently from on-, off- and club licences under the Act. Special licences allow for the sale or supply of alcohol to anyone over 18 attending an event such as a food and wine festival, private function, street party or sporting event.

Applicants must lodge a special licence application at least 20 working days before the event unless there are special circumstances, in which case they need to ask the district licensing committee if it will agree to accept their application late – it might not.

Unlike for other licence applications, the secretary of the district licensing committee decides whether the applicant needs to publicly notify the application and, if so, the kind of notification required (eg, in a newspaper or by putting up a notice on the premises).

If there are any public objections or opposition to the application from the Police, the licensing inspector or the Medical Officer of Health, the committee must call a public hearing to consider the application. If this happens it will slow down the application. There has to be at least 10 working days' notice of any public hearing, for example. The hearing itself takes time and more time is often needed for the decision to be prepared.

If a special licence application relates to a large-scale event, the committee may ask the applicant to:

- provide an *Event Management Plan* outlining how they propose to deal with matters such as security, monitoring, interaction with local residents, and public health concerns. The Health Promotion Agency has sample *Event Management Plans* and guidelines for large-scale events at [hpa.org.nz](http://hpa.org.nz) (see Resources & research)
- provide Resource Management Act and Building Act certificates
- liaise with Police and council officers.

In making its decision the committee will consider the criteria for granting special licences under section 142 of the Act as well as any relevant case law.

# How to object to a licence application

To object to an application for a new or renewed alcohol licence, you need to:

- write to the district licensing committee stating that you wish to object to the application, and why
- include your full name, address and contact phone number
- say how you have a greater interest in the application than the public generally, if it's not obvious from the fact that you're a close neighbour
- ensure that your objection is received within 15 working days after the first public notice in your local newspaper.

Remember, you only have 15 working days to make an objection, so it's important to act quickly. You don't need to have all your arguments well thought out at this stage, as you'll have the opportunity to talk about your objection at the hearing. If you are short on time, just note down a few key points and say that you wish to speak at the hearing. This will ensure that you get the chance to speak to the district licensing committee about your concerns. You'll have time to prepare your full arguments for the hearing later.

A sample letter for objecting to a licence application is provided in Appendix 1.

## The grounds for a public objection

There are more grounds for objecting to a new licence application than to the renewal of an existing licence.

An objection to the renewal of an existing licence can only be based on the suitability of the application. There are no other relevant grounds.

An objection to a new licence must be based on the Act's criteria for assessing applications (see Figure 3). These are the only valid grounds for objection. The decision-makers can't take into account the impacts of the licence on business conducted under any other licence. For example, you can't object because you think your own licensed premises will lose customers.

For example, if you wish to object to an application for a new licence, you could:

- say that you're concerned that a new licensed premises in your street would add to the existing noise, vandalism and disturbance
- describe the current situation (eg, the night-time noise levels) and how it would be affected by a new or renewed licence
- describe how an existing licence has been poorly managed recently, causing community issues, or how its location is no longer appropriate due to the way in which your community is developing.

It will strengthen your case if you link your objection to a specific section of the Act. For example, you could base an objection on any of the following issues:

- The proposed premises is close to a kindergarten or school and would be bad for the children who go there (section 105 (1)(a) and (h)).
- Noise levels, rubbish or nuisance from the premises would affect the neighbourhood (section 105 (1)(a) and (h)).
- There have been problems with a licensed premises (bar or bottle shop) run by the applicant before (section 105 (1)(b)).
- The application does not meet the criteria set down in a local alcohol policy (section 105 (1)(c)).

You may be able to object to an application for a new licence on the grounds that the proposed premises is close to a sensitive site (such as a church or school). Check with your council first. It may have (or be developing) a local alcohol policy that defines sensitive sites and specifies the minimum distances between them and new licensed premises.

If you have concerns about the applicant's suitability, think about discussing this with the local New Zealand Police alcohol harm reduction officer before you make your written objection. The Police can advise you on the information or evidence that you may need to back up your objection.

## Evidence

It's important to provide evidence to support your objection. Evidence must be related to the specific premises that you're objecting to. For example, you could:

- record when (dates and times) you've had to ring the council to complain about noise
- provide photographs of the issue(s) you wish to highlight, such as rubbish, broken bottles in play areas and vomit in doorways
- describe in detail when and how you've been personally affected by problems from the existing licensed premises. For example, "On Saturday 20 October 2014 at 11.30pm I was woken by a group of people leaving the premises. I heard them yelling and saw from my window that they were not walking steadily. Then I saw one of them urinate on my doorstep"
- calculate the number of alcohol outlets per head of population in your area compared with other areas (your local public health unit may be able to provide you with this information).

If you want any further advice about objecting to an application, you could contact the regional manager at the Health Promotion Agency, your local public health unit or Alcohol Healthwatch. For more information and contacts, see Appendix 2.

## What happens to my objection?

When the district licensing committee receives your objection, it will:

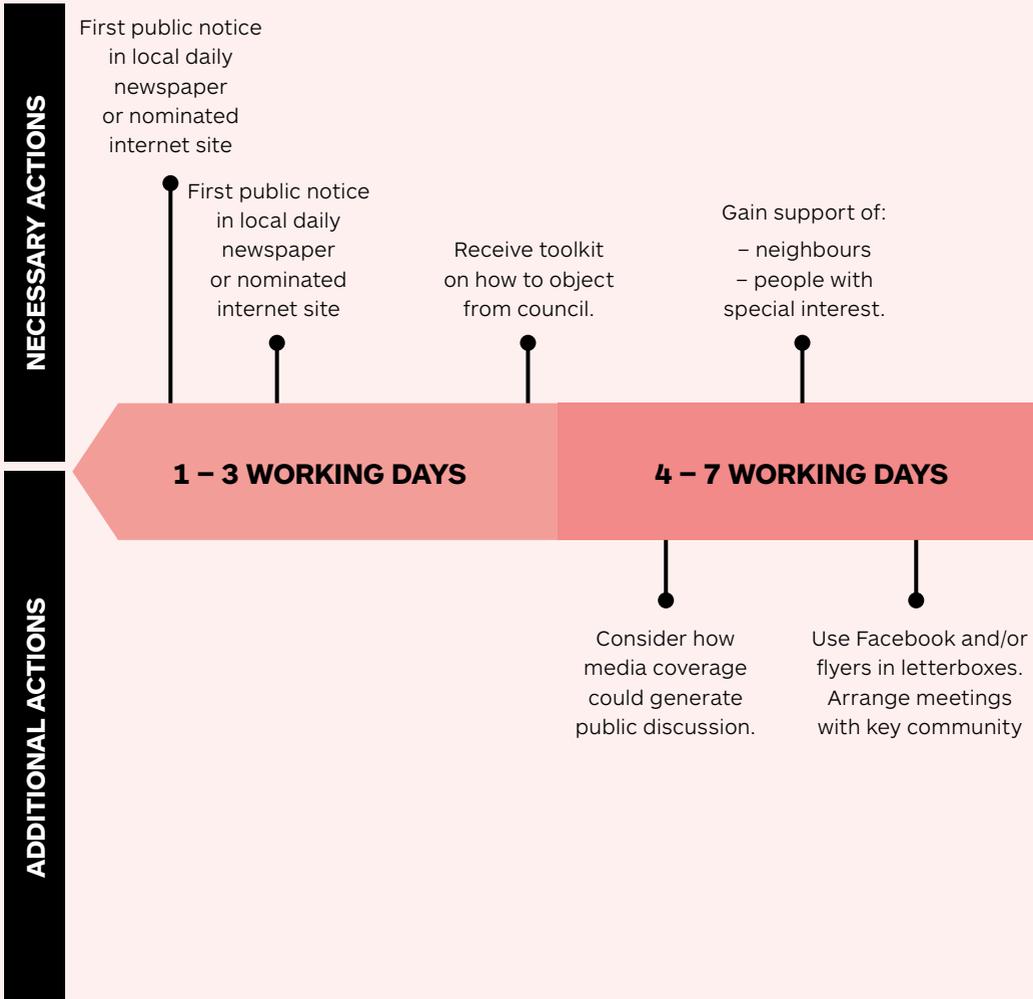
- acknowledge your objection (by phone or letter)
- send a copy of your objection to the licence applicant, the Police and the Medical Officer of Health.
- The district licensing committee will then consider your objection and any others that have been submitted. If it believes that your objection meets the Act's criteria, it will:
  - offer you the opportunity to speak about your objection at a public hearing on the application
  - advise you of the hearing date and time.

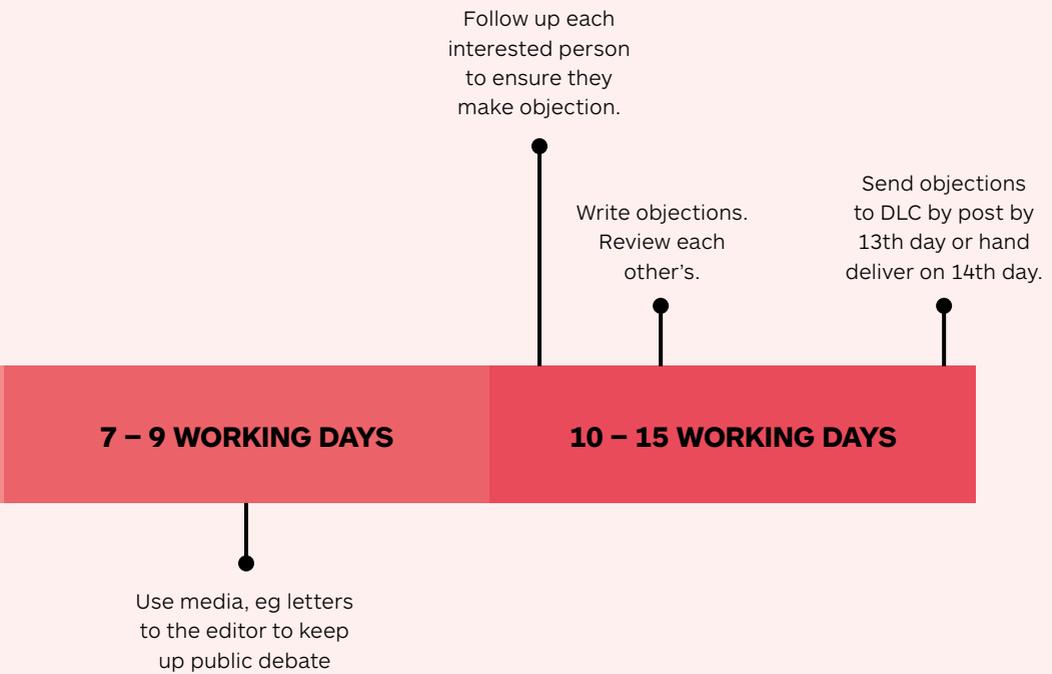
You don't have to speak at the hearing, but your objection will have greater weight if you do. If you can't attend, or are uncomfortable with public speaking, you may know of someone who'd be happy to do this for you. If your objection is based on things that you've seen and heard yourself, it would be better for you to speak at the hearing. If you get someone else to talk about what you've seen or heard it will be what's called 'hearsay', and not very persuasive.

Figures 6 and 7 set out the timeline and process for licensing decisions in more detail.

## Figure 6

### Timeline to making an objection to an alcohol licence

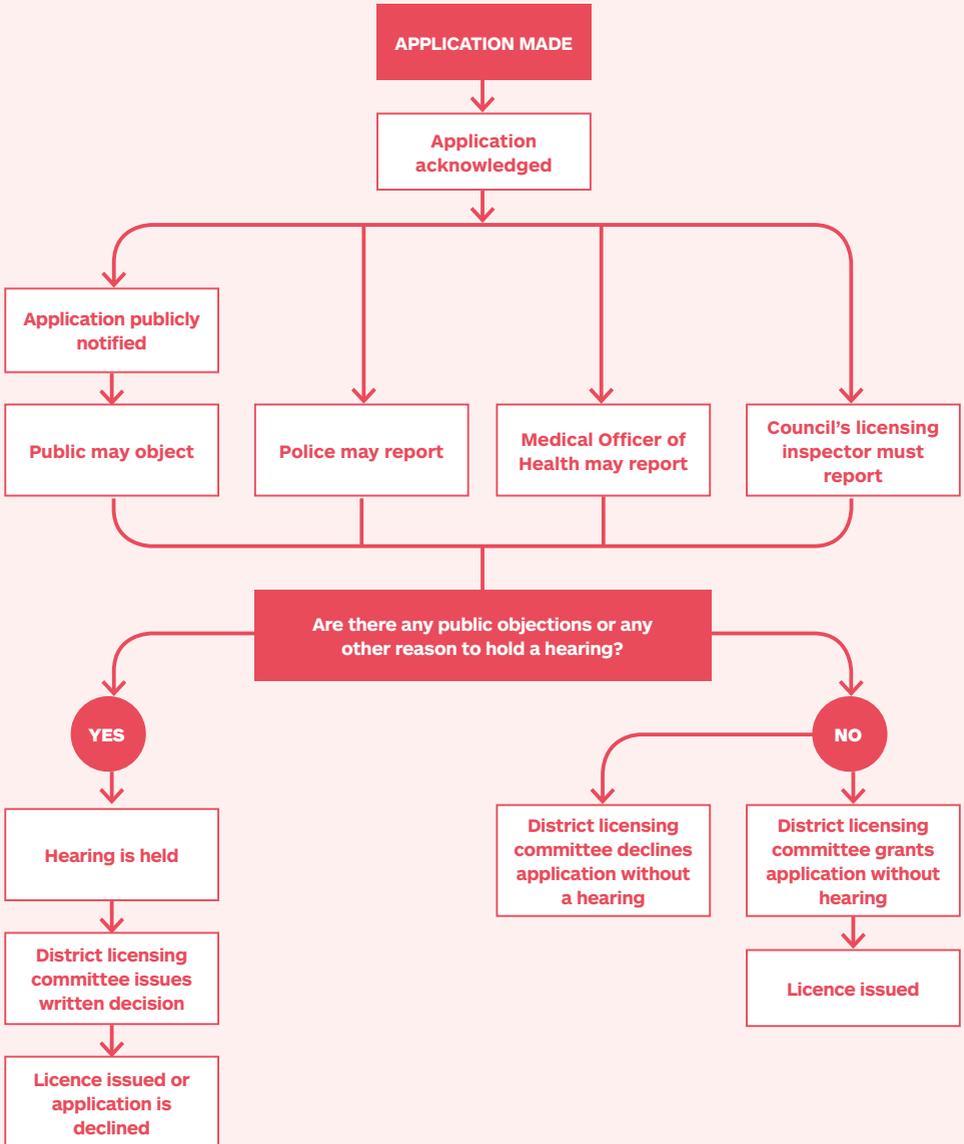




Your objection needs to be with the DLC by the 15th working day after the public notice has been published. Use this timeline as a guideline to making your submission.

## Figure 7

The process for issuing alcohol licences



# District licensing committee hearings: an overview

*In this section you can find out about what a district licensing committee is, its role, and the way it operates.*

District licensing committees are set up under the Act and are administered by your local council. They're independent decision-making bodies. Within their local areas, district licensing committees decide applications for:

- new on-, off- club and special licences
- renewals of on-, off- and club licences
- new and renewed managers' certificates
- variations of licence conditions
- enforcement action for special licences.

Each district licensing committee is made up of a chairperson (who can be either a councillor or a commissioner) and two members appointed from a list of members approved by the council. The committee members have experience relevant to alcohol licensing matters (and can include elected members of the council). A commissioner is someone who's not a councillor but has the required knowledge, skill and experience relating to alcohol licensing, and is appointed under the Act.

The members must not be people who could be biased due to their current involvement in the alcohol industry, and for each hearing there's a process to check that no one on a district licensing committee has any conflict of interest.

The role of the committee is to consider and decide licence applications. This includes listening to evidence and arguments for and against applications and making decisions on them. The committee is an independent and impartial body that makes its decisions by considering the reports and evidence presented to it against the criteria in the Act and any relevant case law. While the committee is administered by the council, and may include councillors, it makes its decisions independently of the council, according to the provisions of the Act.

If there are any public objections to a licence application or opposition from reporting agencies, or the district licensing committee decides that it wishes to call a hearing, the applicant is invited to attend a district licensing committee hearing.



As an objector you'll also be invited to attend the hearing. You don't have to speak at the hearing, but if you do your objection will be likely to have more impact on the committee.

Hearings are reasonably formal so that applications are dealt with consistently and fairly, and all parties are given a fair opportunity to present their cases. District licensing committees have powers under the Act to require documents to be provided and summon (ie, require attendance by) witnesses. Hearings are usually held at council offices, although the chairperson can decide to hold them somewhere else.

If you need assistance from a New Zealand Sign Language interpreter, or have English as a second language and need interpretation support on the day of a hearing, please let the council staff arranging the hearing know in advance. While the Act doesn't require district licensing committees to hear evidence in te reo Māori, the council may assist with this. Contact your council in advance to discuss your request.

District licensing committee hearings are open to the public, and the news media may be present. Sometimes the committee will decide to exclude the public from parts of the hearing, or limit the public release of information, for example for commercial or privacy reasons.

# Preparing for the hearing

*There is a lot you can do to prepare for the hearing so that it goes well on the day.*

## Notice of the hearing

The district licensing committee's support staff will advise you of the need to attend a hearing, the date and the venue, at least 10 working days before the hearing (unless you've agreed to an earlier date).

There's no requirement to send copies to objectors of public objections or reports from the Police, Medical Officer of Health and the council's licensing inspector. If you're interested in this material and haven't received it when you're notified of the hearing, you can ask the secretary of the committee to send you copies.

The district licensing committee may send out pre-hearing directions, which are written instructions about administrative matters, such as when any extra written materials should be provided before the hearing. If this happens, you need to do what's requested.

Some district licensing committees hold pre-hearing meetings. These are voluntary and are an opportunity to clarify administrative matters before a hearing or reach an agreement by consensus, such as changing opening hours in response to public objections. These early meetings can

be really important as a way of influencing what happens. You may be able to achieve what you want before the application even goes to a hearing.

## Get professional support if it will help

If you have a particularly complex objection, or the application itself is complicated, it may be worth considering professional advice for, and representation at, your hearing. This could be from lawyers, consultants or community groups with relevant experience. It will ensure that you have all the information and support you need so that the hearing runs smoothly. You'll need to consider the costs of any such advice before you seek it.

Consider whether you want to call witnesses on the day to support your case. These could be neighbours, a school principal, church elders or expert witnesses with particular technical expertise. Check the costs before you employ an expert witness and make sure that they're able to present solid evidence to support your objection and help the committee to make its decision.

## Prepare your case

Prepare your objection and any evidence you need. Evidence is anything that backs up the facts in your objection. It can be oral, written or visual – you can use photographs and drawings as evidence. Evidence should focus on facts, not emotions, and be directly relevant to your application. Use evidence to highlight how the licence, if granted, would increase alcohol-related harm or have negative effects on amenity and good order. Evidence gathered over a period of time will be stronger than evidence gathered on just one occasion.

Prior to the hearing you may be sent an agenda, hearing information and possibly also evidence and submissions from other parties that they've agreed to pre-circulate. Read all this information before the hearing.

You may wish to prepare a written statement for the hearing. This might cover any evidence you want to provide above and beyond what's in your objection, along with any legal submissions you want to make. Identify the points you want to get across and back them up in your statement. Ensure that your evidence supports what you're saying.

Practise reading your statement. You want to get it right and look confident and comfortable. Practising will make sure you do.

Make copies of any evidence you'll put forward at the hearing (the council can advise you how many copies you'll need to take).

Make sure you know where the hearing is being held, and leave yourself plenty of time to find it.

At the hearing the district licensing committee members may ask for your ideas on how your objection could be addressed. So it's a good idea to go prepared with some reasonable conditions that could be applied if it decides to grant the licence. If you'd like some advice, discuss your options with the licensing inspector at the council, the Police alcohol harm reduction officer, or your local public health unit. For example, you could suggest that:

- the premises operates with restricted trading hours – so if you're concerned about its proximity to a school, it could open after 9am and close for an hour between 3pm and 4pm
- there be no promotional advertising on the premises' exterior
- security cameras be installed
- door staff be employed
- a noise management plan be required
- the building's exterior be cleaned every day at, for example, 3am.

## Case law

When deciding a licence application, the district licensing committee has to consider a range of criteria set out in the Act (see Figure 3). It also considers any relevant ‘case law’.

Case law means decisions made by courts and other decision-making bodies (eg, tribunals) that say what the law is.

When making its decisions, the district licensing committee looks to see whether there is any case law about the matters that it has to determine.

The case law to which a district licensing committee may refer could include decisions made by the Alcohol Regulatory and Licensing Authority, its predecessor the Liquor Licensing Authority and any higher courts (the High Court, the Court of Appeal and the Supreme Court) that relate to alcohol licensing matters.

You may need to consider relevant case law when preparing your application or materials for a hearing. For example, if you’re thinking about how to ‘minimise’ alcohol-related harm, you might need to consider that the Alcohol Regulatory and Licensing Authority has defined ‘minimised’ as “reduced to the smallest amount, extent or degree” in the

case *Penoy Spirits Limited 2014 NZARLA PH697*. See <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZARLA/2014/697.html?query=penoy%20spirits>

The Health Promotion Agency has developed a guide to case law decisions made under the Act and its predecessor the Sale of Liquor Act 1989. It can be found at [www.alcohol.org.nz](http://www.alcohol.org.nz) (see Alcohol management & laws)

The guide sets out some relevant case law under topic headings such as:

- amenity and good order, design and layout
- days and hours
- new off-licence (opposed) – criteria sections 105 and 106
- object of the Act – SSAA.

The New Zealand Legal Information Institute has case law online, including in its databases for Liquor Licensing Authority decisions up until 21 December 2012 and Alcohol Regulatory and Licensing Authority decisions from 2013 (see [nzlii.org](http://nzlii.org)).

# What happens at a hearing

*Depending on the nature of the case, a hearing can last anywhere from half an hour to a full day or several days. If you're unsure about how much time you need to put aside, ask council staff how long they expect your hearing to take. You'll only need to stay while you speak to the committee and answer any questions; however, you're welcome to listen to the whole hearing if you want to. Staying for the whole hearing may help you to understand all the issues raised and how the committee reaches its decision. This might be important if you wish to appeal the decision.*

While all district licensing committees follow the same basic processes, each operates slightly differently. Some are less formal, operating more like a meeting, while others are more formal and operate more like a court.

## Who else will be at the hearing?

As well as you – an objector – and any representatives, lawyers or witnesses you bring to the hearing, there will be other people present. Those likely to attend include:

- the applicant and their representatives, lawyers or witnesses

- the district licensing committee chairperson and members, and their committee advisors
- the Medical Officer of Health or their representative
- representatives of the Police
- the council's licensing inspector
- other council officers, to give reports or technical advice to the committee
- other objectors and any associated representatives, lawyers and witnesses
- members of the public
- news media representatives.

## The hearing process

The order of speakers is likely to vary from hearing to hearing, but the chairperson of the committee will outline the order of the day at your hearing. In general, hearings follow this format:

### Opening and introduction

The chairperson introduces the committee members and advises which licence application is being heard. You and the other parties are asked to introduce yourselves. The chairperson gives a brief outline of the hearing procedure. The chairperson also confirms that they and the committee members don't have any conflicts of interest and are able to consider the application impartially.

## The applicant presents

The applicant (either personally or through a representative) introduces their application and presents their case. They can ask witnesses to speak in support of their application. If they're giving evidence they'll be asked first 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. All witnesses need to do this too.

The committee may have questions for them and their witnesses. The chairperson then invites the reporting agencies (Police, Medical Officer of Health and licensing inspector) and any objectors – including you – to ask questions. This questioning is called cross-examination.

## Reporting agencies speak

The Police, Medical Officer of Health and licensing inspector make submissions on the application and are all sworn in (by oath or affirmation) before presenting any evidence they wish to give. They must answer questions from the committee. The applicant may also ask them questions when it's their turn to cross-examine.

## Objectors present

You and any other public objectors who wish to speak can talk about your objections. You can do this yourself or through a representative.

At the hearing you can't introduce new grounds for objecting, but you can present evidence to support your reasons for objecting. If you present evidence you are sworn in. You can also call witnesses to support your case. The committee members or chairperson may have questions for you or your witnesses. The applicant and the reporting agencies can also ask you and your witnesses questions about your evidence.

## Closing statements

Each party usually has a chance to make closing remarks to sum up their case. This can include responding to any arguments made during the hearing; however, no new evidence can be introduced at this stage. You may wish to highlight any relevant case law and say how it relates to your case and the evidence you have brought. The applicant gets the last say.

## The conclusion of the hearing

The chairperson advises everyone that the public part of the hearing is finished and outlines the next steps.

All committee decisions are issued in writing. Generally the committee issues a written ('reserved') decision to the applicant and other parties some time after the day of the hearing. Sometimes the committee confers in private for a short time and delivers an oral decision on the day, with the written decision issued later.

# How to do well at a hearing

*You want to make a good, strong impression at the hearing. You need the committee to focus on your statement and your evidence. Here are some tips to help you do well on the day:*

- Plan what you wish to say carefully, and practise reading it if you've written it down before the hearing. Providing a 'brief of evidence' that outlines or summarises your evidence is a good idea.
- Be professional. A hearing is a formal process and district licensing committees have legal authority and powers. Think of the committee hearing as a court and act accordingly.
- Dress appropriately.
- When you arrive, introduce yourself to the council staff. You'll be asked to fill in an attendance sheet.
- If you've brought copies of documents, give these to the council staff or let them know if copies need to be made.
- The staff will let you know where to sit and what will be happening.
- You can expect the committee to treat you with dignity and respect, and to put you at ease. You should treat the committee members with respect too.
- Turn off your cell phone while you're at the hearing, or put it in silent mode.
- Assume that the committee has read any written material that you've sent in advance. If you've sent a written statement before the hearing, the members may not want you to read it out and may instead ask if you have anything to add and ask you questions. Be guided by the chairperson.
- You'll be sworn in when you give evidence. You can choose to swear on the Bible or another sacred text (eg, the Koran) or make an affirmation (a non-religious solemn promise).
- When you speak, introduce yourself. If you represent a group, explain how its views were gathered.
- Demonstrate clearly that you have a greater interest in the application than the general public.
- Be precise and clear about why you're objecting, and provide all the information required.
- Speak slowly, clearly and loudly enough to be understood. Try not to repeat yourself.
- Be direct and to the point; focus on the facts and not personalities or emotions.
- Stick with what you know. Use expert witnesses if you need to, but don't pretend to be one yourself if you're not.

- Paint a clear picture of how alcohol-related harm currently affects your community, and link it clearly to your concerns about the impacts of the application. Real-life experiences are persuasive; make sure they're recent and relevant. Be specific about what you saw at what time and on what dates.
- Give your evidence, then wait and respond to cross-examination or questions. If you're asked a question, try to respond or say you don't know. Take your time and take a moment to collect your thoughts before answering.
- Speak to the committee chairperson even when you're being questioned by others.
- Be courteous to other speakers. Don't disrupt or interject when other people are making their presentations.
- During your opportunity to cross-examine you get to question others who give evidence. At this time you must ask questions; you can't make statements. Focus on the issues, the evidence and the legislation, not on personalities or emotions.
- Remember that the hearing committee is impartial. If they're councillors, they're not there as politicians but as decision-makers who have to weigh up both sides of an argument. Don't use the hearing to discuss other issues; focus on the application and the issues at hand.
- There may be media attending who want to report what you've said and they may ask you questions after the meeting. It's your decision to talk to the media or not.
- Remember that everything you say is part of the public record. All evidence and submissions given at a hearing can become public and are made available at the hearing. Some councils may post such materials on a selected website.
- Remember, your audience is interested in what you're saying and wants you to make a successful presentation. This is your opportunity and the district licensing committee is genuinely interested in what you have to say.

# Rights and rules at hearings

*You have certain rights when you appear at a district licensing committee hearing. You must also follow some rules.*

## Can I choose who's on the committee?

You can't choose who's on the district licensing committee for a hearing. If you have any concerns about who'll be hearing the application (for example, if you consider that one of the members has a conflict of interest with the case), you can raise this with council staff. It's best to do this before the hearing, but it's possible to raise issues on the day. In some cases the council will decide to change the hearing members, but only if it considers that there are good grounds for doing so and no one is disadvantaged by the decision.

## Can I have support people?

Yes. Your friends, family and supporters can come to the hearing. You can call them as witnesses to speak on your behalf. But it's the quality of the argument that's important – not the number of people at the hearing.

## Can I ask questions?

When carrying out cross-examinations of the parties you can question them directly about their statements or evidence.

The committee can question you at any time during the hearing. The other parties can only question you during cross-examination when you present your evidence. If you want to respond to evidence given, you can only do this with a question during your opportunity to cross-examine. If you identify an issue that you wish to ask a question about during your cross-examination, you should write it down and use it at the correct time.

The committee will act as neutral referee should any disagreements or process issues arise. It will keep the parties and hearing on track.

## Will I be cross-examined?

Cross-examination means being asked questions by other parties. These can include the applicant, objectors, Police, the Medical Officer of Health and the licensing inspector. All parties with speaking rights at the hearing have an opportunity to ask questions of a party giving evidence. All parties are asked to take an oath or affirmation before giving evidence.

## What will it cost me?

There's no cost to attend a hearing. However, you're responsible for paying for your own costs, such as travel to and from the hearing, time off work, and any lawyers' or professional fees incurred for the hearing.

# What happens after the hearing

*Once the hearing has finished the committee meets privately and makes a decision on the application. This is in writing, giving the reasons for the decision and summarising the evidence and arguments at the hearing. You, along with the other parties, will be sent a copy of the decision. It may take a number of weeks for the decision to be issued.*

If the licence is granted, it will be granted with conditions. If you disagree with the conditions you can appeal them to the Alcohol Regulatory and Licensing Authority. All those who took part in the hearing have the right to appeal to the Authority if they're dissatisfied with the decision or any part of the decision.

In some situations the decision will be suspended pending the outcome of the appeal. This means that the licence can't be used until the appeal is resolved.

An appeal must be lodged with the Alcohol Regulatory and Licensing Authority within 10 working days after the district licensing committee decision is supplied. You must notify the other parties to the hearing that you've appealed. There is a fee for appealing to the Authority. For more information on appeals, go to [justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority](https://justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority)

If your application was first considered by a district licensing committee, the only appeal right is to the Alcohol Regulatory and Licensing Authority. If the Authority was the first body to consider the application, its decision can be appealed to the High Court. Decisions of the Authority can be appealed to the High Court, then to the Court of Appeal and up to the Supreme Court.

## Figure 8

### Conditions on licences

The Act requires some conditions to be imposed on all licences. The district licensing committee or the Alcohol Regulatory and Licensing Authority may impose others at their discretion.

### Compulsory conditions

The Authority or licensing committee must ensure that every licence it issues is subject to conditions:

- stating the days on which and the hours during which alcohol may be sold and supplied
- a place or places on the premises at which drinking water is to be freely available to customers while the premises is open for business
- fees payable.

### Discretionary conditions

Depending on the type of licence, the district licensing committee or the Authority may impose the following conditions:

- Prescribing steps to be taken by the licensee to ensure that the provisions of the Act relating to the sale or supply of alcohol to prohibited persons are observed

- Prescribing steps to be taken by the licensee to ensure that the provisions of the Act relating to the management of the premises concerned are observed
- The people or kinds of person to whom alcohol may be sold or supplied
- One-way door restrictions
- In the case of a club licence or an on-licence endorsed under section 37 of the Act, conditions requiring a manager to be on duty
- For large-scale events, liaison with the Police and a plan to manage security, public health, monitoring and interactions with local residents
- Prescribing the kinds of alcohol that can be sold or delivered from the premises
- Requiring food, low-alcohol and non-alcohol beverages to be provided
- Providing information about forms of transport from the premises
- Requiring alcohol to be sold and supplied in particular containers (eg, plastic)
- Any other reasonable condition.

# Appendix 1: Sample letter – objection to an alcohol licence application

[Insert date]

Alcohol Licensing Team

Name of council

Address of council

Dear Sir/Madam

I wish to object to the alcohol licence application by premises' name, premises' address.

I have an interest in this application that is greater than the general public's because +.

*Examples: I live less than one kilometre from the location. I work for/represent ABC Primary School, which is situated less than 500 metres from the proposed premises.*

I object to the application on the following grounds:

## **Objection 1:**

Grounds for objection – *state grounds for objection*

Reasons for objections:

1. *State concerns*
2. *State concerns*

## **Objection 2:**

Grounds for objection – *state grounds for objection*

Reasons for objections:

1. *State concerns*
2. *State concerns*

## **Objection 3:**

Grounds for objection – *state grounds for objection*

Reasons for objections:

1. *State concerns*
2. *State concerns*

I wish to appear should a formal hearing of this application be held.

My contact details are:

Name

Postal address

Suburb

City/Postcode

Yours sincerely

Signature

Name

# Appendix 2: Useful contacts and information sources

*The following people can help you with information and resources:*

- The licensing inspector at your local council
- The alcohol harm reduction officer at your local Police station
- The public health unit at your local district health board
- Regional managers at the Health Promotion Agency
- Alcohol Healthwatch.

You can find out how to contact them below, along with websites that contain useful information for you as you complete your application and prepare for any hearings.

## Councils

You may wish to get in touch with the licensing inspector at your local council. To find your local council, go to [localcouncils.govt.nz](http://localcouncils.govt.nz)

Your council could help you with information about the number and locations of current licensed premises, and opening and closing hours, in your neighbourhood. Councils also have information about the locations of existing alcohol control bylaws (liquor bans).

## Police

Get in touch with the alcohol harm reduction officer at your local Police station through [police.govt.nz/contact-us](http://police.govt.nz/contact-us). They should be able to provide you with information on breaches of alcohol control bylaws, including:

- the age and gender of people arrested/convicted for breaches
- an analysis of breaches by time and day of the week.

## Public health units/ Medical Officer of Health

Your local **public health unit** should be able to help you find information about the impacts of alcohol-related harm in your community.

## Health Promotion Agency

The Health Promotion Agency took over all functions previously undertaken by the Alcohol Advisory Council (ALAC) in 2012. The work that it undertakes aims to prevent and reduce alcohol-related harm and inspire New Zealanders to make better decisions about drinking alcohol.

You can contact the regional managers of the Health Promotion Agency at [www.hpa.org.nz/contact-us-1](http://www.hpa.org.nz/contact-us-1)

The Health Promotion Agency also provides [www.alcohol.org.nz](http://www.alcohol.org.nz), which contains a wide range of useful information about alcohol laws, research and resources.

## Alcohol Healthwatch

Alcohol Healthwatch aims to reduce alcohol-related harm through effective health promotion. Its website [ahw.org.nz](http://ahw.org.nz) contains information about alcohol legislation, issues, projects and media.

## Sale and Supply of Alcohol Act 2012

For free access to copies of the Act and the Regulations made under it, go to [legislation.govt.nz](http://legislation.govt.nz) and enter 'Sale and Supply of Alcohol Act 2012'.

## Case law

A guide to case law decisions can be found at [www.alcohol.org.nz](http://www.alcohol.org.nz) (see Alcohol management & laws)

The New Zealand Legal Information Institute has databases for Liquor Licensing Authority decisions up until 21 December 2012 and Alcohol Regulatory and Licensing Authority decisions from 2013 (see [nzlii.org](http://nzlii.org)).

## Alcohol Regulatory and Licensing Authority

For more information on appeals to the Alcohol Regulatory and Licensing Authority, go to [justice.govt.nz/tribunals/licences-certificates/arla](http://justice.govt.nz/tribunals/licences-certificates/arla)

## The demography of a district's residents and visitors

Some information about the people in your district is available from the 2006 and 2013 Censuses at Statistics New Zealand.

Council profiles are available on the Department of Internal Affairs' website.

# Health Promotion Agency

Freephone: 0508 258 258

Email: [enquiries@hpa.org.nz](mailto:enquiries@hpa.org.nz)

For help contact the  
Alcohol Drug Helpline on **0800 787 797**

To order resources visit [alcohol.org.nz](http://alcohol.org.nz)