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# Minilya Bridge Roadhouse

13000 North-West Coastal Highway, Minilya WA 6701.



## Application for a Hotel Licence Section 38 and Section 36(B)(4) Submissions Public Interest Assessment

February 2025

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# 1. Introduction

- 1.1. WA05 Pty Ltd is applying to the licensing authority for a Hotel licence for premises located at 13000 North West Coastal Highway, Minilya WA 6701.
- 1.2. The hotel will trade as Minilya Bridge Roadhouse.
- 1.3. The roadhouse/service station was built in the 1970`s with a convenience store, restaurant, office, manager`s residence, staff quarters, donga style motel accommodation units and a 12-bay caravan park. The property is located approximately 148km north of Carnarvon and some 8 kilometres south of the turn off to Coral Bay and Exmouth.
- 1.4. Better Choice Minilya Bridge Roadhouse has been owned and operated by WA05 Pty Ltd since 2010.
- 1.5. These submissions are designed to address:
  - 1.5.1. The restrictions on the grant of certain licences authorising the sale of packaged liquor as set out in Section 36B of the Liquor Control Act 1988, and
  - 1.5.2. The public interest requirements as set out in Section 38(2) of the Act.
- 1.6. Section 38(2) of the Act sets out the matters to be taken into account by the Licensing Authority in deciding whether or not to grant a liquor licence. Specifically, it states:
  - 1.6.1. *“An applicant who makes an application to which this subsection applies must satisfy the licensing authority that granting the application is in the public interest”*
- 1.7. Section 38(4) sets out the matters to which the Licensing Authority may have regard in respect of public interest submissions, as follows;
  - 1.7.1. *“The harm or ill health that might be caused to people, or any group of people, due to the use of liquor; and*
  - 1.7.2. *The impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and*
  - 1.7.3. *Whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and*
  - 1.7.4. *Any other prescribed matter”.*
- 1.8. Section 36B(2) of the Liquor Control Act 1988 states:
  - 1.8.1. *“This section applies to an application for the grant or removal of any of the following licences -*
    - 1.8.1.1. *(a) a hotel licence without restriction;*
    - 1.8.1.2. *(b) a tavern licence;*
    - 1.8.1.3. *(c) a liquor store licence;*

- 1.8.1.4. *(d) a special facility licence of a prescribed type.”*
- 1.9. Based on the above, Section 36B of the Liquor Control Act 1988 applies to this application, and therefore will be considered in these submissions.
- 1.10. Section 36B(3) of the Liquor Control Act 1988 states;
- 1.10.1. *“The licensing authority must not hear or determine an application to which this section applies if –*
- 1.10.1.1. *(a) packaged liquor premises are situated less than the prescribed distance from the proposed licensed premises; and*
- 1.10.1.2. *(b) the area of the retail section of those packaged liquor premises exceeds the prescribed area; and*
- 1.10.1.3. *(c) the area of the retail section of the proposed licensed premises exceeds the prescribed area”.*
- 1.11. Regulations Nos. 9AAA and 9AAB of the Liquor Control Regulations 1989 stipulate the distance and area prescribed referred to in Section 36B of the Liquor Control Act.
- 1.12. Regulation No.9AAA states.
- 1.12.1. *“Area prescribed (Act s. 36B)*
- 1.12.1.1. *For the purposes of section 36B, the area of 400m2 is prescribed.”*
- 1.13. Regulation No. 9AAB states.
- 1.13.1. *“Distance prescribed (Act s.36B)*
- 1.13.1.1. *(1) For the purposes of section 36B, the following distances are prescribed -*
- 1.13.1.1.1. *For packaged liquor premises in the metropolitan region - 5 km;*
- 1.13.1.1.2. *For all other packaged liquor premises - 12km.*
- 1.13.1.2. *(2) The distances referred to in subregulation (1) are to be calculated using the shortest route by road.”*
- 1.14. Section 36B(3) above does not apply to this application as the proposal is for a hotel liquor licence, and Minilya Bridge Roadhouse licensed area is not over 400sqm, and there are no packaged liquor premises within 5km.
- 1.15. Section 36B(4) of the Act states;
- 1.15.1. *“The licensing authority must not grant an application to which this section applies unless satisfied that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated”.*
- 1.16. Section 36B(4) does apply to this application.

- 1.16.1. The applicant has put forward the reasons in this PIA as to why the local packaged liquor requirements in the locality cannot reasonably be met by the existing packaged liquor premises.
- 1.17. Further, the licensing authority has consistently noted this clause states the licensing authority *must not* grant an application to which this section applies unless satisfied in respect of other matters. It is a clear directive, with no room for manoeuvre.
- 1.18. However, the Parliament has tailored the wording of this section to provide the licensing authority with some discretion. This is not a directive to refuse all liquor licence applications to which this section applies. If that were so, the licensing authority would simply not accept any such applications as each one would be a waste of everyone's time and money.
- 1.19. The licensing authority **MAY GRANT** an application to which this section applies if it is *"satisfied that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated"*.
- 1.20. So, the intent of the legislative change was to reduce the pace of approvals for packaged liquor outlets, to manage the process, to bring a level of control. Evidently, the mechanism still exists for the granting of new packaged liquor outlets when the evidence presented in an individual application merits a grant.
- 1.21. The objects of the Act are expressed at s.5 of the Act, which states that the primary objects of the Act are -
- 1.21.1. *"To regulate the sale, supply and consumption of liquor; and*
  - 1.21.2. *To minimise harm or ill-health caused to people, or any group of people, due to the use of liquor, and*
  - 1.21.3. *To cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State."*
- 1.22. Section 5(2) of the Act also includes the following Secondary Objects;
- 1.22.1. *"To facilitate the use and development of licensed facilities,*
  - 1.22.2. *including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and*
  - 1.22.3. *To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*
  - 1.22.4. *To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act, and*
  - 1.22.5. *To encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community."*

- 1.23. Further Section 5(3) states *“If, in carrying out any function under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence”*.
- 1.24. In the Aldi South Fremantle decision (A180692358, refusing an application for a conditional grant of a liquor store licence), dated 22nd March 2019, at paragraph 26, the Director said; (Attachment MBR01)
- 1.24.1. *“None of the primary objects of the Act take precedence over each other, however, where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case<sup>11</sup> and it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations”*.<sup>12</sup>
- 1.25. The footnote references at 11 and 12 from the above decision relate to the following;
- 1.25.1. Footnote 11 - Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WASCA 258.
- 1.25.2. Footnote 12 - Hermal Pty Ltd v Director of Liquor Licensing [2001] WASC 356.
- 1.26. The licensing authority regulates the sale, and supply of alcohol. It seeks to strike a balance between catering for the requirements for liquor and liquor related services whilst minimising the potential for harm and ill-health to the community through the abuse of alcohol. So, the framework exists for the granting of new liquor licences in appropriate circumstances.
- 1.27. Through these submissions, the applicant will demonstrate how this proposed hotel licence will properly and responsibly cater to the diverse consumer requirements for alcohol and related licensed services in the locality.
- 1.28. The applicant will also demonstrate how this application is in keeping with the primary objects of the Act and does not constitute a proliferation of liquor licences in this locality.
- 1.29. The applicant has considered the demographics of the locality and will demonstrate in other sections of these submissions that this proposed hotel licence is well planned to provide an important service to the locality with very little potential for increased harm or ill health.
- 1.30. Further, the applicant will also demonstrate how this application is in keeping with the secondary objects of the Act, in that it caters to the diversity of the requirements of lodgers and customers of the proposed hotel.



## 2. The Locality

2.1. The Director's policy on locality advises as follows.

2.1.1. *"Locality*

- 2.1.1.1. *As part of a PIA submission, applicants must provide details regarding the community in the vicinity of the licensed premises (or proposed licensed premises) and any amenity issues in the locality.*
- 2.1.1.2. *The term 'locality' in this instance refers to the area surrounding the proposed licensed premises. This locality will be the area most likely to be affected by the granting of an application in relation to amenity issues.*
- 2.1.1.3. *Generally, the size of the locality will be that which is stipulated in 'Specification of Locality' at Attachment 2. However, depending on the nature of the application, the licensing authority may also determine a broader locality.*
- 2.1.1.4. *Where an applicant considers that the licensing authority's determination of the locality in accordance with the policy is not suitable having regard to its intended nature of business, the applicant may make submissions as to the appropriate size of the locality to the specific nature of the proposed business.<sup>1</sup>*
- 2.1.1.5. *It should be noted however, that in terms of addressing objects 5(1)(b) and 5(1)(c) of the Act, an applicant may need to consider an area which is much broader than the 'locality' used for consideration of amenity issues. For example, an application for a destination liquor store, which may draw its clientele from a large geographic area, would need to address 5(1)(b) and 5(1)(c) of the Act in a much broader context. The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the public interest and provide relevant evidence and submissions to discharge this onus. An applicant should address all relevant considerations under the Act, bearing in mind all the circumstances and unique features of its particular application."*

2.2. The Director provides further guidance in the same policy document on his website, as follows.

2.2.1. *"Purpose*

- 2.2.1.1. *The purpose of this document is to provide guidance as to what will generally be applied when determining the 'locality' affected by an application under the Liquor Control Act 1988 ('the Act').*
- 2.2.1.2. *The Australian Concise Oxford Dictionary defines the terms:*

- 2.2.1.3. *Locality - as a district or neighbourhood; the site or scene of something in relation to the surroundings*
- 2.2.1.4. *Vicinity - as a surrounding district; nearness or closeness of place or relationship.*
- 2.2.2. *Underlying principles*
  - 2.2.2.1. *In accordance with section 38 of the Act, the licensing authority is required to assess whether the granting of an application is in the public interest.*
  - 2.2.2.2. *One of the matters applicants must have regard to in their PIA under section 38(4) of the Act is in relation to the impact on the amenity of the locality in which the licensed premises or proposed licensed premises is/is to be located.*
  - 2.2.2.3. *In general, 'locality' will be defined as the area surrounding the licensed premises or proposed licensed premises, which is most likely to be impacted by an application if granted.*
  - 2.2.2.4. *However, depending on the nature of the application the licensing authority may determine the locality for a specific application, particularly, where the potential impact on a particular sub-community or 'at risk' group is such that reference to this sub-community should also be made, notwithstanding that this group may be situated outside of the locality of the proposed premises.*
  - 2.2.2.5. *Therefore, the onus is on the applicant to ensure that it identifies any potential 'at risk' groups who may travel through or resort to the locality of the proposed premises, or who may be impacted by the proposed premises. This may include a group of people not situated within the boundaries of the town or suburb in which the proposed premises' suburb is located. The Public Interest Assessment policy outlines 'at risk' groups.*
- 2.2.3. *Locality guide*
  - 2.2.3.1. *The following tables are a guide when determining the specified 'locality' to which an application relates.*
  - 2.2.3.2. *Generally, the size of the locality will be that which is stipulated below. However, depending on the nature of the application, the licensing authority may also determine the locality outside the 'Specification of Locality' guide. Where an applicant considers that the locality set out in this policy is not suitable having regard to its intended nature of business, the applicant may make submissions as to the appropriate size of the locality to the specific nature of the proposed business.*
  - 2.2.3.3. *In regard to country cities, towns or communities, unless remotely located or the licensing authority determines*



*otherwise, the locality is to be a radius of 3 km from the site of the intended business.*

- 2.2.3.4. *Where a premises/proposed premises is remotely located; that is, 200 km or beyond from the nearest town or country city, and more than 400 km from Perth, the applicant is to make a submission to the licensing authority regarding the appropriate size of the locality to suit the intended nature of the business.”*

- 2.3. In *LIQUORLAND (AUSTRALIA) PTY LTD v DIRECTOR OF LIQUOR LICENSING* [2021] WASC 366 Justice Archer considered the meaning and application of “locality”, concluding her review of relevant case law with the following findings;

- 2.3.1. *“179 There is plainly a difference in the approaches taken in New South Wales and South Australia. There is, however, some commonality. First, the word 'locality' (or 'neighbourhood') cannot be defined with precision. Second, the factors that will be relevant in determining the locality will vary from case to case. Third, in some cases, it will be difficult to determine the locality.*

- 2.3.2. *180 The cases from New South Wales and South Australia illustrate the various complexities and considerations that are raised by provisions such as these. Ultimately, however, s 36B must be construed according to its terms, having regard to its context and the purpose of the Act.*

- 2.3.3. *181 In my view, the word 'locality' in s 36B denotes an area that surrounds, and is geographically close to, the location of the proposed premises (proposed site). I consider it was not intended to equate to the area(s) from which consumers would come. The following matters are particularly relevant.”*

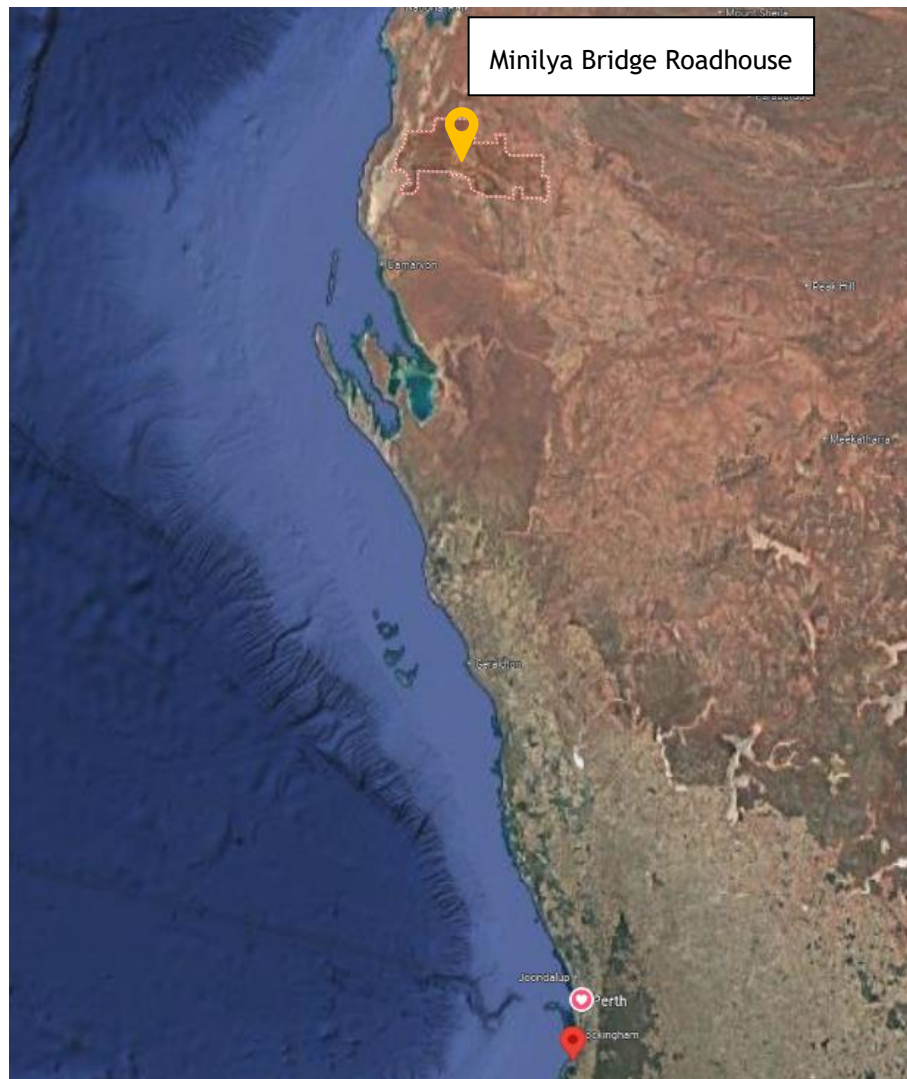
- 2.3.3.1. *182 First, I consider the plain meaning of the words in s 36B supports this construction. As noted earlier, given the context and purpose of s 36B, the word 'locality' is intended to connote the same concept of neighbourhood. I consider that, in this context, it means the geographical area surrounding the proposed site. Section 36B seeks to add an additional hurdle before a licence may be granted under which packaged liquor can be sold. It seeks to ensure that there are not multiple premises in close proximity to one another selling packaged liquor.*

2.3.3.2. 183 Second, a retail catchment area could be extremely large, of wildly irregular shape and even made up of several non-adjointing areas. Describing such an area as a 'locality' would not be consistent with the ordinary meaning of that word.

2.3.3.3. 184 Third, if the legislation had intended the relevant area to be the retail catchment area, it could have easily said so. Similarly, if the legislature intended that the relevant area be fixed at a particular distance, it could easily have said so (as it did in s 36B(3)). By using the word 'locality', I consider that the legislature intended to capture the geographical area surrounding, and relatively close to, the proposed site, the 'neighbourhood' of the site.

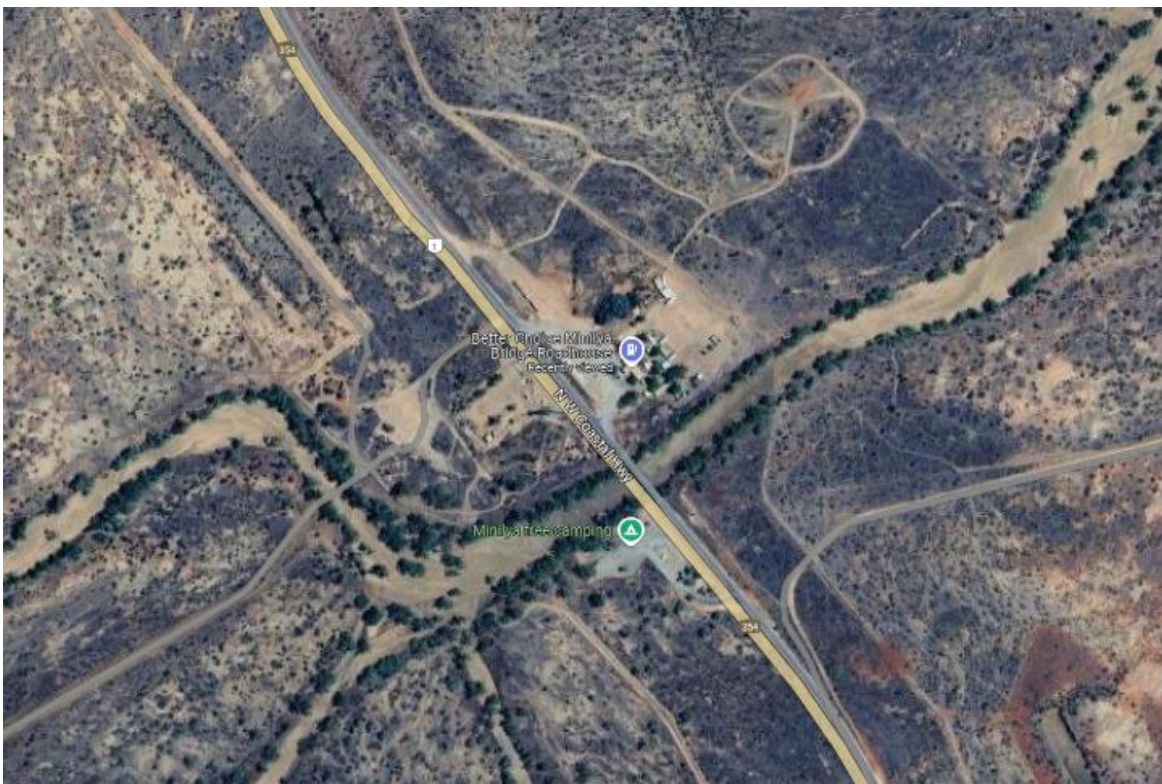
2.4. **The community most likely to be impacted by the grant of this application.**

2.5. Below is a map with Minilya outlined, as well as the location of the subject premises.



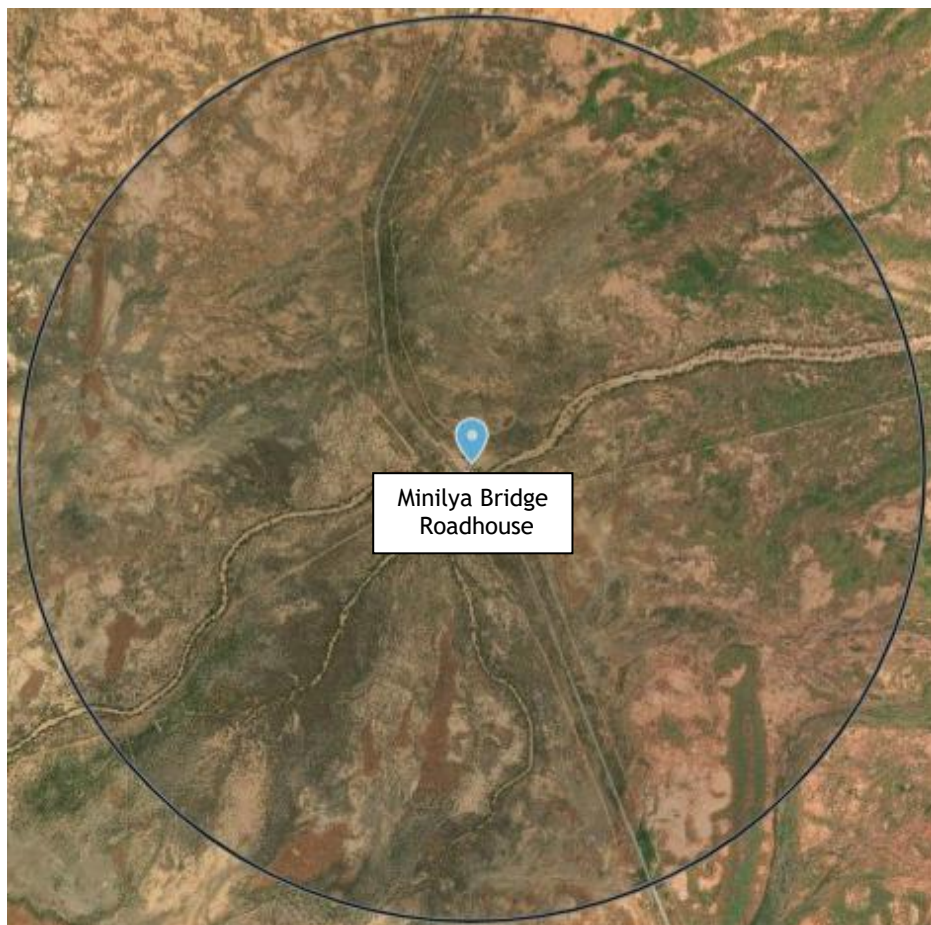


- 2.6. As can be seen from the images below, Minilya is a large regional area, and there are no residences in the immediate vicinity of the Roadhouse.
- 2.7. The community most likely to be impacted would be local farmers, road trippers, DDO workers, or daily commuters who use the North West Coastal Highway to get to & from work.





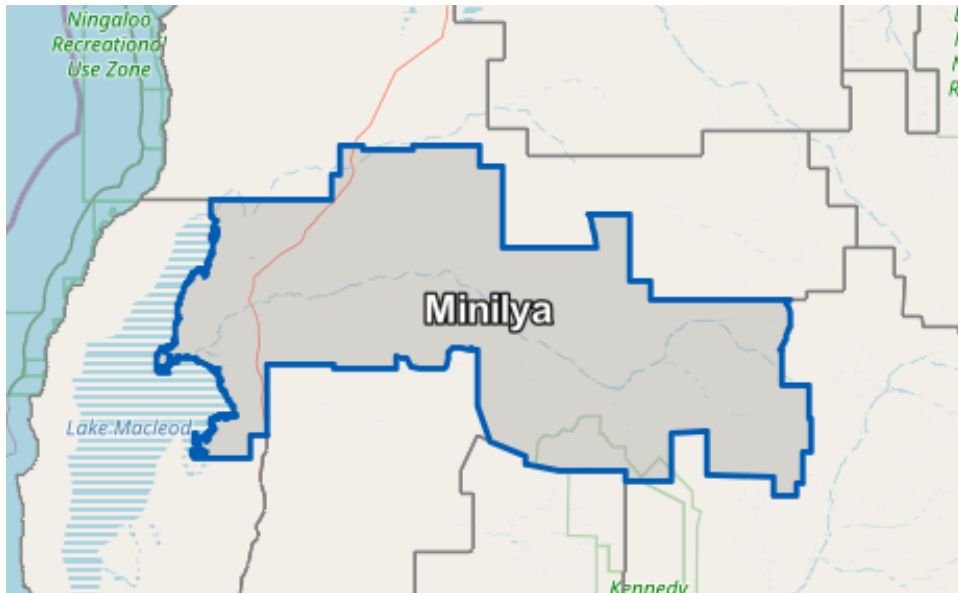
- 2.8. **The presence of natural or man-made boundaries that effectively separate one local community from another.**
- 2.9. There are no manmade boundaries that separate one local community from another in Minilya.
- 2.10. The vast regional space and natural bush / desert land create natural boundaries. The only real access to Minilya and by extension, the Minilya Bridge Roadhouse, is via the North West Coastal Highway.
- 2.11. **The physical location of the subject premises**
- 2.12. The subject premises is located approximately 920km north of the Perth CBD.
- 2.13. Its nearest major regional town / tourist town is Carnarvon (approximately 120km south of Minilya Bridge Roadhouse).
- 2.14. The Roadhouse sits on the North West Coastal Highway (see images above).
- 2.15. **Outlet density**
- 2.15.1. Per the Director's policy, regional areas like Minilya must consider all similar trading premises (i.e. packaged liquor premises) within 3km.
- 2.15.2. Per the Director's policy, given there is an on-premise component to the Roadhouse, the applicant will consider all premises within 500m that serve liquor for consumption on premises.
- 2.15.3. This entire 3km locality ring sits within the Minilya suburb- see below.



2.15.4. So, for the purposes of the outlet density study, the applicant will search for all licensed premises within 3km of Minilya Bridge Roadhouse.

**2.16. Locality for the Demographic Study**

2.16.1. The Applicant will look at demographic data for the suburb of Minilya and for the Shire of Carnarvon, local Government area.



*Map of Minilya Suburb*



*Map of Minilya LGA - the Shire of Carnarvon*

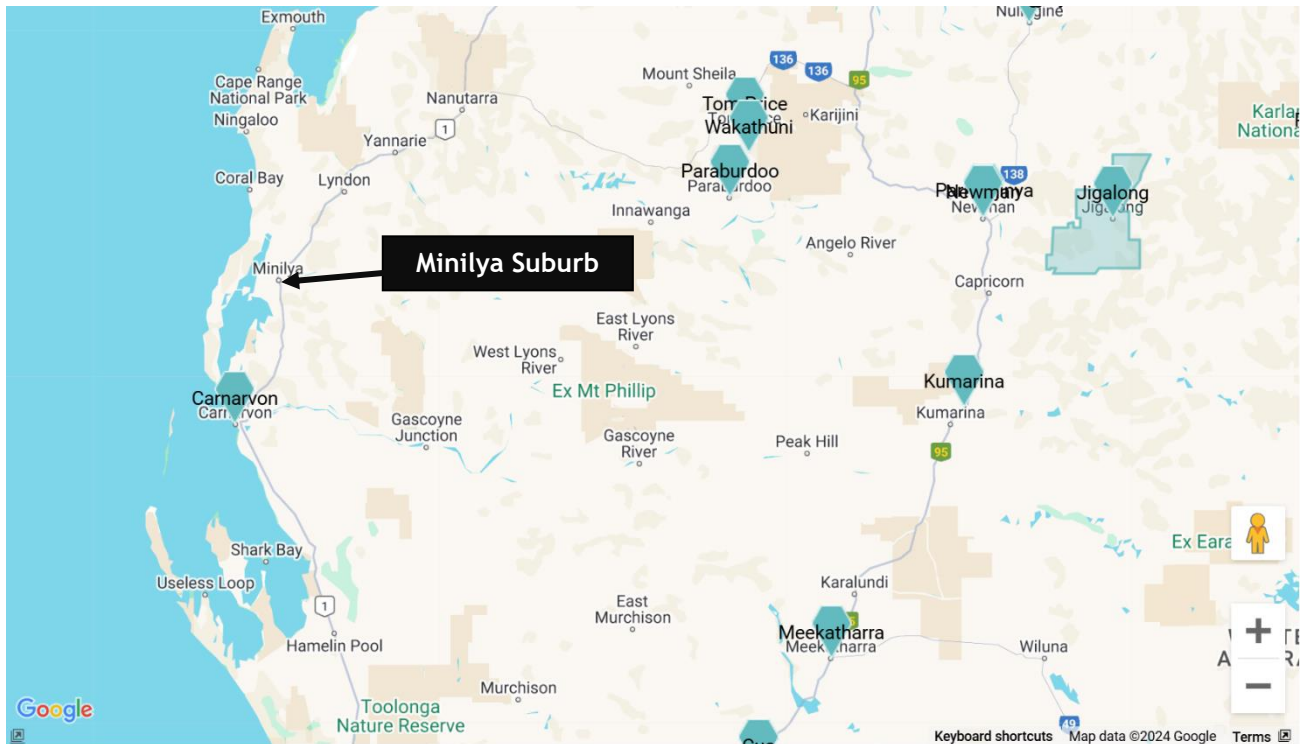
### 3. Demographics of the Locality

- 3.1. Minilya is a “suburb” of the Shire of Carnarvon, with an area of just over 9,000 sq km and a population of 20.
- 3.2. The Shire of Gascoyne-Minilya was a local government area in Western Australia. It was established on 17<sup>th</sup> March 1911 as the Gascoyne-Minilya Road District with the amalgamation of the Lower Gascoyne Road District and the Minilya Road District. It was based in the town of Carnarvon, although the township was located in the separate Municipality of Carnarvon.
- 3.3. A section of the district was severed on 11<sup>th</sup> August 1911 with the establishment of the Mullewa Road District. It was declared a Shire with effect from 1 July 1961 following the passage of the Local Government Act 1960, which reformed all remaining road districts into shires.
- 3.4. The Shire of Exmouth was separated from Gascoyne-Minilya on 13<sup>th</sup> December 1963 due to the development of the town of Exmouth.
- 3.5. It ceased to exist on 12 February 1965 when it amalgamated with the Town of Carnarvon to form the Shire of Carnarvon
- 3.6. Minilya is a location in Western Australia north of Carnarvon on the North West Coastal Highway. It is at a junction on the North West Coastal Highway, where the turn off to Exmouth is 220 kilometres from that location. The main highway then continues to the next junction 217 kilometres further, at Nanutarra Roadhouse.



- 3.7. There is a map published on the licensing authority’s website which shows the locations where liquor restrictions have been put in place in response to local social issues. Below is a snip from that map which shows liquor restrictions in place for localities around and outside of the area, but not anywhere close to the subject locality.





- 3.8. Given the low population numbers in the subject locality, and also in the whole local government area the ABS Census data is of little utility.
- 3.9. The Shire website also provides little assistance in assessing the priority population groups.
- 3.10. In any case the subject business caters mainly to tourists and other people travelling the highway for work/business.
- 3.11. No demographic data is available for this cohort, but anecdotal evidence from the applicant speaks of a large portion of “grey nomads”.

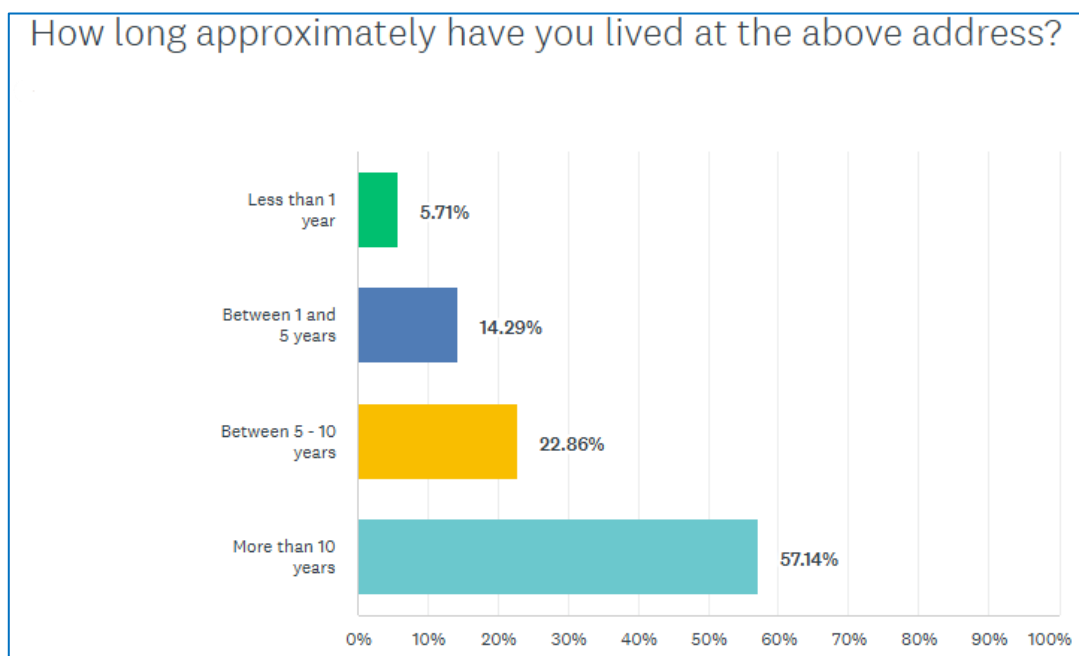
## 4. Outlet Density

- 4.1. The subject premises is located at 13000 North West Coastal Highway, Minilya WA 6701.
- 4.2. The Director's Factsheet titled "Outlet density of packaged liquor premises: Provisions which limit the density of licensed premises selling packaged liquor in any one area", last reviewed on 29<sup>th</sup> August 2024, the Director states;
  - 1.1.1. *"Outlet density is a relevant consideration for the grant or removal of three different liquor licence types: hotels (if they are authorised to sell packaged liquor), taverns and liquor stores.<sup>3</sup>*
  - 1.1.2. *The (licensing authority) must not approve additional packaged liquor outlets in an area unless satisfied that existing licensed premises cannot meet local requirements.<sup>4</sup> As a result, applications for a new packaged liquor outlet in an area must provide evidence to satisfy the (licensing authority) that any existing premises cannot meet local requirements."*
- 4.3. In LIQUORLAND (AUSTRALIA) PTY LTD -v-DIRECTOR OF LIQUOR LICENSING [2021] WASC 366 Archer J stated at 53 *"During his second reading speech, the relevant Minister said that the purpose of the amendment was 'to prevent the further proliferation of small and medium packaged liquor outlets across the state'. In the Parliamentary debates on the Bill, the Minister said that the new s 36B would 'enable the community to determine whether it feels consumers in its area have adequate, reasonable access to a liquor supply'"*.
- 4.4. In January 2025, the Applicant searched the Racing, Gaming and Liquor for all licensed premises within the locality determined in paragraph 2.15.4, i.e. 3km.
- 4.5. This resulted in **0 premises** within the locality which trade in a similar manner to a hotel or that may be permitted to sell packaged liquor. In fact there are no licensed premises selling packaged (takeaway) liquor within 100km (approximately) of the subject premises by road.
- 4.6. The licensed services proposed to be offered at this hotel are modest and mostly focused on accommodation guests and those travelling along North West Coastal Highway.
- 4.7. In the witness questionnaire, respondents were asked *"Where do you currently buy your packaged / take-away liquor from?"*
  - 4.7.1. Respondent 32 said the following, *"Where I live, which is around 4-500kms away from Minilya Roadhouse...."* and *"It would be nice to purchase a drink when we travel through, Minilya roadhouse is 130km from Carnarvon so it's not exactly easily accessible."*
  - 4.7.2. Respondent 14 said, *"Carnarvon, Karratha"* and *"mostly [these outlets are convenient] but having a place to stop and drink in Minilya would be a lot more convenient."*
  - 4.7.3. Other respondents said they got their packaged liquor from Perth, Carnarvon, Coral Bay, Exmouth, Karratha and Geraldton.

- 4.8. Respondents were asked, “*Which licensed premises do you currently frequent, in the Shire of Carnarvon to have an alcoholic drink?*”
- 4.8.1. Respondents’ answers included: Carnarvon Hotel (7), The Port Hotel (3), Speedway (1), Bills Coral Bay (1) and various bottle shops (5).

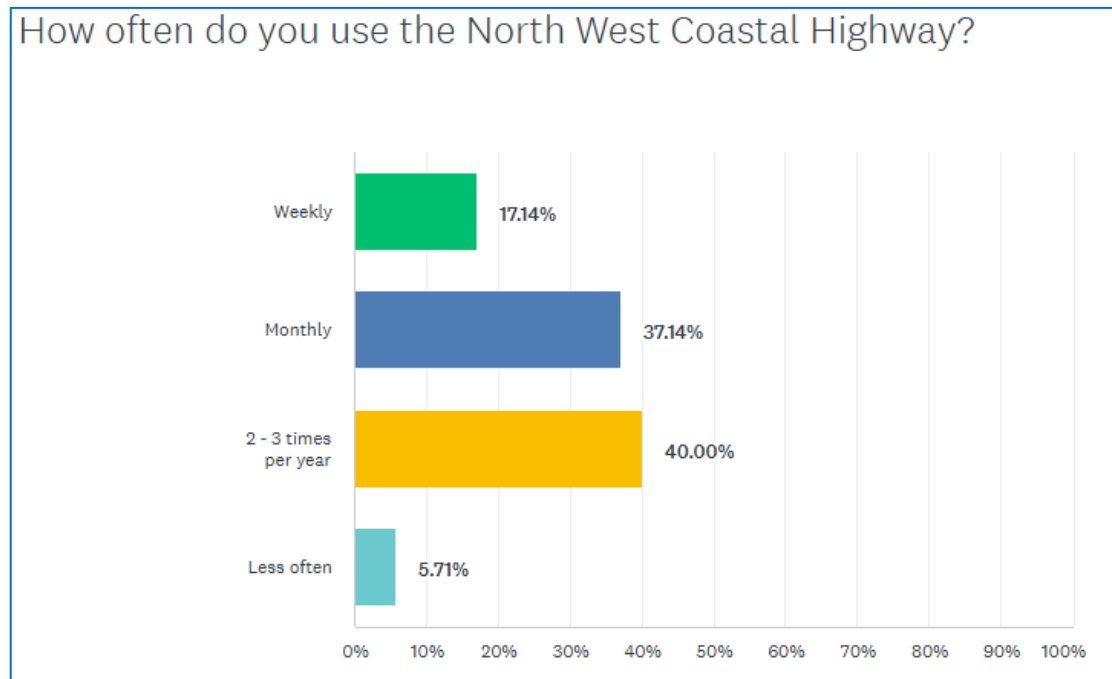
## 5. Objective Public Interest Evidence

- 5.1. From November to January this year, the applicant implemented a witness response strategy online to gather objective evidence for these submissions.
- 5.2. A hard copy of the witness questionnaire can be found at attachment MBR02
- 5.3. The following information / documentation was made available to potential respondents.
  - 5.3.1. Floor plans (attachment MBR03),
  - 5.3.2. Map of the locality (attachment MBR04), and
  - 5.3.3. Intended Manner of Trade document (attachment MBR05).
- 5.4. The raw data can be viewed in attachment MBR06
- 5.5. In total, the applicant has gathered 35 responses. It should be noted that a further 24 questionnaires were attempted, but no data was entered. They have been removed from final consideration as they have no bearing on the final data.
- 5.6. The respondents were asked “*Approximately how far do you live from the proposed liquor store?*”. **100%** of the respondents answered that they live 30kms or more from the proposed liquor store. The applicant submits this is representative of their customer base being a roadhouse in remote Western Australia.
- 5.7. Respondents were then asked, “*How long have you lived at the above address?*” Results of that question are shown in the below graph.

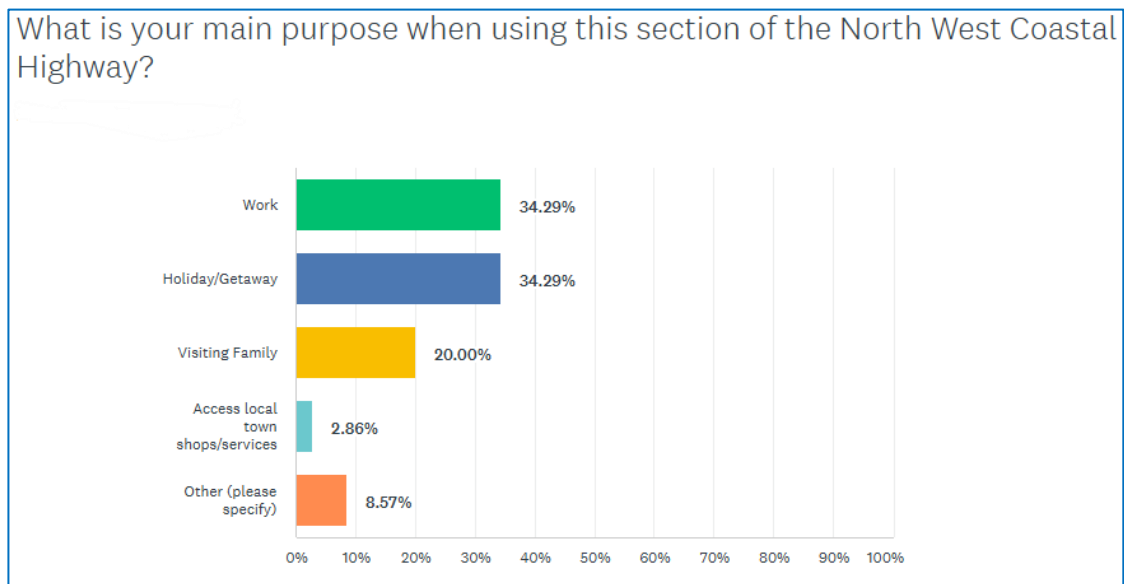


- 5.8. Respondents were also asked “*Do you live in the Shire of Carnarvon?*” 77% of the respondents live outside of the Shire of Carnarvon.

- 5.9. Respondents were asked “*How often do you use the Northwest Coastal Highway?*”



- 5.9.1. As can be seen in the resulting graph above **55%** of the respondents use the Northwest Coastal Highway at least monthly and then a further **45%** use the highway 3 times or less per year.
- 5.10. Respondents were asked “*What is your main purpose when using this section of the North West Coastal Highway?*”: Respondents answers are shown below.



- 5.10.1. Respondent 25 went on to specify that the subject area of the North West coastal Highway for “*Work, specialist appointments, holiday, business & more. We use it a lot living in Exmouth.*”

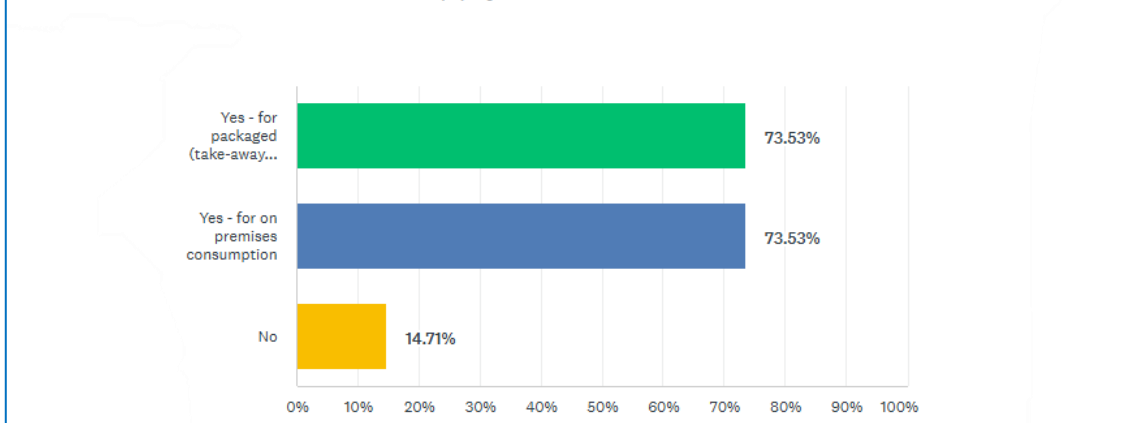
- 5.11. Given that this application is for the benefit of those who work in Minilya, those who work DIDO or FIFO, and those who regularly make use of North West Coastal Highway for travels, the objective evidence presented so far throughout this section show this respondent pool to be an accurate representation of the roadhouse customer base.
- 5.12. The responses to these questions above detail a relevant respondent base;
- 5.12.1. The majority of the respondent base uses the highway at least monthly
- 5.12.2. Over a third use the highway for work,
- 5.12.3. Over a third use the highway for a holiday / getaway
- 5.12.4. Nearly the entire respondent pool either work or live in the area, and
- 5.13. Noting all of this, further questions and respondent answers are detailed throughout these submissions, to aid in the applicant satisfying Section 36B(4) and Section 38 of the Liquor Control Act (1988).



## 6. Proposed Style of Operation

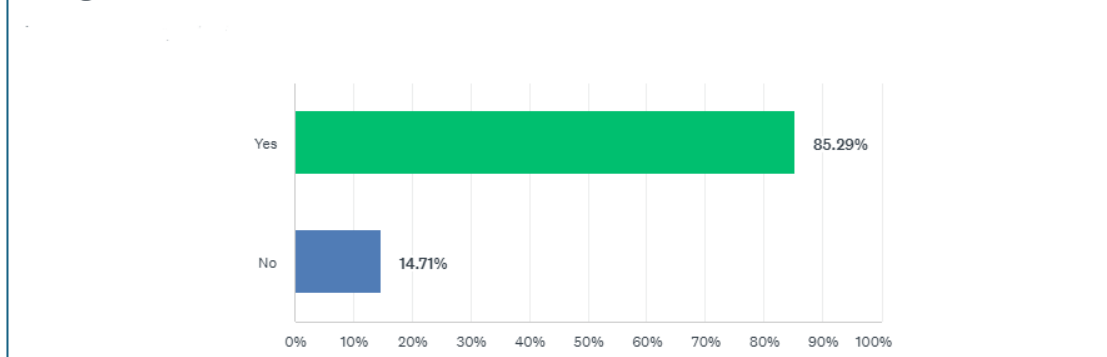
- 6.1. Better Choice Minilya Bridge Roadhouse is an oasis in the vast outback located on the North-West Highway North of Perth. It is a busy rest stop catering to travellers, those travelling the highway for work, and locals.
- 6.2. The Roadhouse takes pride in providing exceptional customer service, delicious food, and comfortable accommodation in a friendly and welcoming atmosphere.
- 6.3. Under this new licence, the Roadhouse will be simple, clean and friendly.
- 6.4. There will be 6 - 8 staff members who rotate through on a full and part time basis.
- 6.5. The focus is mainly on the residents, and surrounding caravan park lodgers, to serve them meals with a beverage of their choice.
- 6.6. The restaurant facilities currently available at the roadhouse will serve cold beer, wine and spirits alongside hot, restaurant quality meals.
- 6.7. The applicant proposes that the roadhouse will trade 10am - 10pm (Monday - Sunday), for both the service of alcoholic beverages in the restaurant facility, and the service of packaged (take-away) liquor.
- 6.8. The applicant is also committed to renovate and reinvigorate both the shop and restaurant layout, as well as the accommodation units and caravan park, to bring further value to travellers, locals and tourists who patronise the roadhouse.
- 6.9. The applicant intends to introduce room service food and beverage (Liquor) for the lodgers. Liquor will be also be available for customers using the restaurant facility.
- 6.10. Packaged liquor items will be displayed on the shelves behind the counter.
- 6.11. People staying at the roadhouse may take packaged liquor back to their rooms.
- 6.12. No staff handling alcohol will be employed without the mandatory Responsible Service of Alcohol training.
- 6.13. Under a hotel licence, the applicant will be permitted to sell liquor to hotel guests at any time.
- 6.14. Respondents were asked *“After considering the intended manner of trade document provided - would you be likely to become a customer of this Roadhouse, for it's licensed services? Please tick all that apply.”* A graph of the responses can be seen below.

After considering the intended manner of trade document provided – would you be likely to become a customer of this Roadhouse, for it's licensed services? Please tick all that apply.



- 6.15. Almost **three quarters** said “**Yes**” for both the proposed on-premises and off-premises offering.
- 6.16. Respondents were then asked “*If you answered yes to question 11 [above], would you then find it convenient / important to you to have access to packaged liquor at Minilya Bridge Roadhouse, on North West Coastal Highway?*”;

If you answered Yes to question 11, would you find it to be convenient / important to you to be able to have an alcoholic drink on premises at Minilya Bridge Roadhouse?



- 6.16.1. As can be seen in the above graph **85%** of the respondents the above question answered “**Yes**”.

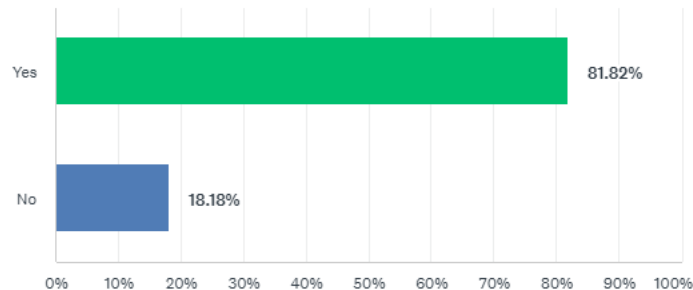
## 7. Background and Experience of the Applicant.

- 7.1. The Director of the applicant company - Doron Berger - successfully operates the Karridale Tavern and bottleshop and has done so since September 2017 under a separate entity (BC5 Pty Ltd).
- 7.2. The Karridale Tavern is a quiet, country food & beverage premises set amongst the forest in Karridale, between Margaret River and Augusta.
- 7.3. They have provided quality service to local patrons, tourists and travellers through the Karridale area, and have the support of the local community and authorities to successfully manage the business.
- 7.4. It is the intention of Mr. Berger, to provide the same quality licensed services to Minilya Bridge Roadhouse.
- 7.5. To date, Mr. Berger has not received any liquor infringements from the Licensing Authority, or any warnings / formal complaints from Police, Council and/or neighbours.

## 8. Section 36B(4) of the Act - Restrictions on Grant or Removal of Certain Licences Authorising Sale of Packaged Liquor

- 8.1. In the Second Reading Speech on the introduction of the Liquor Control Amendment Bill 2018 dated 20th February 2018, the Minister for Racing and Gaming, Mr. Paul Papalia stated:
  - 8.1.1. *“.....to prevent the further proliferation of small and medium packaged liquor outlets across the state, the act will be amended so that the licensing authority must not grant an application unless it is satisfied that existing premises in the locality cannot reasonably meet the requirements for packaged liquor.”*
- 8.2. Subsequently, a new Section 36B(4) of the Liquor Control Act (WA) 1988 was proclaimed and came into effect on 2<sup>nd</sup> November 2019. Section 36B(4) reads as follows:
  - 8.2.1. *“The licensing authority must not grant an application to which this section applies unless satisfied that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated”.*
- 8.3. In this section the applicant considers whether the local packaged liquor requirements are reasonably met by the existing packaged liquor premises in the locality.
- 8.4. These submissions have concluded that there is no existing packaged liquor outlet in the locality capable of selling packaged liquor to the public. In fact, the nearest existing packaged liquor outlet is approximately 100km away from the subject premises by road.
- 8.5. Paragraphs 6.14. and 6.15. provide objective evidence to back up the assertion that there is a consumer requirement for a packaged liquor service at Minilya Bridge Roadhouse. **73%** of respondents to the witness questionnaire said they would be a customer of the roadhouse for packaged liquor services,
- 8.6. Further, **81%** of respondents said **“Yes”** when asked, *“If you answered yes to question 11, would you then find it convenient / important to you to have access to packaged liquor at Minilya Bridge Roadhouse, on Northwest Coastal Highway?”*

If you answered yes to question 11, would you then find it convenient / important to you to have access to packaged liquor at Minilya Bridge Roadhouse, on North West Coastal Highway?



- 8.7. The nearest packaged liquor outlet is approximately 100km away by road.
- 8.8. It therefore follows that consumer requirements for packaged liquor are not currently being met.
- 8.9. In the Supreme Court decision relating to Liquorland Karrinyup (LIQUORLAND (AUSTRALIA) PTY LTD v DIRECTOR OF LIQUOR LICENSING [2021] WASC 366) Archer J provided guidance on the meaning of reasonable and was critical of the Liquor Commission for searching for great difficulty and great inconvenience, when the correct test is to identify sensible and rational inconvenience.
- 8.10. In paragraph 121 of that decision she stated;
  - 8.10.1. *"I do not accept this. It is plain from the paragraphs extracted above that the Commission mistakenly thought that the Difficulty Test applied to the 'reasonable requirements' phrase. Further, although appearing to state on those two occasions that these matters were alternatives, on another occasion, the Commission appeared to find that an alleged consumer requirement did not satisfy the Consumer Requirements condition because it did not 'constitute a "great difficulty or inconvenience"."*
- 8.11. And at 127 of the same decision;
  - 8.11.1. *"Having regard to all of the matters I have outlined, it is not entirely clear what the Commission considered the test to be. Nevertheless, having regard to the Decision as a whole, I am satisfied that the Commission interpreted the phrase 'cannot reasonably be met' as meaning 'cannot be met without causing great difficulty or inconvenience'."*
- 8.12. And further in 130 and 131;
  - 8.12.1. *"The word 'reasonable' has been said to import a degree of objectivity in that the word reasonable means sensible; not irrational, absurd or*

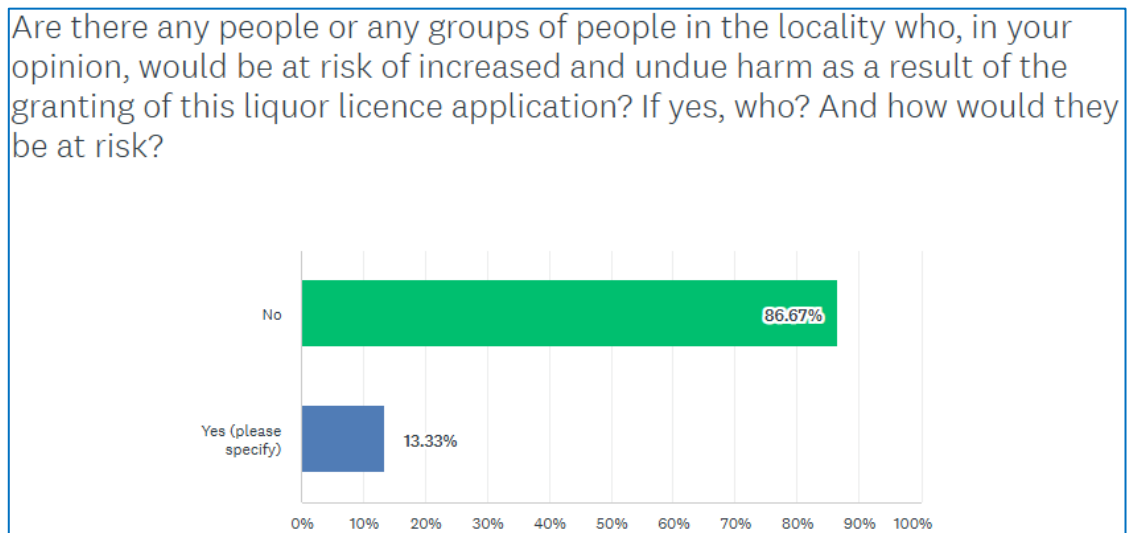
*ridiculous; not going beyond the limit assigned by reason; not extravagant or excessive.*

- 8.12.2. *In my view, the word 'reasonably' in s 36B(4) is intended to bear the same meaning. Accordingly, the phrase 'cannot reasonably be met' means 'cannot sensibly or rationally be met'."*



## 9. Section 38(4)(a) - Harm or Ill-health

- 9.1. Section 38(4)(a) of the Liquor Control Act (1988) asks the applicant to consider “the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor.”
- 9.2. In this section the applicant assesses the risk with respect to the harm or ill-health that might be caused to people, or groups of people within the locality should this licence be granted.
- 9.3. The dominant customer segment will be travelers. They could be tourists or people using the highway for work trips. Some will stay in the accommodation and break their trip, others will stock up on supplies of fuel, food, liquor and grocery items and proceed on to camping sites or their final destination.
- 9.4. The addition of liquor will be a small addition to the current sales mix.
- 9.5. The proposed licensed area in the main building is very small and will have tables and chairs in place. It is not intended as an upright drinking space.
- 9.6. It is also in full view of the service counter and very easily monitored by staff.
- 9.7. No live entertainment is proposed, and any music played will be at conversational levels.
- 9.8. The applicant has provided a detailed Harm Minimisation Plan which is included in the application documents to manage any potential for increased harm or ill-health.
- 9.9. In witness questionnaire respondents were asked, *“Are there any people or any groups of people in the locality who, in your opinion, would be at risk of increased and undue harm as a result of the granting of this liquor licence application? If yes, who? And how would they be at risk?”*

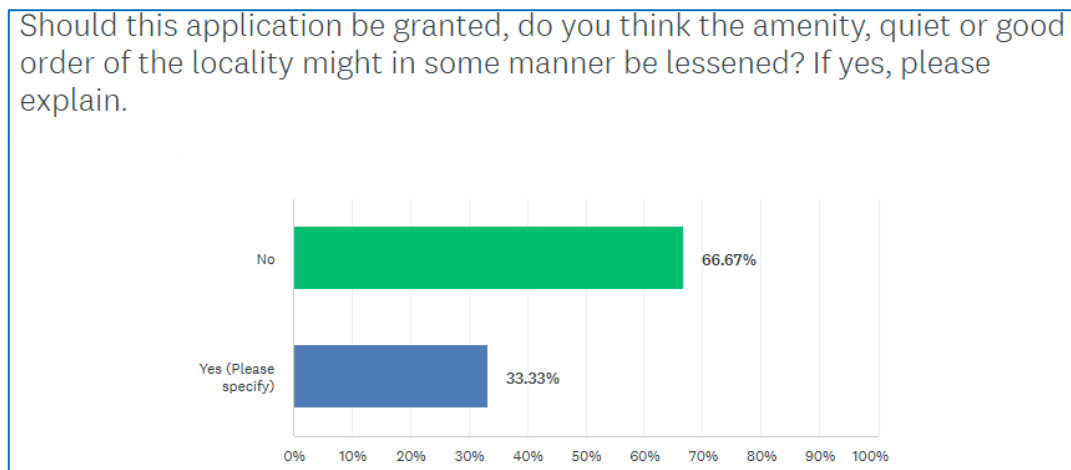


- 9.9.1. The vast majority of respondents said **‘No’ (87%)**. 3.3% (3) of respondents who answered this question answered ‘yes’. Their responses are below;

- 9.9.1.1. Respondent 2 said, “*Local community could travel to get there alcohol.*”
- 9.9.1.2. Respondent 5 said, “*Indigenous community.*”
- 9.9.1.3. Respondent 5 said, “*Anyone travelling that road is generally doing long distances, having alcohol readily available at a fuel station is questionable for safety.*”
- 9.10. The applicant, through its director, Doron Berger, has shown itself to be an experienced and capable licensee with experience in managing a similar licensed premises in south west WA.
- 9.11. There is limited potential for any detrimental impacts through the increased supply of liquor into the community. There is, clearly, on the other hand, every prospect that the overall amenity of the locality will be enhanced through the granting of this application.
- 9.12. The Applicant investigated the website of the WA Police and found that no offences have occurred in Minilya since 2021 (noting there is a very small local population).

## 10.A Report on the amenity of the Locality

- 10.1. Section 38(4)(b) of the Liquor Control Act, asks the applicant to consider *“whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened”*.
- 10.2. The applicant believes that through this proposed hotel licence they will be adding to the amenity of the locality by providing a hotel which offers premium licensed services for travellers, tourists, locals and workers alike.
- 10.3. Not only that but they believe that they will be doing so in a very responsible way, and it will become a very welcome addition to the services offered along the highway.
- 10.4. Further, given the very regional and sparse nature of the Minilya suburb, the addition of this licensed service in a largely unpopulated area is extremely unlikely to affect the amenity, quiet or good order of the locality it's in.
- 10.5. The applicant reached out to Tourism WA for comment on the proposed licence. Director of Policy and Planning, Vicki Robertson provided the following comment of support, *“Tourism WA is generally supportive of the redevelopment/refurbishment of the Roadhouse accommodation which provides an important service for self-drive visitors.”*
- 10.6. Respondents to the witness survey were asked *“Should this application be granted, do you think the amenity, quiet or good order of the locality might in some manner be lessened? If yes please explain”*



- 10.6.1. **Two thirds (67%)** said, **“No”**.
- 10.6.2. 33.3% (10) of respondents who answered this question said yes however in their further explanations, 7 of the 10 listed only positive outcomes from the grant of the licence. Their responses are below;
  - 10.6.2.1. Respondent 4 said, *“Great to have extra amenities.”*
  - 10.6.2.2. Respondent 13 said, *“Convenience.”*
  - 10.6.2.3. Respondent 15 said, *“Yes great place to have a meal also.”*

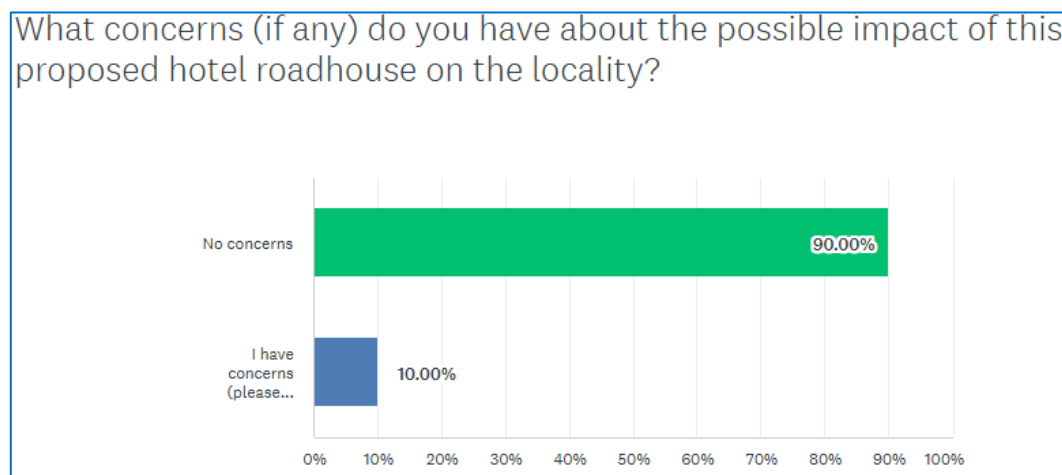
10.6.2.4. Respondent 21 said, *“Because you are adding value to the consumer, for Tourism this will be an added bonus and an attraction. People will overnight and stay longer. Rather than just using the toilet.”*

10.6.2.5. Respondent 23 said, *“There isn't many good clean road houses anymore and this roadhouse is 1 to stop at for a clean shower and good food would be great to have a beer aswell.”*

10.6.2.6. Respondent 24 said, *“Yes it should be granted Minilya would become a good option for me to camp at on my travels between Perth Geraldton and Karratha.”*

10.6.2.7. Respondent 32 said, *“I think this will make the premises better and more appealing to stop at when travelling.”*

10.7. As a follow up, the questionnaire asked respondents, *“What concerns (if any) do you have about the possible impact of this proposed hotel roadhouse on the locality”*



10.8. The applicant notes comments were made about;

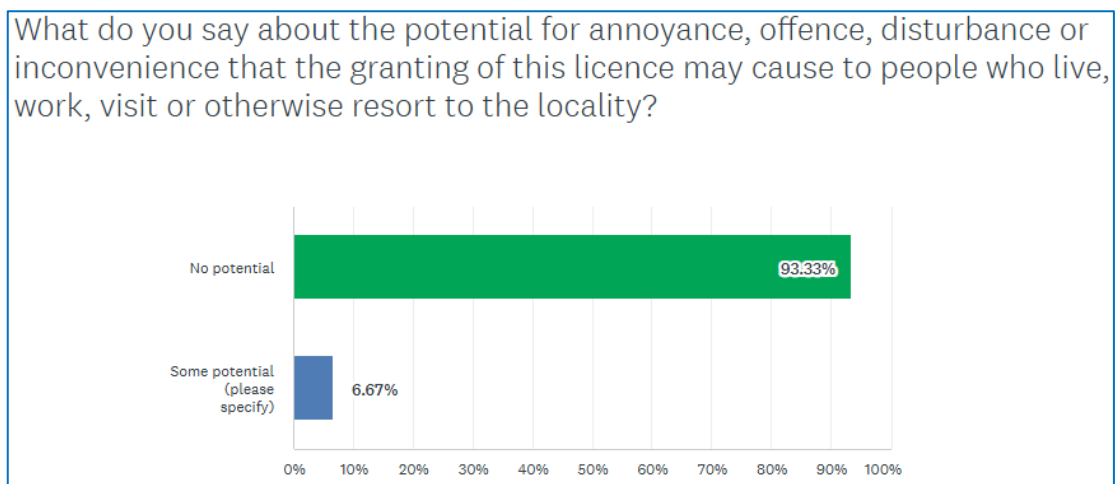
10.8.1. Drinking at the premises and then continuing to drive on the highway after, and

10.8.2. Access to alcohol for travelling underaged groups.

10.9. In response to this the applicant is committed to responsible service of alcohol, and will have trained staff on hand who will (1) be able to recognise signs of intoxication, (2) remind patrons of responsible consumption and (3) be vigilant on asking for proof of age for anyone who appears to be under 18. There will also be appropriate harm minimisation posters on premises.

## 11. Section 38(4)(c) Offence, Annoyance, Disturbance or Inconvenience

- 11.1. Section 38(4)(c) of the Liquor Control Act (1988) asks the applicant to consider *“whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises”*.
- 11.2. The premises will not be attractive to those who are looking to rapidly consume cheap liquor. The Roadhouse will not present itself as a regional pub.
- 11.3. The hotel is well positioned to be conveniently located for its customer base. Given the Roadhouse faces out onto the highway, the potential for noise related issues for the accommodation units out back will be minimal. Further, with a closing time of 10pm, guests to the Roadhouse will not be caused any undue disturbance or inconvenience in the later hours of the night.
- 11.4. The proposed hotel will be managed by a licensee who has experience in the hospitality industry. Mr. Berger along with his employed staff will have the know-how to properly manage these premises & ensure they do not negatively impact on any locals or those making use of the accommodation facilities.
- 11.5. The Applicant has a vested interest in ensuring there is no noise, or other disturbance to lodgers of the Roadhouse.
- 11.6. From the witness questionnaire, respondents were asked *“What do you say about the potential for annoyance, offence, disturbance or inconvenience that the granting of this licence may cause to people who work, visit or otherwise resort to the locality?”* A graph of the results are below.



- 11.6.1. Elaborating on their answer (though having selected ‘some potential’ as their response), respondent said, *“It’s not a resort in the middle nowhere (sic.) There will 0 annoyances to anyone!!!”*
- 11.7. In the applicant’s opinion, and by the vast majority of responses to the question above, there is very little potential for offence, annoyance, disturbance or inconvenience to the local community.

## 12. Section 5(1)(a) of the Liquor Control Act (1988)

- 12.1. Section 5(1)(a) states that a primary object of the Act is;
  - 12.1.1. *“to regulate the sale, supply and consumption of liquor”*;
- 12.2. Being one of three primary objects means that it is of equal importance to the other two primary objects of the Act.
- 12.3. To regulate means;
  - 12.3.1. *“to control or direct according to rule, principle, or law”* or
  - 12.3.2. *“to put or maintain in order”*
- 12.4. It does not mean to restrict or to reduce.
- 12.5. There may be some circumstances where a restriction or a reduction is warranted, but the word “regulate” implies more flexibility than either “restrict” or “reduce”.
- 12.6. It is possible to “regulate” and to “increase” at the same time.
- 12.7. Therefore, this primary object should not, of itself, prevent this application from being granted.
- 12.8. It is possible to properly regulate the sale, supply and consumption of liquor and grant this application.
- 12.9. As mentioned through these submissions, this application is for the benefit of travelers, locals and FIFO / DIDO workers alike. With licensed options incredibly limited along North-West Coastal highway - the provision of this on & off premises licensed service will be welcomed.
- 12.10. All staff involved in the sale & supply of liquor to patrons of the restaurant, bottleshop or accommodation units will have the necessary RSA training completed and will strictly adhere to the Harm Minimisation Plan lodged with these submissions.



## 13. Section 5(1)(b) of the Liquor Control Act (1988)

- 13.1. Section 5(1)(b) states that a primary object of the Act is;
  - 13.1.1. *“to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor”*;
- 13.2. Being one of three primary objects means that it is of equal importance to the other two primary objects of the Act.
- 13.3. In its decision granting a liquor store licence to Woolworths Warnbro the Liquor Commission noted;
  - 13.3.1. 40. The potential for harm or ill-health is a powerful public interest consideration when determining an application (refer *Lily Creek supra*). Consequently, it is relevant for the licensing authority to consider the level of alcohol-related harm, due to the use of liquor, which is likely to result from the grant of the application. As Wheeler J stated in *Executive Director of Public Health v Lily Creek International & Ors [2001] WASCA 410*:
  - 13.3.2. “This does not mean that only the increased harm which may result from the specific premises in question is to be considered; rather it seems to me that must necessarily be assessed against any existing harm or ill health so as to assess the overall level which is likely to result if a particular application is granted. Where, as occurs in probably the majority of cases, the existing level of alcohol related harm is no greater than that which appears to be commonly accepted in the community, the distinction is probably not significant.”
  - 13.3.3. 41. Also, as observed by Ipp J (in *Lily Creek supra*) it is significant that the primary object in section 5(1)(b) is to “minimize” harm or ill-health, not to prevent harm or ill-health absolutely.
- 13.4. In paragraph 46 of the Supreme Court decision in respect of the National Hotel, Fremantle, the following conclusion is found;
  - 13.4.1. *“It is not sufficient to simply reason that, where there is already a high level of harm in the particular area, even a small increment in potential or actual harm may be determinative, without making specific findings on the evidence about the level of alcohol related harm which is likely to result from the grant of the particular application.”*
- 13.5. Paragraph 62 of that same decision reads;
  - 13.5.1. *“the reasons of the Commission reveal that it considered the application was not in the public interest, but not:*
    - (a) the positive aspects of the application that were weighed;*
    - (b) how the Commission reached the conclusion there was a likelihood of increased harm and ill-health if the application was granted; or*
    - (c) the degree of increased harm or ill-health that was likely to have resulted if the application was granted.”*

- 13.6. In this application, therefore, the applicant is not required to show that no harm whatsoever may occur if this application is granted, only that the applicant will do all that is reasonable to minimise harm and ill-health that could potentially occur if this application is granted, and that any potential for harm or ill-health is minimised and is not “undue”.
- 13.7. The applicant believes that it has shown very clearly there is little potential for detrimental health effects through an increased supply of liquor into the community due to the following reasons;
- 13.7.1. Staff will be adequately briefed and trained in responsible service of alcohol,
- 13.7.2. All packaged liquor will be kept behind the counter in an effort to reduce any potential for theft,
- 13.7.3. There is not a ‘community’ within the Minilya locality to be adversely affected by the supply of packaged liquor - 20 people within a 9,000 square kilometre area.
- 13.7.4. The premises is small, with seating inside for only around 25 to 30 people. The venue is not a rowdy tavern or regional pub. It is a simple roadhouse seeking to provide a varied and quality service to those who stop-in for food & drink or those who make use of the rear accommodation.
- 13.8. Witnesses were asked about the potential for undue harm or ill-health that might be caused by the proposed hotel. The majority of respondents (**87.6%**) indicated that they did not believe there were any people or groups of people they believed were likely to suffer increased and undue harm or ill-health from the granting of this licence. Survey results are shown in more detail in paragraph 9.9.

## 14. Section 5(1)(c) of the Liquor Control Act (1988)

- 14.1. Section 5(1)(c) states that a primary object of the Act is;
  - 14.1.1. *“to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State”*;
- 14.2. Being one of three primary objects means that it is of equal importance to the other two primary objects of the Act.
- 14.3. In other words, it is just as important for the Director to cater for the requirements of consumers as stated above, as it is to minimise the potential for harm or ill-health due to the use of liquor.
- 14.4. In the end it is a weighing and balancing of these equal objects which will determine whether this application should be granted or not.
- 14.5. This application can be seen to be very much in line with that legislative intent, for if this application is approved, what will be created is a flexible, low risk venue, promoting responsible drinking practices.
- 14.6. It is therefore open for the licensing authority to conclude the granting of this licence will be completely in accordance with the primary object stated in section 5(1)(c) of the Act.
- 14.7. It is very significant that in the locality the subject of this application there is only no publicly available hotel outlets currently trading - offering both an on-premises and off-premises liquor service.

## 16. Conclusion

- 16.1. In summary this is an application for a hotel licence for a regional roadhouse premises, that also provides accommodation.
- 16.2. The proposed hotel will be managed by an applicant who has experience in the industry in a small regional town and is well informed on the responsible practices of selling and supplying liquor.
- 16.3. Lastly, in the witness questionnaire, respondents were asked *“Any other comments regarding the proposed new licence for Minilya Bridge Roadhouse.”* A number of responses to this question demonstrating support for this application can be seen below:
  - 16.3.1. Respondent 6 said, *“Convenient for hotel users, works in the area and overnight campers at the Minilya Bridge camp site.”*
  - 16.3.2. Respondent 9 said, *“Great for visitors to their accommodation and for non drivers to have a refreshment with a meal.”*
  - 16.3.3. Respondent 21 said, *“I see this initiative complimenting the accommodation venture adding value to the Tourism Experience . Ensuring that the Road House is able to diversify the offering working on economic sustainability.”*
  - 16.3.4. Respondent 28 said, *“It would be very convenient if Minilya Bridge Roadhouse has their licence as then the general public would not have to transport alcohol from other towns and be able to have an alcoholic beverage when they stay at the Roadhouse. It would also encourage people to stay in the accommodation on offer at Minilya Bridge Roadhouse thus bringing more customers and income to the local business.”*
  - 16.3.5. Respondent 32 said, *“I think this would be very beneficial for the Minilya roadhouse. It would definitely entice more visitors to stay here (myself included)..”*
- 16.4. It also must be said that there are no licensed services within the suburb of Minilya.
- 16.5. The licensed services proposed here are modest but important, and it is open for the licensing authority to conclude the granting of this application is in the public interest.

Drafted for and on behalf of WA05 Pty Ltd by;

Phil Cockman  
Canford Hospitality Consultants Pty Ltd  
Thursday, April 17, 2025

## Attachments

MBR01	ALDI South Fremantle Decision
MBR02	Hard Copy Witness Questionnaire
MBR03	Floor Plan
MBR04	Map of the locality
MBR05	Intended Manner of Trade
MBR06	Raw witness data