



Phone: (08) 6278 2788
M : 0417 976 009
E : phil@canford.com.au

Postal: PO Box 389
Guildford WA 6935
Office: Suite 17, 36 Johnson St,
Guildford WA 6055

Cellarbrations at Gingin

Shop 2, 12 Brockman St, Gingin WA 6503



Application for Extended Trading Permit Ongoing Hours

Section 38 Submissions Public Interest Assessment

August 2024

COPYRIGHT © Canford Hospitality Consultants Pty Ltd 2024

Copyright in this document is the property of Canford Hospitality Consultants Pty Ltd. This document may not be copied or reproduced in whole or in part without the specific prior written consent of Canford Hospitality Consultants Pty Ltd.

Canford Hospitality Consultants Pty Ltd may seek both injunctive relief restraining the unauthorised use of this document (or any part thereof) and an accounting for profits action against any person or entity who so copies or reproduces this document (or any part thereof) without said prior written consent

Contents

1	Introduction	3
2	Director’s policy “Extended Trading Permits - Sunday Trading: Non-metro liquor stores”	6
3	The Locality.....	11
4	Demographics of the Locality	19
5	Outlet Density	22
6	Liquor Services Offered by Cellarbrations at Gingin.....	25
7	Background and Experience of the Licensee.....	26
8	Risk Assessment with respect to Harm or Ill-health	27
9	A Report on the amenity of the Locality	29
10	Section 38(4)(c) - Offence, Annoyance, Disturbance or Inconvenience.....	31
11	Section 38(4)(ca) Tourism, or Community or Cultural Matters	32
12	Section 5(1)(a) of the Liquor Control Act (1988).....	34
13	Section 5(1)(b) of the Liquor Control Act (1988).....	35
14	Section 5(1)(c) of the Liquor Control Act (1988).....	37
15	Section 5(2)(a)(d)(e)(f) of the Liquor Control Act (1988).....	38
16	Objective Public Interest Evidence	39
17	Conclusion	43

1 Introduction

- 1.1. Lynda Butler, Jack Butler & Wayne Butler (partnership) are applying to the Licensing Authority for the grant of an extended trading permit to allow Sunday trading from 10am to 6pm for the licensed premises located Shop 2, 12 Brockman St, Gingin WA.
- 1.2. The subject premises currently trades as Cellarbrations at Gingin under liquor store licence number 6010001552.
- 1.3. The current licensee has operated the liquor store since 1994.
- 1.4. These submissions have been drafted by Canford Hospitality Consultants Pty Ltd in consultation with Jack Butler one of the licensees. Any references of 'the licensee' or 'the licensee's opinion' relate to Mr. Butler.
- 1.5. MOTIVATION FOR APPLICATION
- 1.6. From Monday to Saturday, the residents of Gingin have the benefit and convenience of purchasing their packaged liquor at the Cellarbrations at Gingin liquor store.
- 1.7. The motivation for applying for this extended trading permit is to satisfy the very reasonable demand of the local community for packaged liquor in their locality on a Sunday.
- 1.8. **PURPOSE OF SUBMISSION**
- 1.9. These submissions are designed to address the public interest requirements as set out in Section 38 of the Liquor Control Act 1988 as well as the Director's policy entitled "Extended Trading Permits - Sunday Trading for Non-metropolitan liquor stores".
- 1.10. Section 38 of the Act states as follows.
 - 1.10.1. *Some applications not to be granted unless in the public interest*
 - 1.10.1.1. *(1) Subsection (2) applies to -*
 - 1.10.1.2. *(a) an application for the grant or removal of a licence of a kind prescribed; or*
 - 1.10.1.3. *(b) an application for a permit of a kind prescribed; or*
 - 1.10.1.4. *(c) any other application to which the Director decides it is appropriate for subsection (2) to apply.*
 - 1.10.2. *"(2) 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".*
- 1.11. Section 9F of the Regulations states the kinds of permit prescribed.
 - 1.11.1. *"For the purposes of section 38(1)(b), an extended trading permit to be issued for the purpose referred to in section 60(4)(g) and for a specified period exceeding 3 weeks is prescribed"*
- 1.12. Section 60(4)(g) of the Act identifies that an extended trading permit may be granted for -
 - 1.12.1. *"extended hours, authorising the licensee to sell liquor under the licence at specified hours that would not otherwise be permitted hours, on such days other than a Good Friday as may be specified, or in relation to such occasion as may be specified, which remains in force for the period, not exceeding 10 years, specified;"*
- 1.13. The licensee is applying for an extended trading permit (ongoing hours) for their current liquor store licence to permit the premises to trade on a Sunday. Therefore, the licensee must satisfy the Director that its application is in the public interest.

- 1.14. Section 38(4) of the Liquor Control Act states the licensing authority may have regard to the following matters when considering an application for an extended trading permit (ongoing hours);
- 1.14.1. *“Without limiting subsection (2), the matters the licensing authority may have regard to in determining whether granting an application is in the public interest include –*
- 1.14.1.1. *“the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and*
- 1.14.1.2. *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 (emphasis added); and*
- 1.14.1.3. *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*
- 1.14.1.4. *any effect the granting of the application might have in relation to tourism, or community or cultural matters (emphasis added); and*
- 1.14.1.5. *any other prescribed matter”*
- 1.15. The objects of the Act are contained in section 5, which states the primary objects of the Act are -
- 1.15.1. *“to regulate the sale, supply and consumption of liquor; and*
- 1.15.2. *to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor, and*
- 1.15.3. *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.”*
- 1.16. Section 5 of the Act also includes the following Secondary Objects;
- 1.16.1. *To facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and*
- 1.16.2. *To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*
- 1.16.3. *To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act, and*
- 1.16.4. *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.”*
- 1.17. 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.
- 1.18. 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”.*
- 1.19. In the Aldi South Fremantle decision (attachment CG01), dated 22nd March 2019, at paragraph 26, the Director said;

- 1.19.1. *“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 case¹¹ and it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations”.*¹²
- 1.20. The footnote references at 11 & 12 from the above decision relate to the following;
 - 1.20.1. Footnote 11 - *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258.
 - 1.20.2. Footnote 12 - *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.
- 1.21. Through these submissions the licensee will demonstrate how this application is in keeping with the primary objects of the Act.
- 1.22. Further, the licensee will also demonstrate how this application is in keeping with the secondary objects of the Act, and that the facilitation for the use and development of the licensed premises, reflects the diversity of the requirements of consumers in the locality and the State.
- 1.23. The licensee will also demonstrate how this application is in accordance with the Director’s policy on Extended Trading Permits.

2 Director's policy "Extended Trading Permits – Sunday Trading: Non-metro liquor stores"

- 2.1. Pursuant to section 60 of the Liquor Control Act, the licensing authority may grant permits to allow liquor stores in non-metropolitan areas to trade on Sundays.
- 2.2. The policy document entitled "Extended Trading Permits - Sunday Trading: Non-metro Liquor Store" last amended on 3rd April 2019 provides guidance on the requirements relating to the granting of such permits.
- 2.3. Critically any applicant for such permits must demonstrate that the granting of the permit is in the public interest. However, it is clearly contemplated that such permits may be granted in the right circumstances when the application is shown to be in the public interest.
 - 2.3.1. *The policy states "Given that Government policy, as reflected in section 98D of the Act, is to prohibit liquor stores located outside of the Perth metropolitan area from trading on Sundays, the following additional factors will also be considered relevant:*
 - 2.3.2. *a) section 5(1)(c) of the Act, which requires consideration to be given to whether the application "caters for the requirements of consumers for liquor and related services" and in this context, it is considered that the public interest associated with an application for an ETP for a non-metropolitan liquor store to trade on Sundays:*
 - 2.3.2.1. *i. is less likely to cater for the broader requirements of liquor consumers and related services, where the relevant liquor store is located within reasonable proximity to existing licensed premises that may already be authorised to sell packaged liquor on a Sunday;*
 - 2.3.2.2. *ii. would only offer a limited benefit, since consumer requirements in the locality are already being met by the existing licensed premises, the only additional benefit the public would enjoy upon the grant of an ETP would be a potential increase in convenience and the benefit of this is far less significant than meeting a previously unmet consumer requirement; and*
 - 2.3.2.3. *iii. as country communities may already have access to packaged liquor on Sundays from other licensed premises, travelling time to the nearest outlet will be a relevant matter and the mere inconvenience of consumers having to travel a reasonable distance to purchase liquor on a Sunday would also not normally be considered as sufficient justification or reason to grant an ETP."*
 - 2.3.3. *b) whether trading on Sunday will provide consumers with access to additional services in conjunction with packaged liquor sales (although it should be noted that the added convenience to local shoppers at a local supermarket has not been considered by the Liquor Commission as a sufficient reason to grant an ETP in the public interest, which involves much broader considerations).*
 - 2.3.4. *c) whether the licensee has previously been granted an ETP to authorise trading on Sundays at the relevant liquor store; and*

- 2.3.5. *d) whether the premises is located in a holiday/tourist area and the effect that the grant might have in relation to tourism, or community or cultural matters.*
- 2.3.6. *In addition to the above, the Supreme Court’s finding that the Act’s ETP provisions do not require the Director to treat Sunday in the same way as other days of the week is also relevant³*
- 2.3.6.1. *Relevant footnotes: “3. See the comments of McLure J in Re Romato; Ex Parte Mitchell James Holdings Pty Ltd [2001 WASCA 28.]”*
- 2.4. **Treatment of Sunday compared to other days of the week**
- 2.5. It should be noted that the policy wording stated in paragraph 2.3. above is not a complete statement. Neither the revised policy nor the Act require the Director to treat Sundays differently to other days of the week.
- 2.6. Paragraphs 37 and 38 from McClure J in [2001] WASCA 286 state;
- 2.6.1. *“The source for the suggestion appears to be the Director’s reasons in the Joondalup Inn case quoted by the Acting Deputy Director in his reasons. The Director in the Joondalup Inn case says nothing more than for the stated reasons he treats Sunday differently than other days in relation to the grant of an ETP and that his approach is consistent with s 97(3) of the Act. The statement of consistency is correct as far as it goes. The statutorily permitted (fixed) trading hours on a Sunday are different from weekdays or a Saturday. For a hotel licence the weekday trading hours are 6 am to midnight whereas they are 10 am to 10 pm on a Sunday. I interpret the Director’s reasons in the Joondalup Inn case (approved and adopted by the Acting Deputy Director) as identifying discretionary matters he has taken into account and noting that the discretionary matters are consistent with the scope and purpose of the Act.*
- 2.6.2. *That is an entirely appropriate approach to the issue. He does not say or suggest that his approach to the grant of an ETP for Sunday is mandated by the Act.*
- 2.6.3. *The applicant put its construction argument slightly differently at the hearing. In essence, the submission was that there was nothing in the provisions of the Act dealing with ETPs to support the conclusion that Sunday should be treated differently than any other day. It is correct that the provisions of the Act dealing with ETPs do not make any distinction between Sunday and any other day of the week (except Good Friday). However, there are three difficulties with the applicant’s submission. Firstly, it is wrong to focus on the ETP provisions of the Act. Regard must be had to the Act as a whole. Secondly, it fails to take due account of the nature and scope of the Director’s discretion. Subject to the Act, the Director has an absolute discretion to refuse an application for an ETP on any ground, or for any reason, that he considers in the public interest: (s 33). Thirdly, the ETP provisions of the Act do not require the Director to treat Sunday in the same way as other days of the week.” (emphasis added)*
- 2.7. To summarise the above quote:
- 2.7.1. (1) regard must be had to the Act as a whole, and
- 2.7.2. (2) the Director has an absolute discretion to grant or refuse an application for an ETP on any ground, or for any reason, that he considers in the public interest.

- 2.8. However, in various decisions, the Director reminds applicants that Sunday is not an ordinary trading day, and therefore that peculiar conditions should be present in the application to merit the grant of an ETP for Sunday trading.
- 2.9. Specifically, in Decisions A219107, A198571, A199633 and A2180235, the Director states;
- 2.9.1. *“The licensing authority is not required to treat Sunday in the same way as other days of the week. The scheme of the Act is that the inability of non-metropolitan liquor stores to trade on Sundays in accordance with section 98D of the Act, is consistent with the primary objects of the Act. The legislature’s intention was for the other non-metropolitan liquor merchants to cater for the requirements of consumers for packaged liquor on Sundays and, therefore, consumers will not enjoy on Sundays the convenience that they may enjoy from Monday to Saturday. The prohibition against liquor stores outside the metropolitan area trading on Sundays is consistent with the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.*
- 2.9.2. *However, in Hermal Pty Ltd -v- Director of Liquor Licensing [2001] WASCA 356, at paragraph 37, Templeman J noted: “The only question is whether, having regard to all the circumstances and the legislative intention, an extended trading permit is justified. In answering that question the Director has a wide discretion: it is a matter for him to decide what weight he will give to the competing interests and other relevant considerations.”*
- 2.9.3. *“The considerations relevant to this application are that: a) Seabird Sunset Cafe is located in Seabird which is outside of the metropolitan area referred to in section 98D(2); and (b) there is an onus on the applicant, pursuant to sections 33 and 38(2) to demonstrate that the grant of the application is in the public interest. The reference to “public interest” indicates that both sections 5 and 38 of the Act are relevant when making a decision.”*
(emphasis added)
- 2.9.4. *“To establish that the liquor store will cater for the requirements of consumers for packaged liquor on Sundays, the applicant’s submissions include letters of support and a petition with “Signatures of support for a liquor store with Sunday trading.”*
(emphasis added)
- 2.9.5. *“Having considered the intervention and the submissions of the applicant, and in weighing and balancing the competing considerations, I am satisfied that, on the balance of probabilities, it is in the public interest that the application for the extended trading permit be granted”.*
- 2.10. Further in the more recent Harvey decision (2nd June 2016), the Delegate of the Director, determined, relevantly as follows;
- 2.10.1. *“there is no evidence before me that Sunday trading in Harvey should be treated differently from any other day of the week”*
(Paragraph 66 (c)).

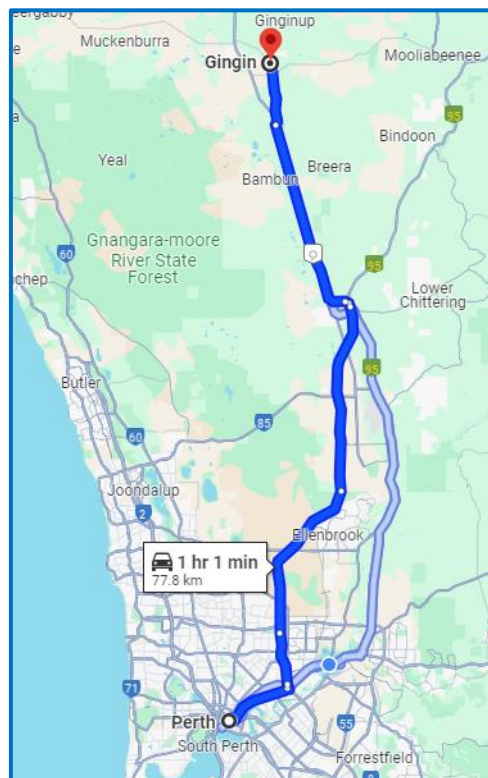
- 2.11. The conclusion is the licensing authority is not required to treat Sunday *“in the same way as other days of the week”*, but in the absence of evidence to the contrary it should not be *“treated differently from any other day of the week”*, and the ultimate criterion is whether the proposed extended trading permit is justified in the public interest.
- 2.12. Travelling time**
- 2.13. As stated earlier at Paragraph 2.3., the revised policy states; *“...travelling time to the nearest outlet will be a relevant matter and the mere inconvenience of consumers having to travel a reasonable distance to purchase liquor on a Sunday would also not normally be considered as sufficient justification or reason to grant an ETP.”*
- 2.14. The decision for Redport Enterprises Pty Ltd above highlights that, under certain circumstances, a relatively short extra distance for a customer to avail themselves of a packaged liquor outlet on a Sunday may not prevent the granting of an ETP.
- 2.15. Moreover, as stated in paragraph 55 of the same decision *“The Director’s policy is a guide and only one aspect to be considered by the Commission.”*
- 2.16. In the Decision granting an Extended Trading Permit (Ongoing Hours) for Sunday trading for Cellarbrations at Harvey, reference No. A000191694, the Delegate of the Director said the following:
- 2.16.1. *“52 However, the Director’s policy while stating that the travelling distance will be one of the circumstances of particular relevance, no other circumstances, which should be taken into account are set out therein or prescribed in the Act”.*
- 2.17. In the Decision refusing an Extended Trading Permit (Ongoing Hours) for Sunday trading for Pemberton Cellars the Liquor Commission referred to the Director’s previous policy on Sunday Trading for Non-Metro Liquor stores, saying the following at paragraph 8.1:
- 2.17.1. *“In this regard it may not be unreasonable for the public to have to travel a total distance of approximately 20 kilometres to/from the nearest licensed premises that sells packaged liquor.”*
- 2.18. This illustrates what the licensing authority has previously considered to be a reasonable distance to drive in considering the consumer requirements for packaged liquor.
- 2.19. In later sections of this submission, the Licensee submits that travelling distance is an important consideration for this application, given that the nearest packaged liquor outlet trading on a Sunday capable of fulfilling the locality’s consumer requirements are located in excess of 23km from the subject premises (i.e. a round trip of 46km).
- 2.20. Shoppers’ convenience**
- 2.21. As stated in paragraph 2.3.3., the revised policy states; *“it should be noted that the added convenience to local shoppers at a local supermarket has not been considered by the Liquor Commission as a sufficient reason to grant an ETP in the public interest, which involves much broader considerations.”*
- 2.22. Importantly the Liquor Commission goes on to say *“convenience, of itself, is not a basis upon which to grant an application which is required to satisfy the public interest. The public interest involves much broader considerations.”*
- 2.23. That is, therefore, not to say ‘convenience’ is not a factor, and it may or may not be considered as a factor, important or otherwise, but OF ITSELF ‘convenience’ is not determinant for refusal.

- 2.24. As an example, ‘convenience’ was a factor in the Redport Enterprises decision.
- 2.25. **Public Interest**
- 2.26. From the summary of Paragraphs 37 and 38 from McClure J in [2001] WASCA 286: the Licensee concludes that there should be no presumption of an approval nor presumption of a refusal because an application must be judged on its own merits in the public interest.
- 2.27. In a Decision granting an Extended Trading Permit (Ongoing Hours) for Sunday trading for Cellarbrations at Harvey, reference No. A000191694, the Delegate of the Director said the following:
- 2.27.1. *“In determining, whether an application should be granted “in the public interest” the licensing authority, is required to exercise a discretionary value judgement within the scope and purpose of the Act (refer Water Conservation and Irrigation Commission (NSW) v Browning (1947) 74 CLR 492; O’Sullivan v Farrer (1989) 168 CLR 210: and Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241” and;*
- 2.28. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:
- 2.28.1. *“The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.*
- 2.28.2. *The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.”*
- 2.29. So, it is clearly contemplated that such permits may be granted in the right circumstances when the application is shown to be in the public interest.
- 2.30. It is made clear that the onus must be put on “each particular set of circumstances”. These submissions will show the particular circumstances of the Gingin community. That is, the level of inconvenience expressed by the community by having to go to unreasonable lengths to obtain packaged liquor on a Sunday.

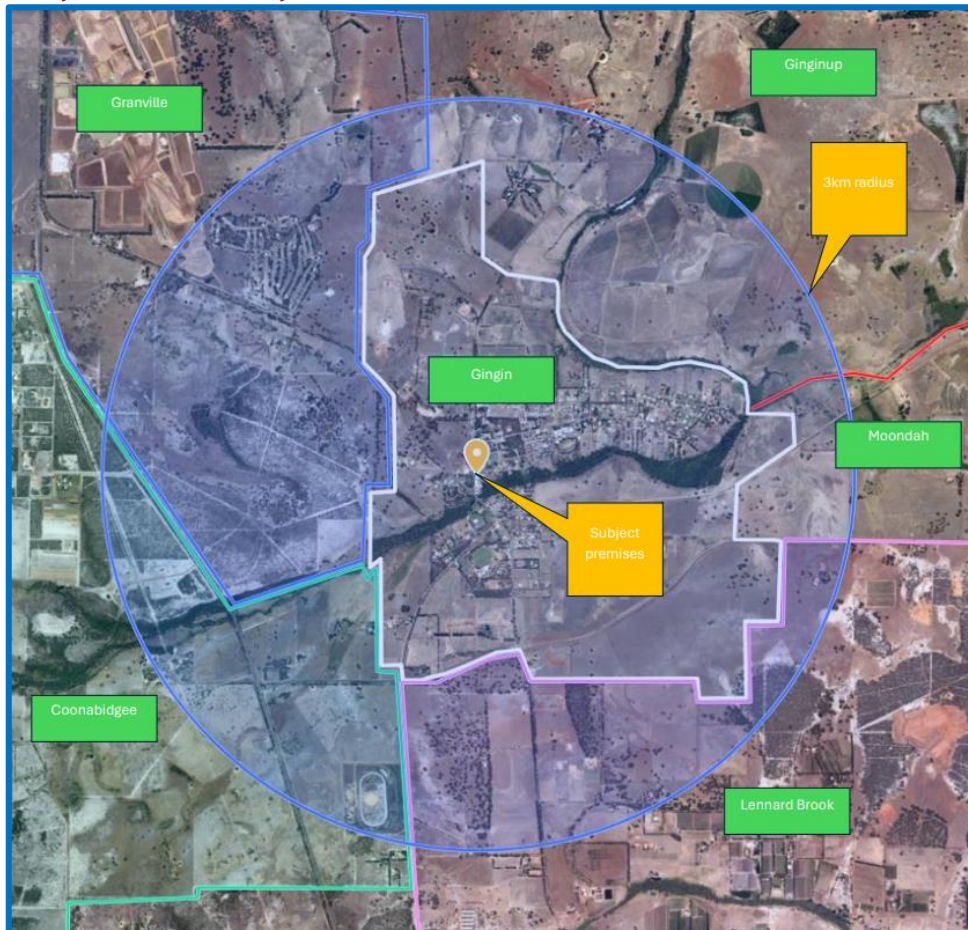
3 The Locality



- 3.1. As stated above, Cellarbrations at Gingin is situated at Shop 2, 12 Brockman St, Gingin WA.
- 3.2. Gingin is located 67 kilometres north of the Perth city centre and is one of the oldest rural towns in Western Australia.



- 3.3. According to the Director’s policy - Public Interest Assessment, *“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 3km from the site of the intended business.”*



- 3.4. The image above, as taken from the Nearmap website, shows the approximate location of the subject premises in Gingin.
- 3.5. The image illustrates the area encompassed by the 3km radius, by use of a blue circle and denotes the surrounding suburb boundaries.
- 3.6. Clearly a 3km radius encompasses the entire town of Gingin.
- 3.7. The area outside of the town boundary of Gingin but still within the 3km radius is very scarcely populated, comprising mostly of farmland and river flats.

- 3.8. A residential sub-division called Brookview Estate is located near the town centre and not far from the subject premises. This has been in planning since the site was rezoned in 2017. To date 15 lots have been sold as shown below. The licensee advises no lots have been or are being built as of July 2024.

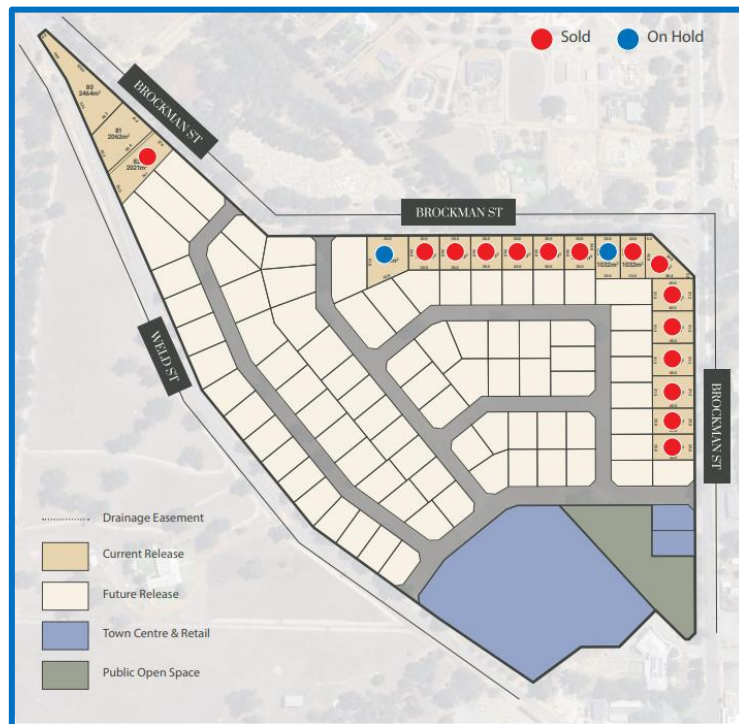
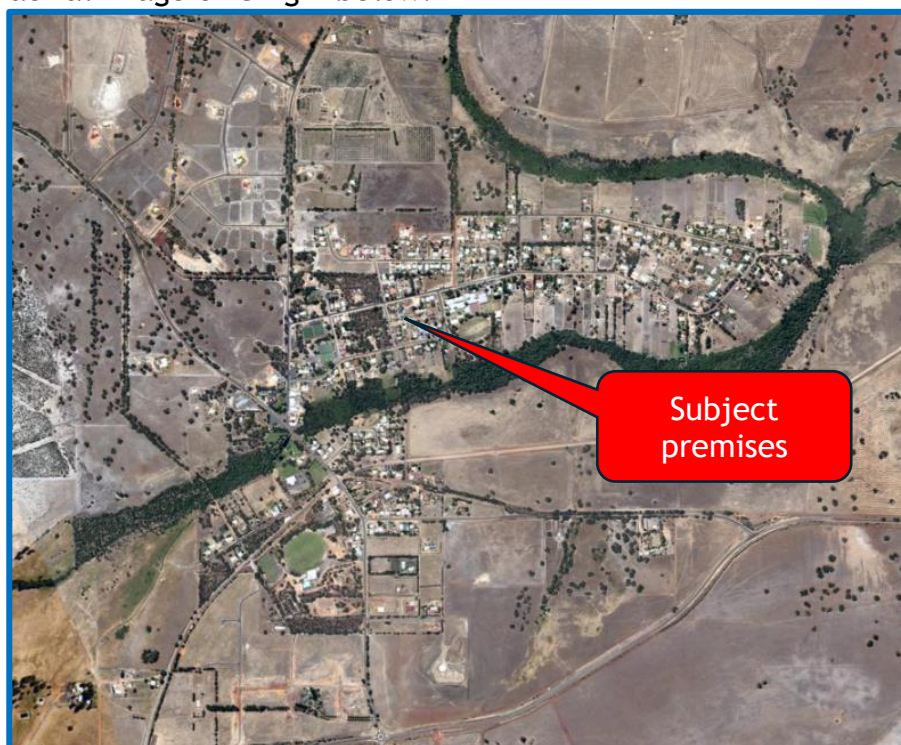


Image taken from <https://brookviewgingin.com.au> on 29th of July 2024

- 3.9. See aerial image of Gingin below.



- 3.10. In defining the “locality” affected by the application, guidance has been provided by “Public Interest Assessment - A Policy of the Director of Liquor Licensing” (Director’s PIA Policy) last amended on 16th April 2020. (Referenced in July 2024).

- 3.11. The Director’s policy states:
- 3.11.1. *“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.*
 - 3.11.2. *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.*
 - 3.11.3. *However, depending on the nature of the application, the licensing authority may also determine a broader locality”.*
- 3.12. In a recent Supreme Court decision relating to Liquorland Karrinyup (LIQUORLAND (AUSTRALIA) PTY LTD -v DIRECTOR OF LIQUOR LICENSING [2021] WASC 366), Justice Archer made the following comments (at 179, 181 and 186) in relation to the appropriate locality for an application.
- 3.12.1. *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.*
 - 3.12.2. *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.*
 - 3.12.3. *186 Unfortunately, due to the variety of factual situations that may arise, it is impossible to prescribe a specific test to be applied or even an exhaustive list of the factors that will or may be relevant in the determination of the locality in any given case. As has been observed in other jurisdictions, there will be some cases where it will be easy to determine the locality, and other cases where it will not be. An example of the former would be where the proposed premises was to be placed in a small country town. An example of the latter would be where it was to be placed in the CBD.*
- 3.13. This section will consider;
- 3.13.1. The physical location of the subject premises;
 - 3.13.1.1. The community most likely to be impacted by the grant of this application; and
 - 3.13.1.2. The presence of natural or human made boundaries that effectively separate the subject premises from that community.
 - 3.13.2. The physical location of the subject premises;
 - 3.13.3. This is not an application for a new licence. The liquor store already exists. The community most likely to be impacted by the grant of this application;

3.13.3.1. The subject premises is situated on Brockman Street in the heart of the town centre only 120 meters down the road from Gingin IGA as shown in the image below.

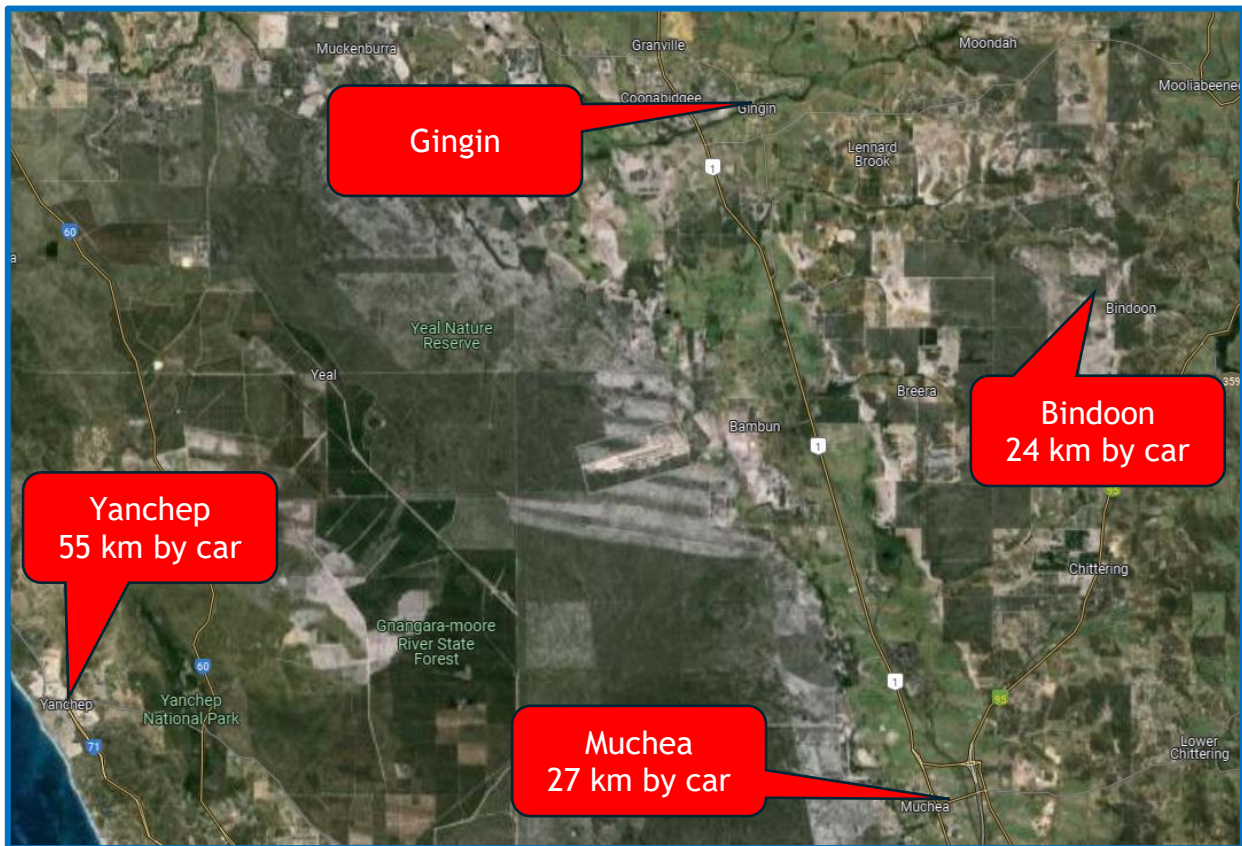
Cellarbrations at
Gingin

Gingin IGA





- 3.14. Thus, it can be assumed that the community most likely impacted by the change in trading hours will be;
- 3.14.1. Local residents,
 - 3.14.2. Customers of the existing liquor store;
 - 3.14.3. Any travellers or tourists who may be visiting the town.
- 3.15. **The presence of natural or human made boundaries that effectively separate the subject premises from the community.**
- 3.16. The Gingin Brook wraps around the populated area of the Town of Gingin like a horseshoe, resulting in residential build up being concentrated to the West of the brook. Besides this there is the natural separation of Gingin from neighbouring towns by space with it being 55 kilometres (one-way) from the nearest major town, Yanchep (population 10,000+) as shown on the map below.



3.17. Demographics of the locality;

- 3.17.1. For the demographic study for this application the licensee will use the 2021 Census data relating to the suburb of Gingin.
- 3.17.2. There are six suburbs that fall either wholly or partially within the 3km radius.
 - 3.17.2.1. Gingin
 - 3.17.2.2. Granville
 - 3.17.2.3. Ginginup
 - 3.17.2.4. Moondah
 - 3.17.2.5. Lennard Brook
 - 3.17.2.6. Coonabidgee
- 3.17.3. Only the suburb of Gingin falls wholly within the 3km radius, and the portions of the other suburbs that fall within the 3km radius are almost entirely without population, and so would have no impact on the demographics, as seen in the map at 3.3.

3.18. Outlet Density study:

- 3.18.1. Directors policy on Extended trading Permits - Sunday trading for non-metropolitan liquor stores - last amended 3rd April 2009.
 - 3.18.1.1. *“As country communities may already have access to packaged liquor on Sundays from other licensed premises, travelling time to the nearest outlet will be a relevant matter and the mere inconvenience of consumers having to travel a reasonable distance to purchase liquor on a Sunday would also not normally be considered as sufficient justification or reason to grant an ETP1;”*

- 3.18.1.2. In the footnotes of the policy we are instructed to *“See the observations of the Liquor Commission in Redport Enterprises Pty Ltd v Executive Director of Public Health & Others (LC 01/2016).”*
- 3.18.1.3. The Cape Cellars decision referred to above did not pay particularly close attention to the distance between the proposed liquor store and the nearest existing liquor store.
- 3.18.1.4. *“whilst in normal circumstances a requirement to travel an extra distance of two to three kilometres to purchase liquor on a Sunday would not be considered by the Commission to be sufficient justification or reason to grant an ETP, in this case, the Commission is persuaded there are a number of other factors that support the grant of this particular application”.*
- 3.18.2. The Pemberton Cellars decision gives light to the Director’s thinking on reasonable travelling distances
 - 3.18.2.1. *“it may not be unreasonable for the public to have to travel a total distance of approximately 20 kilometres to/from the nearest licensed premises that sells packaged liquor.”*
- 3.18.3. For the purposes of the outlet density study discussed in Section 5 below the Licensee will consider the location of all existing licensed premises within the 15km, accounting for a 30km round trip (total distance travelled).

4 Demographics of the Locality

- 4.1. In “The Western Australian Alcohol and Drug Interagency Strategy 2018-2022” the priority groups of concern have been updated and are listed as follows;
 - 4.1.1. *Aboriginal people and communities.*
 - 4.1.2. *Children and young people.*
 - 4.1.3. *People with co-occurring problems*
 - 4.1.4. *People in rural and remote areas including fly-in, fly-out and drive-in, drive-out workers;*
 - 4.1.5. *Families, including alcohol and other drug using parents and significant others;*
 - 4.1.6. *Those interacting with the justice and corrections systems.*
 - 4.1.7. *Other target groups of concern include:*
 - 3.19.1.1 *Older adults:*
 - 3.19.1.2 *Culturally and linguistically diverse communities,*
 - 3.19.1.3 *People identifying as lesbian, gay, bisexual, transgender or intersex; and*
 - 3.19.1.4 *Homeless people.”*
- 4.2. The Director’s Public Interest Assessment policy states applicants “*are encouraged to consider other ‘at risk’ groups that may be present in the locality.*”
- 4.3. The licensee will consider all nine groups above for which data is readily available. The following groups were unable to be considered however, as data is not available for them;
 - 4.3.1. *People with co-occurring problems;*
 - 4.3.2. *Families, including alcohol and other drug using parents and significant others (see paragraph 4.5 below);*
 - 4.3.3. *people identifying as lesbian, gay, bisexual, transgender or intersex; and*
 - 4.3.4. *Homeless people.*
- 4.4. Clarification has previously been sought from the Drug and Alcohol Office regarding the definition of the term “family”.
 - 4.4.1. The Drug and Alcohol Office replied that “*a specific definition of family is not provided in the Strategy document. There are a number of reasons for this, including:*
 - 4.4.2. *“Recognition of the cultural diversity in Western Australia and that the definition of family can be different for different cultures.*
 - 4.4.3. *Recognition that the impact of an individual’s drug and alcohol use is not always confined to a household or what has in the past been defined as the ‘immediate family’ - it can impact more broadly on family members who are external to a household. For example, Grandparents, Aunts and Uncles are commonly reported to be impacted upon.*
- 4.5. Recognition that not all families are biologically related but can still be impacted on by a person’s drug or alcohol use - for example step-children/guardians.”
- 4.6. With such a broad definition, it is impossible for the licensee to identify or quantify this priority population group in the locality.
- 4.7. This is an application for an extended trading permit to allow Sunday trading hours for a liquor store in a non-metropolitan area. As such, there will be no changes to the premises location nor to the locality it is currently serving.

- 4.8. For this demographic study, the licensee has selected relevant Census topics from the Australian Bureau of Statistics (ABS) website (www.abs.gov.au) to provide an indication of the representation of the identified priority groups listed in paragraph 4.1, for which data is readily available.
- 4.9. The Licensee will consider the most recent statistics available, ABS 2021 Census data, for the Gingin suburb which is the locality of this application. This data was compared to the State (Western Australia) in the table below.

ABS Census 2021	Gingin Suburb	Western Australia
Total Persons	902	2,660,026
People		
Aboriginal and Torres Strait Islander People	3.1%	3.3%
Median age	40	38
Age		
Persons aged 15 - 24 years	8%	11.8%
People aged 65 years and over	21.3%	16.1%
Country of birth, top responses		
Australia	70.6%	66.9%
Country of birth of parents		
Both parents born over seas	26.7%	41.6%
Language used at home, top responses (other than English)		
English only used at home	86.5%	75.3%
Households where a non-English language is used	8.8%	21.2%
Employment status		
Unemployed	1.7%	5.1%
Industry if employment, top responses		
Vegetable Growing (Outdoors)	6.0%	0.1%
Iron Ore Mining	5.3%	2.9%
Local Government Administration	5.3%	1.4%
Site Preparation Services	4.5%	0.5%
Pig Farming	4.0%	0.0%
Type of long-term health conditions		
Mental health condition	5.9%	8.3%
No long term health condition	61.0%	61.2%
None of the selected conditions	65.7%	65.1%
Family composition		
One parent family	12.8%	15.1%
Tenure type		
Owned outright	32.0%	29.2%
Rented	23.2%	27.3%
Rent weekly payments		
Renter households where rent payments are less than or equal to 30% of household income	64.9%	59.9%
Renter households with rent payments greater than 30% of household income	16.2%	28.3%
Mortgage monthly repayments		
Owner with mortgage households with mortgage repayments greater than 30% of household income	5.7%	13%

- 4.10. The purpose of considering the demographic data for the locality is to establish whether the priority population groups identified in paragraphs 4.1. and 4.3. above are over or underrepresented in the locality.

- 4.11. **Aboriginal people and communities;**
4.11.1. The table above indicates that there is a lower percentage of Aboriginal and Torres Strait Islander people in the suburb of Gingin at 3.1%, compared to the State at 3.3%.
- 4.12. **Children and young people;**
4.12.1. The population percentages for young people aged between 15 and 24 years in the suburb of Gingin are less than the State figure.
- 4.13. **People from rural and remote communities;**
4.13.1. Located about 67km from Perth, the locality is a rural area. Therefore, the licensee must consider the impact of the licensed premises on individuals living in the surrounding areas who are part of the rural community.
- 4.14. When comparing the socio-economic data in the 2021 Census for the locality to the figures for WA as a whole, it can be summarised that;
4.14.1. There are lower levels of rent stress in the locality.
4.14.2. There are lower levels of mortgage stress in the locality.
4.14.3. There is a higher percentage of the population in the locality which owns their private dwelling with no mortgage.
- 4.15. Conclusion - The socio-economic environment in the locality is very strong, and the population appears to be relatively affluent and stable.
- 4.16. This is a stable locality with a below average representation of the priority groups identified in paragraphs 4.1 and 4.3 above.

5 Outlet Density

- 5.1. As was shown in the locality section of the report Gingin is the only suburb included in the locality in a meaningful manner.
- 5.2. In this section, the licensee lists all existing packaged liquor facilities within the locality that may trade on a Sunday.
- 5.3. As stated in paragraph 3.3 above, the licensee will consider the licensed premises within the locality (3km) that may sell packaged liquor to the public on a Sunday.
- 5.4. The proposed premises is currently the only one-stop shopping facility in the locality, with the next nearest one-stop shopping facility is more than 24km away (48km round trip) in Bindoon.
- 5.5. The Licensee searched the website of the Department of Local Government, Sport, and Cultural Industries for all licensed premises in the locality, and eliminated any premises which may not sell packaged liquor to the public on a Sunday.
- 5.6. Through this process, the Licensee confirms that there is only one other licensed premises in the locality licensed to sell packaged liquor to the public on a Sunday (see table below).

RGL Ref	Licence type	Premises name	Premises address
6010001552	LIQ-Hotel	Gingin Hotel	5 JONES STREET GINGIN WA 6503

- 5.7. To assist in considering these factors, the applicant had Research Solutions (RS) conduct an independent mystery shop exercise on all competing packaged liquor outlets within the agreed locality.
- 5.8. This report can be read in full in attachment CG02.
- 5.9. RS confirmed the scope of the mystery shop to be as follows

An independent in-person mystery shop was undertaken by Research Solutions of The Gingin Hotel and Cellarbrations Gingin. The mystery shop involved our mystery shopper traveling to Gingin to undertake an in-person mystery shop of the only packaged liquor outlet within the locality, the Gingin Hotel, and do a comparison basket shop with Cellarbrations Gingin.

The list of items requested for the mystery shop comparison are as follows:

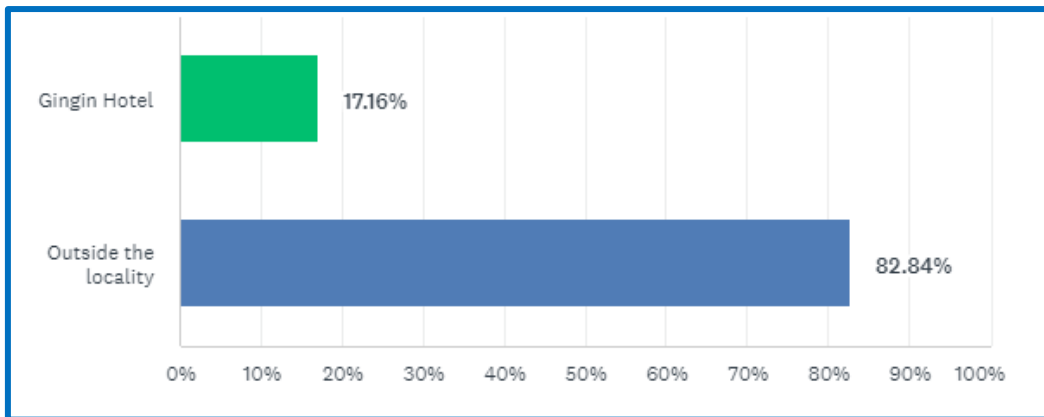
- 6 pack Carlton Dry stubbies
- 6 Pack of Export Cans
- 6 pack Bundy original cans
- 4 pack of Wild Turkey Rare cans
- 4 Pack of Cruisers
- 1 X Bottle Ruffled Feather SSB (White wine)

1 The Gingin Hotel
5 Jones Street, GINGIN WA 6503

2 Cellarbrations Gingin
Bottle Shop and Liquor Store, 2/3 12 Brockman Street, GINGIN WA 6503

- 5.10. The mystery shopper report indicates that the only licensed premises trading on Sunday in the locality, Gingin Hotel, does not have a dedicated packaged liquor facility. Instead, it offers a very limited packaged liquor service over the bar counter.
- 5.10.1. When asked how easy it was to browse for packaged liquor at the Gingin Hotel the mystery shopper said *“Not easy at all. Hard to tell what is available. Had to show the sales person the list of items I was interested in, there was no display to browse.”*
- 5.10.2. When asked about the comparative ease of browsing at the two premises the mystery shopper said *“(Cellarbrations at Gingin was) Completely different to the Hotel where you almost feel guilty asking for takeaways. Finding products was so quick and easy at Cellarbrations.”*
- 5.10.3. When asked about Cellarbrations at Gingin’s range of choices the mystery shopper said *“No comparison. A completely different view towards retail liquor compared to Cellarbrations. The Hotel is more intent on drinkers and meals and not retail.”*
- 5.7 The mystery shopper report also indicated that Cellarbrations at Gingin is around **33%** cheaper in terms of packaged liquor when compared to Gingin Hotel.
- 5.8 The mystery shopper observed that Gingin Hotel staff suggested buying from Cellarbrations at Gingin when they were approached for packaged liquor.
- 5.8.1 The mystery shopper noted *“the bar person did start telling me to go to the Cellarbrations when I first asked (for take-away packaged liquor).”*
- 5.9 In addition the Gingin Hotel does not have an online presence for its packaged liquor service,
- 5.10 This means, to access a full range of packaged liquor on a Sunday, in a dedicated retail setting, people must travel out of the locality.

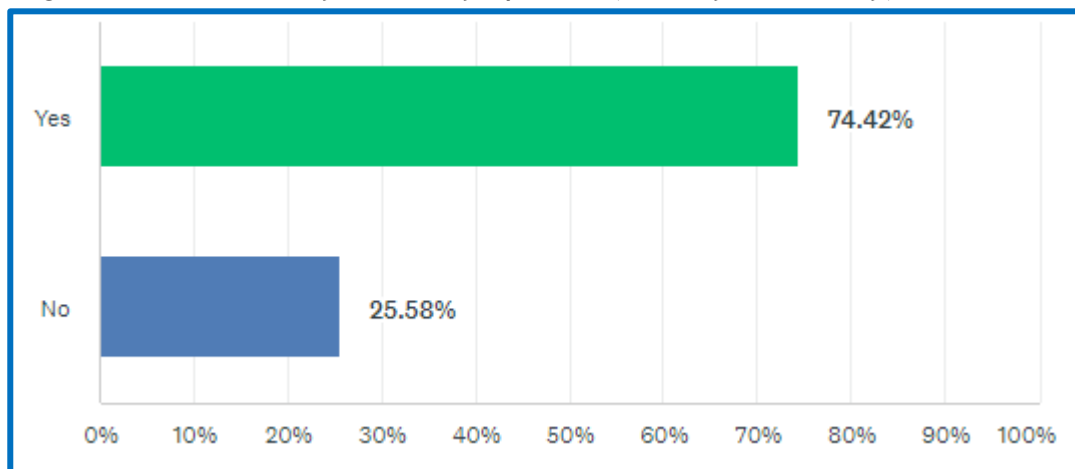
5.11 The questionnaire respondents were asked where they purchase take-away liquor from on Sundays, options being Gingin hotel or leaving the locality in order to buy packaged liquor. The results showed that more than 80% of respondents travel out of the locality, these results are shown in the table below.



5.11.1 Evidently the Gingin Hotel does not meet the packaged alcohol needs of the locality on a Sunday.

6 Liquor Services Offered by Cellarbrations at Gingin

- 6.1. To recap, Cellarbrations Gingin is currently offering the following services:
- 6.1.1. A comprehensive stock range as the only store with a dedicated packaged liquor facility in the locality.
 - 6.1.2. An easily accessible browse facility.
 - 6.1.3. Assistance for the elderly;
 - 6.1.4. A brightly lit browse facility.
 - 6.1.5. One-stop shop convenience with the town's only supermarket located 120 metres down the road.
- 6.2. Respondents were asked "Cellarbrations at Gingin aims to satisfy consumer requirements in: Pricing; Convenience; Product-range; Service; and Efficiency. Do you feel these requirements are satisfied by Cellarbrations at Gingin in the hours they currently operate (Monday - Saturday)?"



- 6.3. Almost three-quarters of the respondents to the survey said their requirements for packaged liquor, in terms of pricing, convenience, product range, service and efficiency are met by Cellarbrations at Gingin.

7 Background and Experience of the Licensee

- 7.1. The store has been under the same licensee / management since 1994 when it opened.
- 7.2. The licensee advises in the 30 years they have run the store they have had no customer complaints or infringement notices from the liquor licensing authority.
- 7.3. Jack, Wayne and Lynda are locals to Gingin and are active within the community.
 - 7.3.1. The licensees have sponsored various sporting clubs around Gingin in the past including the Gingin Bowling Club, Football Club and Golf Club.
 - 7.3.2. Jack is currently involved with the Gingin Football Club.
 - 7.3.3. Wayne is currently involved in the Gingin Bowling Club
 - 7.3.4. Both Jack and Wayne participate in local golfing events.
 - 7.3.5. The licensees participate in numerous fundraisers especially those related to Busy Bees.
- 7.4. The licensee advises their store offers, whenever possible, to carry goods out the car for those that would struggle themselves.
- 7.5. Therefore, it is open to the licensing authority to conclude that the applicant is a very competent and responsible licensee, very much invested in the local community.

8 Risk Assessment with respect to Harm or Ill-health

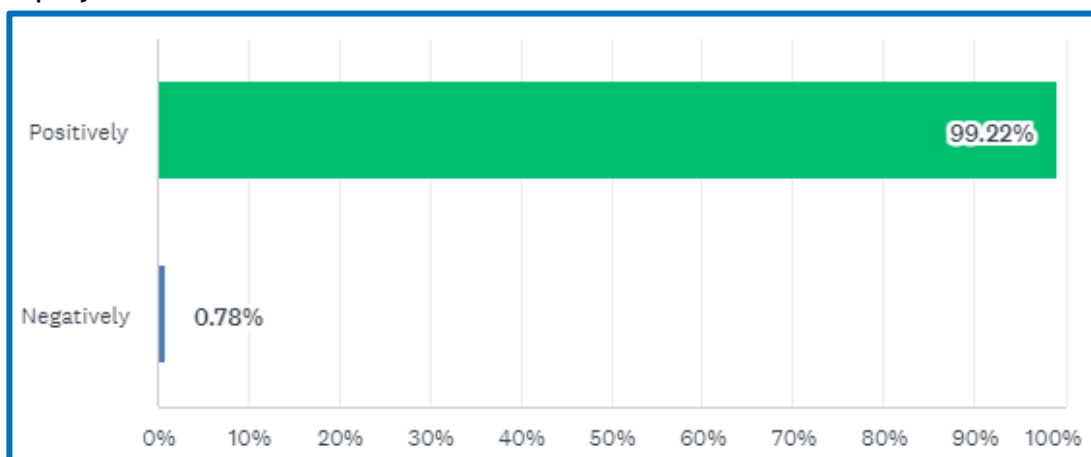
- 8.1. Section 38(4)(a) of the Liquor Control Act (1988) asks the applicant to consider *“the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor”*.
- 8.2. The demographics of the locality have been discussed in some detail in section 4 and concluded that this is a stable locality with a below average representation of almost all of the population priority groups.
- 8.3. This application is not for a new licence. The liquor store already exists. Further, during its existence, the liquor store has never received any liquor infringements nor any complaints from local residents. Indeed, many of the questionnaire respondents live very close to the liquor store and are very supportive of the store and this application.
- 8.4. In paragraph 66 (b) of the Cellarbrations at Harvey decision, dated 2nd June 2016, granting an extended trading permit to trade on Sundays (prior to S36B(4)), the Director’s Delegate stated:
 - 8.4.1. *66 “Therefore in weighing and balancing the public benefit;...there is no apparent reason why the application should be refused, in the public interest, I am prepared on the balance of probabilities to exercise my discretion to grant the application for the following reasons:*
 - 8.4.2. *b) There is no evidence before me to indicate that granting the extended trading permit would increase alcohol-related harm, contrary to the object 5(1)(b) of the Act”*.
- 8.5. When questionnaire respondents were asked if there were any people or any groups of people in the locality who, in their opinion would be at risk of increased and undue harm as a result of the granting of this extended trading permit. Only one respondent answered ‘yes’ to this question and the existing liquor store has been operating since 1994 without any local resident complaints nor liquor infringements.
- 8.6. The licensee further submits that the potential for an increase in harm and ill-health for at risk-groups in the locality is low because of the following factors:
 - 8.6.1. Jack, Wayne and Lynda, the licensees, are locals to the area and part of the locality they serve.
 - 8.6.2. They have operated this liquor store for 30 years in Gingin.
 - 8.6.3. The licensee’s management practices ensure that the business is not operated in any manner that could have an adverse effect on priority population groups.
 - 8.6.4. The licensee has not been the subject of any infringement notices for a contravention of the Act.
 - 8.6.5. The high standard of service and facilities engender patronage from mature and responsible people.
 - 8.6.6. The licensee has a detailed harm minimisation plan in place, which will help in minimising any potential for undue harm or ill-health in the locality.

- 8.7. Further, there will be no change in the current style of operation.
- 8.8. It is therefore anticipated that this application, if granted, will not add to the potential for alcohol related harm or ill-health in the locality.

9 A Report on the amenity of the Locality

- 9.1. 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”*.
- 9.2. This is an application for an Extended Trading Permit (Ongoing hours) for Sunday trading.
- 9.3. It is argued here that this permit would add a needed packaged liquor service to the locality on a Sunday, and thereby add to the amenity locally.
- 9.4. Due to the isolated nature of the Gingin community the granting of this permit would provide much needed convenience and choice for residents and visitors on a Sunday.
- 9.5. Due to the nature of the community and precautions taken by the licensee, it is highly unlikely that the grant of this permit will have any negative impact on the local community. Instead, the grant will provide an alternative currently lacking in the locality.
- 9.6. The licensee confirms the following;
 - 9.6.1. An approved manager will be in the liquor store during all trading hours managing the day-to-day operations.
 - 9.6.2. There will be one to three staff on duty, depending on the time of day.
 - 9.6.3. The licensee has put in place a detailed harm minimisation plan, which will help in minimising any potential for undue harm or ill-health in the locality.
- 9.7. Furthermore, being located close to the only supermarket in the community, granting this permit for Cellarbrations at Gingin can further benefit the people of the locality through the following services:
 - 9.7.1. A one stop shopping experience for residents and visitors.
 - 9.7.2. The offer for sale of a large variety of liquor products.
 - 9.7.3. A safe, secure and inviting place to shop for local residents and visitors.
 - 9.7.4. Creating new jobs in the locality, and
 - 9.7.5. A convenient and easily accessible packaged liquor facility.

9.8. In the questionnaire respondents were asked whether they believed the application might change the locality positively or negatively and 127 out of 128 respondents said it would change the locality positively. These results are displayed in the bar chart below.



10 Section 38(4)(c) - Offence, Annoyance, Disturbance or Inconvenience

- 10.1. 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”*.
- 10.2. Given that there will be no consumption on premises it is the licensee’s considered opinion the proposed extended trading permit will not cause any undue offence, annoyance or disturbance to anyone in the local community.
- 10.3. The liquor store is of modest size, currently trades six days a week and has not received any liquor infringements nor any complaints from local residents.
- 10.4. Respondents to the questionnaire were asked “What do you say about the potential for annoyance, offence, disturbance or inconvenience that the granting of this application may cause people who live, work, visit or otherwise resort to the locality?” Their responses are below:
 - 10.4.1 Barry Callen from Gingin said *“I don't see any of these during it's current opening times, so do not see any reason why it would change.”*
 - 10.4.2 Scott from Gingin said *“I don't think there will be any of the above, we live in a peaceful town where the majority of people know each other.”*
 - 10.4.3 Matt from Gingin said *“Celebrations Gingin operates 6 days a week without any negative impact on the community.”*
 - 10.4.4 Alison From Ginginup said *“Opening an extra day (Sunday) will not increase any bad behaviour as we dont seem to have a problem on the other days of the week when they could purchase alcohol.”*
- 10.5. Therefore, it can be concluded that it is unlikely that the granting of this application will cause any offence, annoyance, disturbance or inconvenience to any people or group of people in the locality.

11 Section 38(4)(ca) Tourism, or Community or Cultural Matters

- 11.1. Gingin as a suburb has very few businesses open on a Sunday currently, namely the local café CU@Park, a hardware store, the IGA and the Gingin Hotel.
- 11.2. The café which is operated by the Hotel owner often has a line out the door on Sundays. It is located in the centre of Granville Park which is a popular picnic spot for both locals and visitors to Gingin.
- 11.3. MacroPlan Australia Central Coast Strategic Tourism Planning Study has this to say about Gingin
 - 11.3.1. *“Located 83 km north of Perth, Gingin is one of the oldest towns in Western Australia. Today it retains much of its antiquity being an absolutely delightful and quaint township with a substantial number of historical buildings, an old pub, and the tree-lined Gingin Brook running through the heart of the settlement. Nestled into the valleys to the north of Perth, it is the ideal distance from the capital for a pleasant day trip to view the wildflowers or to picnic by the Water Wheel in Granville Park.”*
 - 11.3.2. This clearly shows the potential for Gingin as a destination for travellers.
- 11.4. As Sunday is one of the two days of the week most workers and students are free the licensee feels it will liven the town having a packaged liquor store trading giving people the opportunity to buy packaged liquor for a picnic or other gathering last minute on a Sunday.
- 11.5. Gingin British Car Day is an event that happens in the town of Gingin every year.
- 11.6. British Car Day sees 5000 people in Gingin for the day (On a Sunday).
- 11.7. It is a Very popular event with over 2800 followers on Facebook.



- 11.8. Visitors are able to easily locate Cellarbrations at Gingin due to its central location in the locality and might expect them to be open but are forced to either forgo their plans or to go a considerable distance elsewhere on a Sunday to purchase packaged liquor.
- 11.9. Furthermore, when questionnaire respondents were asked for their comments regarding the proposed extended trading permit for the liquor store;
- 11.3.3. Jasmine from Gingin said, "May bring more people into town on a Sunday, as it is often very quiet."*
- 11.3.4. Terri from Gingin said, "Would bring more people to the area on Sundays increasing the opportunity for other businesses to open."*
- 11.3.5. Kirsty from Wannamal said, "Gingin needs to evolve. The store is really good with many options but being closed on a Sunday is absurd. It's not 1970!"*
- 11.3.6. Carla from Mooliabeenee said, "More freedom for customers & the community. Potential to attract tourists or people driving through to Perth."*
- 11.3.7. Jenny from Gingin said, "This is a well run locally owned family business and they run a very well oiled service to our community."*
- 11.10. Section 38(4) (ca) of the Liquor Control Act (1988), asks the applicant to consider *"any effect the granting of the application might have in relation to tourism, or community or cultural matters."*
- 11.11. Considering the public's response to the new proposed hours (See section 16 of this PIA) as well as the popularity of picnics and events like the Gingin British Car Day the licensee feels that the tourism of the town and general community will benefit from Cellarbrations at Gingin trading on Sundays.

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.

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 (attachment CG 03), 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:*
 - 13.5.1.1. *(a) the positive aspects of the application that were weighed;*
 - 13.5.1.2. *(b) how the Commission reached the conclusion there was a likelihood of increased harm and ill-health if the application was granted; or*
 - 13.5.1.3. *(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 licensee is not required to show that no harm whatsoever may occur if this application is granted, only that the licensee will do all that is reasonable within their power 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. This then must be weighed, in equal measure, against the benefits that will be accrued by the local community through having a professional browse packaged liquor offer available to them in the locality on a Sunday.
- 13.8. We say the level of risk of harm for this application is lower as it is a modestly sized liquor store, and this is not an application for a new licence but an application for an ETP for Sunday trading.
- 13.9. Gingin is a safe suburb with 39 offences reported by WA Police between June 2023 and June 2024.
 - 13.9.1. This translates to 43 crimes per thousand people which is considerably lower than the average for all of Western Australia which is 106 offences per thousand people.
- 13.10. The licensee sought to investigate the incidence of alcohol related offences within the town of Gingin as recorded by the WA police. However, no statistics were available on the WA Police website in relation to alcohol related crime for any towns in WA.

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

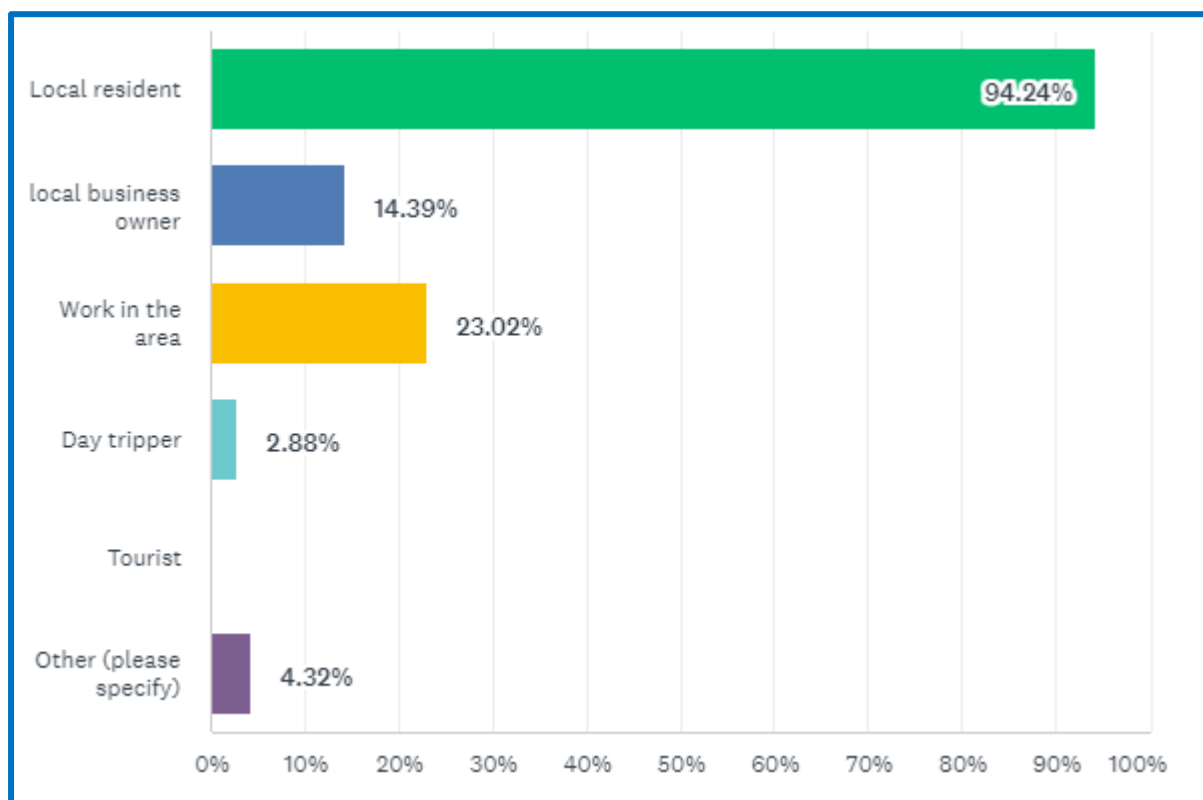
- 14.1. Section 5(1)(c) states that a primary object of the Act is;
 - 14.1.1 *“to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State”;*
- 14.2. Being a primary object means that it is of equal importance to the other two primary objects of the Act.
- 14.3. Thus, it is just as important for the Director to cater for the requirements of consumers as stated above, as it is to minimize the potential for harm or ill-health due to the use of liquor.
- 14.4. In the end it is the weighing and balancing of these equal objects which will determine whether a liquor licence should be granted or not.
- 14.5. The comments of the many questionnaire respondents who have taken the trouble to complete witness questionnaires, further underline that this packaged liquor facility is required on a Sunday.
- 14.6. **93%** of the questionnaire respondents say they have had a requirement to purchase packaged liquor on a Sunday.
- 14.7. When further asked to explain what happened and whether they were able to obtain the liquor they required that day;
 - 14.7.1. Natalie from Gingin said, *“I had friends over for dinner and could not get what I needed as the liquor shop was close(d).”*
 - 14.7.2. Michelle from Gingin said, *“No there wasn't another option within a reasonable distance.”*
 - 14.7.3. Marc from Bindoon said, *“No unless I went to the hotel and paid ridiculous price for very limited choice of drinks.”*
 - 14.7.4. Vanessa from Gingin said, *“No as the local bottle shop is closed, the pub does not stock what I drink and that is the only option locally to purchase liquor on a Sunday unless I want to travel more than half an hour to purchase it, I'm not willing to do that, I prefer to support local.”*
- 14.8. It is open for the licensing authority to conclude that by granting this permit, the licensee will cater for the requirements of locals for important packaged liquor services on a Sunday.
- 14.9. Cellarbrations at Gingin is located in the heart of town, walking distance for many of the local community. It is the only dedicated packaged liquor store present in the town of Gingin.
- 14.10. Therefore, in relation to section 5(1)(c) of the Act, the licensee asserts that the proposed Extended Trading Permit will cater for the current market need in the locality for packaged liquor and related services on a Sunday and will responsibly develop the local liquor industry.
- 14.11. It is quite apparent from the evidence presented in these submissions that there is a high level of inconvenience currently experienced by the local community and visitors to Gingin.

15 Section 5(2)(a)(d)(e)(f) of the Liquor Control Act (1988)

- 15.1. In carrying out its functions under the Act, the licensing authority shall have regard to the primary objects of the Act and also to the following secondary objects -
 - 15.1.1. (a) *“To facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State”*; and
 - 15.1.2. (d) *“To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor”*; and
 - 15.1.3. (e) *“To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act”*, and
 - 15.1.4. (f) *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”*.
- 15.2. 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”*.
- 15.3. In his decision A219143 dated 16th September 2011, in granting a liquor store licence to Mt Barker Liquor store the Director stated;
 - 15.3.1. *“The use and development of the proposed liquor store in Mount Barker is consistent with object 5(2)(a) of the Act, in that the licensing authority is to have regard to facilitating “...the use and development of licensed facilities...reflecting the diversity of the requirements of consumers in the State.”*
- 15.4. Through this application the licensing authority will be facilitating the development of a very responsible and needed licensed service in the locality that will satisfy a reasonable and identified public requirement.
- 15.5. Therefore, in the opinion of the licensee, in granting this licence the Director of Liquor Licensing will be fulfilling his obligations under section 5(2)(a) of the Act.

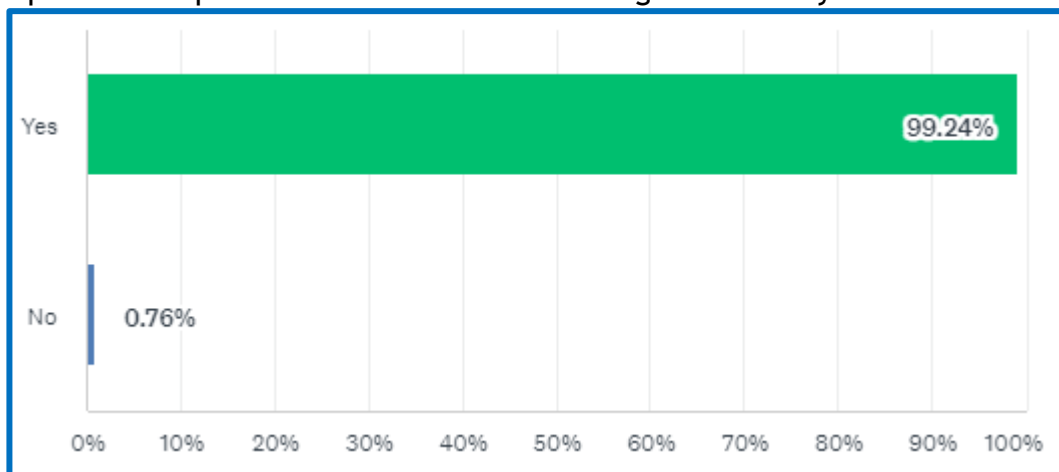
16 Objective Public Interest Evidence

- 16.1. In this section the licensee reports on how objective public interest evidence was obtained and collated. It will also show there is a section of the community who wish to be able to purchase packaged liquor from the liquor store on a Sunday.
- 16.2. Through the process of preparing this application, the licensee reached out to people who live, work, or otherwise resort to the locality. Potential respondents could access the questionnaire through a Survey Monkey Link.
- 16.3. A copy of the witness questionnaire can be found at attachment CG04.
- 16.4. A map of the locality was made available to potential respondents (Attachment CG05).
- 16.5. In total the licensee collected 168 witness questionnaires the results of which can be seen in the survey summary (attachment CG06).
- 16.6. Out of the 168 witness questionnaires completed there are 27 respondents who did not meaningfully attempt to answer the full survey.
- 16.7. The licensee states that all returned questionnaires have been included in these submissions.
- 16.8. These questionnaire respondents, in addition to demonstrating strong support for this application, provide the Director with a very valuable insight into the opinions of people in the locality.
- 16.9. The respondents were asked to select all options that describe their relationship to Gingin, the results are shown in the table below.



- 16.9.1. 94% of respondents described themselves as a local resident and 20 specified themselves as local business owners.

- 16.9.2. Of the four respondents that answered other, they were comprised of three people with family or partners in the area who did not live there themselves as well as one person who is soon to move into the locality.
- 16.9.3. 47% of respondents live less than 2 kilometres from Cellarbrations at Gingin.
- 16.9.4. 78% of respondents have lived in Gingin for more than 5 years.
- 16.10. One of the local business owners, Peter Garbin of Garbin Estate Wines, shared a letter of support for this application which can be found attached (Attachment CG07). In his letter he wrote *“It would benefit us at Garbin Wines for Cellarbrations to open on Sundays to sell our locally grown wines in store. Hopefully the store’s Sunday trading will welcome tourists to seek out and purchase locally produced wines such as our own.”*
- 16.11. Respondents to the questionnaire were also asked “would you be likely to purchase liquor from Cellarbrations at Gingin on Sundays?”



- 16.11.1. All but one of the 131 respondents answered ‘Yes’ meaning that there is an identified and significant requirement within the locality for a packaged liquor service on Sunday from Cellarbrations at Gingin.
- 16.12. 130 out of 139 respondents, or 94%, have had a requirement to purchase packaged liquor on a Sunday.
- 16.13. Respondents who have wanted to purchase packaged liquor on a Sunday in the past were asked if / how they did;
- 16.13.1. Emma from Neergabby said, *“Had to buy from the hotel at a much higher price. If you’re (sic.) after anything that’s not beer the hotel is unlikely to sell it to you or won’t have it.”*
- 16.13.2. Scott from Gingin said, *“Yes but I had to drive to Ellenbrook which is 50km away.”*
- 16.13.3. Vanessa from Gingin said, *“No as the local bottle shop is closed, the pub does not stock what I drink and that is the only option locally to purchase liquor on a Sunday unless I want to travel more than half an hour to purchase it, I’m not willing to do that, I prefer to support local.”*
- 16.13.4. Natalie from Gingin said, *“I had friends over for dinner and could not get what I needed as the liquor shop was closed.”*
- 16.14. When asked where they buy their packaged liquor on Sundays 83% bought it from an outlet outside the locality.

- 16.15. Following this they were asked to describe any limitations to the only current packaged liquor offering the locality on a Sunday, the Gingin Hotel;
- 16.15.1. Kim from Wanerie said, *“In recent years, the opening hours of the Gingin Hotel have been restricted so they are sometimes not open when needing to purchase liquor.”*
- 16.15.2. Tanya from Muckenburra said, *“It’s often closed, doesn’t have a nice selection of wine and can’t buy prepackaged drinks.”*
- 16.15.3. Alana from Gingin said, *“Limitations are that they are overpriced, have limited stock and no variety.”*
- 16.15.4. Vanessa from Gingin said, *“Very limited range very high pricing. Prefer not to take my child there so I don’t go, which means this is not an option for me.”*
- 16.15.5. Alana from Gingin said, *“Limitations are that they are overpriced, have limited stock and no variety.”*
- 16.16. Respondents were also asked how they think the locality might be changed by Cellarbrations at Gingin trading on a Sunday.
- 16.16.1. Alana from Gingin said, *“It brings money back into Gingin economy, rather than people either stocking up in bulk in Perth I.e. Dan Murphys, and/or on a Sunday purchasing alcohol for the whole week elsewhere. A lot of people have their groceries delivered on a Sunday and the(y) want to plan their meals ahead I.e wine matching to dinner dishes etc.”*
- 16.16.2. Emma from Neergabby said, *“The main street in Gingin is like a ghost town when no shops are open. Having cellarbrations open will add more atmosphere to the town. Aside from the convenience of being able to purchase what you want.”*
- 16.16.3. Vanessa from Gingin said, *“It will keep local dollars in a local business. Give day trippers to a chance to buy alcohol to have with their picnic in the local park. On days such as the British car day, this is a huge event in town, all the local shops open and benefit from the huge clientele and our bottle shop, which has a huge range and heaps to offer those visiting on that day, yet the shop is closed.”*
- 16.16.4. Kym from Wanerie said, *“Will be nice to have at least one shop open in the main street on a Sunday.”*
- 16.17. Overall, **99%** of respondents say that the Cellarbrations at Gingin trading on Sunday may positively affect the locality.
- 16.18. The main themes of the witness responses may be summarised as follows;
- 16.18.1 Services and products:
The only licensed premises currently trading on a Sunday in the locality does not carry a wide or satisfactory range of liquor products nor do they provide the high standard of service that Cellarbrations at Gingin does **in regard to packaged liquor**.
- 16.18.2 Price:
Prices for packaged liquor products at the only other licensed premises in the locality are expensive when compared to Cellarbrations at Gingin (see paragraph 5.7 above).

16.18.3 Convenience:

As explained in paragraph 5.4 above, the nearest place to purchase packaged liquor with one-stop shopping potential is a minimum 24 km **one-way** trip.

Going to town on a Sunday in search of packed liquor especially for last minutes gatherings. See paragraph 14.7.

As there is no convenient public transport from Gingin on a Sunday those without access to a car are inconvenienced.

16.19. In the Decision granting the liquor store licence for Kojonup Liquor Store, dated 22nd June 1999 (No. A31180), the Director commented;

16.19.1. *“It was also established that a significant amount of packaged liquor is purchased outside the affected area (over 50 per cent) because of limited choice, limited access and uncompetitive prices. In my view, the public, therefore, is put to substantial inconvenience in having to travel outside the affected area in order to satisfy their packaged liquor requirements. On this basis I conclude that the licensed premises already existing in the affected area, including the objectors’ premises, cannot provide for the reasonable requirements of the public for packaged liquor.”*

16.20. Gingin residents are facing a similar situation of "limited choice, limited access and uncompetitive prices" and "having the inconvenience to travel outside" the Gingin locality to purchase packaged liquor on Sundays.

16.21. As stated in 16.14. above, **83%** of respondents in the questionnaire purchased their Sunday packaged liquor requirements outside the locality.

16.22. On Sundays, the nearest place to purchase liquor is the Gingin Hotel but according to the survey respondents and the mystery shopper, the prices are uncompetitive and it offers a very limited range. Moreover, the tavern does not have a dedicated browse facility to offer packaged liquor sales.

17 Conclusion

- 17.1. The licensee recognises that Sundays are different under the Liquor Control Act but believes that the extraordinary circumstances of the locality described in these submissions justifies the granting of the extended trading permit applied for.
- 17.2. Even though the Director often states in his decisions on applications for Sunday trading permits for liquor stores, "*The licensing authority is not required to treat Sunday in the same way as other days of the week*", the question remains whether the permit is justified in the public interest. (See paragraph 2.9.1 above)
- 17.3. It has been shown in these submissions that there is a significant requirement for packaged liquor services on a Sunday.
- 17.4. There is a below average representation of almost all of the population priority groups in the locality and the licensee has shown in these submissions that the town of Gingin has a low incidence of alcohol related harm and ill health.
- 17.5. After proper consideration of the facts and evidence in this application it is open for the licensing authority to conclude there is little potential for increased harm or ill health that could possibly result from the granting of this permit on the one hand, and on the other hand there are very tangible public interest benefits to a readily identifiable group of local people and visitors.
- 17.6. The only other licensed premises currently trading on a Sunday in the locality does not have a dedicated packaged liquor facility nor do they carry the wide range of liquor products and provide the high standard of packaged liquor service that Cellarbrations at Gingin does.
- 17.7. Cellarbrations at Gingin, the subject premises, is located in close proximity to the only grocery store in town which provides shopping convenience for patrons, whether local or tourist, especially given the lack of public transport.
- 17.8. The next nearest shopping centre with a packaged liquor service available on Sundays is in Bindoon, which is located at least 24km away.
- 17.9. Visitors to Gingin may not have any knowledge of other licensed venues or how to get there. On the other hand, visitors can easily locate the Cellarbrations at Gingin, due to its central location in the locality, and expect Cellarbrations at Gingin to be open but are forced to go a considerable distance elsewhere on a Sunday to purchase packaged liquor.
- 17.10. The Licensee has shown itself to be a professional and responsible licensee who can be entrusted with the privilege of operating under the permit which has been applied for.
- 17.11. In the opinion of the Licensee there are almost no foreseeable negatives relating to this application, and many foreseeable positives.
- 17.12. It is therefore submitted that granting this application is very much in the public interest.

Drafted for and on behalf of Lynda Butler, Jack Butler & Wayne Butler (partnership)

Phil Cockman
Canford Hospitality Consultants Pty Ltd
Tuesday, September 24, 2024

Attachments

- CG01- Directors Decision ALDI South Fremantle
- CG02- Mystery Shopper Report
- CG03- Directors Decision National Hotel, Fremantle
- CG04- Witness Questionnaire
- CG05- Map of Locality provided with the questionnaire
- CG06- Summary Responses Data
- CG07- Letter of Support form Peter Garbin of Garbin Estate