# Attachment 10
# Section 36B(4) Assessment

**Banksia Grove Tavern Pty Ltd (ACN 697 586 360)**

**Proposed Tavern Unrestricted Licence**

**Banksia Grove Shopping Centre, 1001 Joondalup Drive, Banksia Grove WA 6031**

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# Table of Contents

**1 The Statutory Provisions**

**2 The Construction of Section 36B(4)**

**3 The Defined Locality**

**4 Existing Packaged Liquor Outlets in the Defined Locality**

**5 Application of Section 36B(4) to this Application**

**6 Image Source Register**

# 1 The Statutory Provisions

## Section 36B of the Liquor Control Act 1988

1.1 Section 36B(4) states that the licensing authority must not grant an application to which the 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. Section 36B(1) states that local packaged liquor requirements, in relation to an application to which the section applies, means the requirements of consumers for packaged liquor in the locality in which the proposed licensed premises are, or are to be, situated. Section 36B operates by reference to a prescribed area and a prescribed distance, each of which is prescribed for the purposes of the section by the Liquor Control Regulations 1989.

1.2 Section 36B(4) does not require the Applicant to prove that consumers cannot obtain packaged liquor at all within the locality. What the subsection requires is that the licensing authority be satisfied, before the licence may be conditionally granted, that the requirements of consumers for packaged liquor in the locality cannot reasonably be met by the packaged liquor premises already existing there. The enquiry is directed at what the existing premises provide, measured against what consumers in that locality require, and not at whether packaged liquor is obtainable somewhere within the locality.

## Section 41 and the Licence Sought

1.3 The licence sought is a Tavern Unrestricted Licence under Section 41 of the Act, on a conditional grant. Subject to the Act, a hotel licence granted as a tavern licence authorises the licensee to sell and supply liquor on the licensed premises for consumption on the premises and, where the licence so provides, for consumption off the premises. The packaged liquor component of this application is an ancillary take-away offering, by way of a drive-through and walk-in facility, integrated within a single tavern premises and depicted on the plans as part of one continuous licensed area.

1.4 The proposed packaged liquor retail section is approximately 268 square metres, below the prescribed area of 400 square metres, so that the hearing bar in Section 36B(3) is not engaged. [OBTAIN: confirm the final retail area against the lodgement floor plan.]

## Section 38(2) and the Onus

1.5 The onus is on the Applicant. Section 38(2) of the Act requires the Applicant to satisfy the licensing authority that granting the application is in the public interest, and the Applicant must provide the prescribed documents and information and any further document or information the licensing authority reasonably requires for that purpose.

# 2 The Construction of Section 36B(4)

2.1 The construction of Section 36B(4) is governed by two decisions of the Supreme Court of Western Australia. In Liquorland (Australia) Pty Ltd v Liquor Commission of Western Australia [2021] WASC 366, Archer J determined the meaning of the phrase 'requirements of consumers' and of the words 'cannot reasonably be met'. In Liquorland (Australia) Pty Ltd v Director of Liquor Licensing [2024] WASC 128, Lemonis J identified the constituent matters the licensing authority must address, the nature of the comparison the subsection requires, and the scope of the enquiry. Each decision is reproduced at Attachment 11 – Case Precedents.

## Judge Archer on the Requirements of Consumers

2.2 Her Honour applied the presumption that the same words bear the same meaning throughout an Act, and held that the phrase 'requirements of consumers' in Section 36B bears the meaning it bears in Section 5(1)(c), which states the primary object of catering 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. Her Honour held:

> *"In my view, the words 'requirements of consumers' mean the same in s 36B(1) and s 5(1)(c) and, subject to the facts and issues of a particular case, may involve consideration of the same types of matters."*

2.3 Her Honour further held that the phrase 'requirements of consumers for packaged liquor' in the definition of 'local packaged liquor requirements' is not limited in its scope to the physical item or product of packaged liquor, and that matters such as convenience, product range, service and efficiency are relevant, the requirements of consumers in Section 5(1)(c) having been interpreted to include shopper convenience and preferences, including the convenience of one-stop shopping.

## Judge Archer on 'Cannot Reasonably be Met'

2.4 The operative words of Section 36B(4) are 'cannot reasonably be met'. The word 'reasonably' imports an objective standard rather than a threshold of hardship. Her Honour held:

> *"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, having regard to contemporary standards and expectations."*

2.5 It follows that the Applicant is not required to establish that consumers cannot obtain packaged liquor in the locality, or that they face great difficulty in doing so. The Applicant is required to establish that the requirements of consumers, understood in the broad sense described above, are not sensibly or rationally met by the existing premises, having regard to contemporary standards and expectations.

### Judge Lemonis on the Four Matters Arising Under Section 36B(4)

2.6 In Liquorland (Australia) Pty Ltd v Director of Liquor Licensing [2024] WASC 128, Lemonis J held that, broken down into its constituent parts, Section 36B(4) requires the licensing authority to address the following four matters:

- what is the relevant locality;
- what are the requirements of consumers for packaged liquor in the relevant locality;
- what packaged liquor services are provided by existing packaged liquor premises in the relevant locality; and
- whether the local packaged liquor requirements cannot reasonably be met by those existing packaged liquor premises.

2.7 His Honour held that those matters should logically be addressed in that order, that the analysis is not at large but is directed to the substance of the application itself and to the products and services which the new premises is intended to provide, and that the comparison requires at least a broad assessment of the nature, scope and extent of the requirements relied on. This Attachment is structured to address the four matters in that order. [VERIFY: confirm each quoted passage verbatim against the decisions at Attachment 11 before lodgement.]

## 3 The Defined Locality

3.1 The relevant locality for the purposes of Section 36B(4) is the defined locality adopted in the Public Interest Assessment, determined with the guidance of the Premises Manager at the Department of Local Government, Industry Regulation and Safety and by reference to the natural and constructed catchment boundaries surrounding the site: Flynn Drive to the north; Pinjar Road and Caporn Street to the south; Wanneroo Road to the west; and Rousset Road and Old Yanchep Road to the east. The defined locality captures the suburb of Banksia Grove and parts of Carramar, Ashby and Tapping.

3.2 The arterial roads that bound the area operate as genuine catchment boundaries for convenience-based retail trips, the area corresponds to the residential catchment served by the Banksia Grove District Centre at which the proposed premises is located, and the area is broadly consistent in scale with the 3-kilometre locality benchmark adopted by the City of Wanneroo's Local Planning Policy 2.8 – Licensed Premises. A large-format destination outlet (Dan Murphy's) is located on the western side of Wanneroo Road, outside the defined locality; consistent with the approach in Liquorland Secret Harbour [LC 06/2017], the presence of a destination outlet serving a broader regional catchment does not negate a demonstrated consumer requirement within the locality.

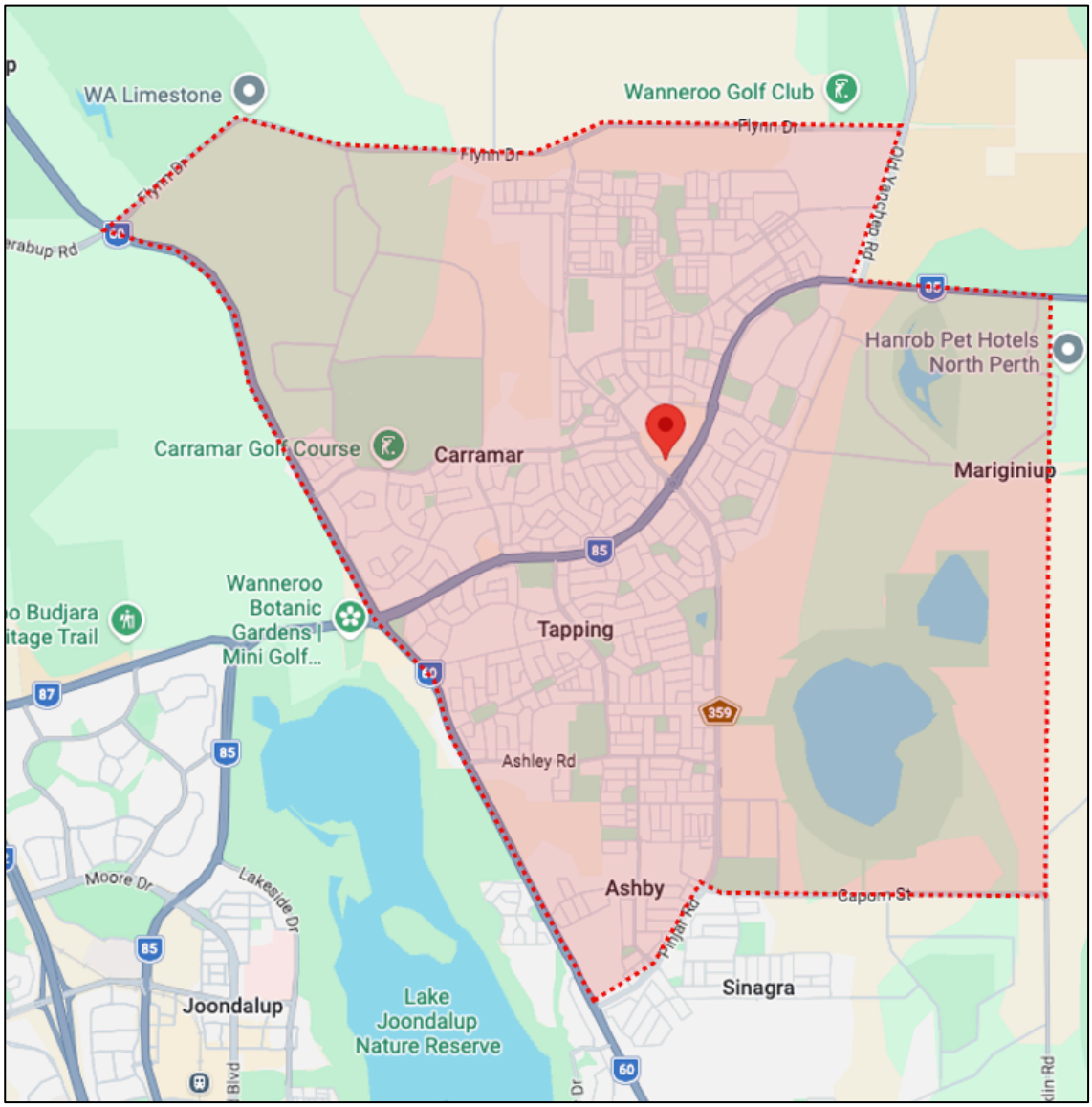



**Figure 1: Packaged Liquor Outlets in the Defined Locality1**

3.3 Figure 1 is a location schematic, not a cadastral survey and not to scale. It depicts the instructed road boundaries, the proposed premises and the five specified outlets. Point placement was cross-checked against Google Maps place records on 25 August 2026.

# 4 Existing Packaged Liquor Outlets in the Defined Locality

4.1 Five existing packaged liquor premises are located in, or on the boundary of, the defined locality. Each is profiled below. The profiles are desktop-based: sources are the operators' published material, shopping-centre directories and mapping services, accessed 25 August 2026, and dynamic details (trading hours, services and range) should be reconfirmed immediately before lodgement.

## 1. BWS Banksia Grove

***81 Ghost Gum Boulevard, Banksia Grove WA 6031.***




**Figure 2: BWS Banksia Grove – frontage and pedestrian approach2**

| | |
|---|---|
| **Brand and operator group** | BWS, an Endeavour Group retail brand. |
| **Store format** | Browse-only packaged liquor store attached to a Woolworths supermarket. No drive-through is identified. |
| **Trading hours, as published** | Mon to Fri 8:00 am to 9:00 pm; Sat 8:00 am to 5:00 pm; Sun 11:00 am to 5:00 pm. |

| | |
|---|---|
| **Range and positioning** | General-purpose national chain range across wine, beer, spirits, ready-to-drink and non-alcoholic products. |
| **Road distance and drive time** | 400m |

## 2. Liquorland Banksia Grove

***Tenancy 2/1001 Joondalup Drive, Banksia Grove WA 6031.***




**Figure 3: Liquorland Banksia Grove – shopping-centre frontage3**

| | |
|---|---|
| **Brand and operator group** | Liquorland, operated within Coles Liquor; by the retailer as Liquorland (Australia) Pty Ltd. |
| **Store format** | Browse-only store in Banksia Grove Village, adjacent to the Coles supermarket. No drive-through is identified. |
| **Trading hours, as published** | Mon to Thu 8:00 am to 9:00 pm; Fri 8:00 am to 10:00 pm; Sat 8:00 am to 9:00 pm; Sun 10:00 am to 7:00 pm. |
| **Range and positioning** | The product offering wine, spirits, beer, cider and premixed drinks, including products |

| | |
|---|---|
| | exclusive to Liquorland. Coles describes its liquor offer in terms of range, value and convenience. The store-specific Western Australian producer mix is not established. |
| **Services offered and not identified** | Liquorland offers delivery and Click & Collect through its platform, subject to store and postcode availability. A drive-through is not available |
| **Road distance** | 60m |

## 3. ALDI Banksia Grove

***3 Jewel Way, Banksia Grove WA 6031.***




**Figure 4: ALDI Banksia Grove – supermarket frontage4**

| | |
|---|---|
| **Brand, licensee and licence class** | ALDI Banksia Grove, licensed to ALDI Foods Pty Limited. |
| **Store format** | Supermarket-based liquor retail within ALDI Banksia Grove. The store locator lists liquor among the store services. No drive-through is identified. |
| **Trading hours, as published** | Mon to Wed 8:30 am to 8:00 pm; Thu 8:30 am to 9:00 pm; Fri 8:30 am to 8:00 pm; Sat 8:30 am to 5:00 pm; Sun 11:00 am to 5:00 pm. |

| | |
|---|---|
| **Range and positioning** | ALDI presents a value-positioned range across wine, beer, cider, premixed drinks and spirits. |
| **Distance from proposed premises** | Approximately 157 m. |

## 4. BWS Carramar

***7 Cheriton Drive (corner Joondalup Drive), Carramar WA 6031.***




**Figure 5: BWS Carramar – Carramar Village streetscape5**

| | |
|---|---|
| **Brand and operator group** | BWS, an Endeavour Group retail brand. |
| **Store format** | Browse-only packaged liquor outlet at the Woolworths-anchored Carramar Village. |
| **Trading hours, as published** | Mon to Fri 8:00 am to 9:00 pm; Sat 8:00 am to 5:00 pm; Sun 11:00 am to 5:00 pm. |
| **Range and positioning** | The centre describes a broad beer, wine and spirits range and value-oriented pricing. |
| **Road distance** | Approximately 2.0 km. |

## 5. Cellarbrations at Ashby

***131 Pinjar Road, Ashby WA 6065.***




**Figure 6: Cellarbrations at Ashby – dual-lane drive-through frontage6**

| | |
|---|---|
| **Brand and operator group** | Cellarbrations banner; the venue website identifies Tenfold Investments Pty Ltd as licensee. Cellarbrations stores are independently owned and operated. |
| **Store format** | A liquor superstore with a dual-lane drive-through, associated with The Ashby Bar & Bistro. |
| **Trading hours, as published** | Mon and Tue 10:00 am to 8:00 pm; Wed to Sat 10:00 am to 9:00 pm; Sun 10:00 am to 8:00 pm. |
| **Range and positioning** | Large-format range of wine, spirits and beer, with a five-tap growler station for small-batch craft beer. |
| **Road distance and drive time** | 3.0km |

## Comparative Analysis

4.2 Table source: preceding outlet profiles and applicant-supplied proposal attributes.

| Attribute | BWS Banksia Grove | Liquorland Banksia Grove | ALDI Banksia Grove | BWS Carramar | Cellarbrations at Ashby | Proposed packaged amenity |
|---|---|---|---|---|---|---|
| **Format** | Browse-only; supermarket-linked | Browse-only; supermarket-adjacent | Supermarket-based licensed liquor retail | Browse-only; neighbourhood-centre | Large-format; dual-lane drive-through; tavern-linked | Ancillary walk-in and drive-through; tavern-linked |
| **Range / positioning** | General-purpose national chain; local mix unverified | General-purpose chain; value, range and convenience; local mix unverified | Value-positioned supermarket liquor range; local mix unverified | General-purpose national chain; local mix unverified | Large-format broad range; growler station; WA program unverified | Proposed curated Western Australian producer range, subject to evidence |
| **Services** | 30-minute pick-up; delivery; no drive-through identified | Delivery and Click & Collect subject to availability; no drive-through identified | Walk-in supermarket purchase; other store-level liquor services unverified; no drive-through identified | Walk-in; no drive-through identified | Drive-through; walk-in; growler fills; staff guidance | Proposed drive-through; walk-in; personalised service; other services to confirm |
| **Manner of trade** | Mainstream browse and online convenience | Mainstream browse and online convenience in the District Centre | Value-oriented liquor purchased during supermarket visit | Mainstream browse linked to supermarket visit | Large-format browse, drive-through and guided selection | Proposed combined hospitality-linked, walk-in and drive-through offer |

# 5 Application of Section 36B(4) to this Application

5.1 The statutory provisions are set out at the start of this Attachment, the construction of Section 36B(4) on the authorities in the construction section, and the defined locality, together with the five existing packaged liquor premises within it, in the two sections preceding this one. This section applies that construction to those facts, identifies the requirements of consumers the Applicant relies on and the evidence for each, addresses the statutory question, and states the conclusion to which the Applicant submits the material leads.

## First Matter: The Relevant Locality

5.2 The relevant locality is the defined locality identified earlier in this submission. That is the single locality by reference to which the comparison required by Section 36B(4) is made.

## Second Matter: The Requirements of Consumers for Packaged Liquor in the Locality

5.3 On the construction adopted earlier in this submission, local packaged liquor requirements are not confined to the physical availability of the product. The Applicant relies on the following requirements:

- Convenience and one-stop shopping within the Banksia Grove District Centre, including the ability to complete a packaged liquor purchase, by drive-through or on foot, within a District Centre visit already being undertaken;
- Drive-through packaged liquor collection at the District Centre, for consumers collecting by vehicle, including parents with children and consumers with limited mobility;
- Integration of the packaged liquor purchase with a supervised, family-oriented hospitality venue, so that consumers attending the venue for dining and alfresco amenity are able to complete a take-away purchase in the same supervised setting;
- A curated range with a Western Australian producer focus, including craft beer, local wines and locally distilled spirits, together with a growing selection of low-alcohol and no-alcohol products; and
- Knowledgeable, personalised service and the ability to request products not readily available in the locality.

5.4 The evidence directed to those requirements is of three strands: the Consumer Survey deployed for this application, the Applicant's direct operating experience with the same hybrid tavern-plus-packaged model in comparable growth-corridor localities, and the retail character of the proposed site. Each is addressed in turn.

## The Consumer Survey

5.5 A Consumer Survey was conducted to demonstrate the consumers' requirements for packaged liquor in the defined locality. The instrument and full response data are provided at Attachment 4 – Consumer Surveys, and the verified results are set out in the Public Interest Assessment. In summary: the survey closed with 780 responses, of which 779 were verified for analysis; 83.4 per cent of verified respondents live or work in Banksia Grove, Carramar, Ashby or Tapping; the leading packaged liquor requirements identified were competitive pricing (71.9 per cent), a conveniently located outlet close to home or work (60.9 per cent) and drive-through service (46.2 per cent); and no single existing outlet is used by more than 41.8 per cent of respondents, while 29.0 per cent nominated an outlet outside the defined list, indicating that a material proportion of consumers presently travel beyond the defined locality to satisfy their packaged liquor requirements.

5.6 The written comments corroborate that purchasing pattern, for example:

*"When it's later than 9 pm on a weekend I have to traverse to Clarkson thirsty camel" (Respondent, Clarkson)*

*"We have been waiting for somewhere local, where we can take our families for dinner, or stop in on the way home from work for a quick one. The ashby and the duke are too far from us. If we had a drive thru, I would use it all the time as I drive further to ashby over bws all the time for the convenience." (Respondent, Banksia Grove)*

*"I usually shop at Dan Murphy's on Wanneroo Road …" (Respondent, Carramar)*

## The Retail Character of the Proposed Site

5.7 The proposed premises is located within the Banksia Grove District Centre, the focal point of retail, commercial and social activity for the surrounding residential catchment. The packaged liquor amenity is an ancillary component of a supervised, family-oriented tavern, and a consumer attending the District Centre, or the venue itself, would be able to complete a packaged liquor purchase, on foot or by vehicle, within the same visit. That is the one-stop shopping requirement recognised in Woolworths Ltd v Director of Liquor Licensing [2013] WASCA 227, in which the Court of Appeal described one-stop shopping in contemporary Australian life as of great importance, particularly to working people.

## Third Matter: The Packaged Liquor Services Provided by the Existing Premises

5.8 The packaged liquor services provided by the existing premises in the defined locality are identified in the preceding section of this submission, which records, for each premises, its location, format, published trading hours, range, services, distance from the proposed premises, and principal catchment. In summary, the five existing premises serve mainstream packaged liquor purchases through supermarket-linked or shopping-

centre browse formats: BWS Banksia Grove, Liquorland Banksia Grove and BWS Carramar are national-brand browse outlets; ALDI Banksia Grove provides a value-positioned supermarket liquor offer approximately 157 metres from the proposed premises; and Cellarbrations at Ashby is a large-format superstore with a dual-lane drive-through located on the southern boundary of the locality, approximately 3.0 kilometres from the District Centre.

## Fourth Matter: Whether Those Requirements Cannot Reasonably be Met by Those Premises

5.9 This is the statutory question, and the Applicant submits it on the facts of its own proposal, consistent with the scope of the enquiry identified by Lemonis J. Applying the standard established by Archer J, the question is whether the requirements identified above can sensibly and rationally be met by the existing premises, having regard to contemporary standards and expectations.

5.10 The Applicant's submission rests on specific, evidence-based distinctions rather than broad claims. First, no existing outlet within the Banksia Grove District Centre provides drive-through packaged liquor collection: the only drive-through in the locality is at Ashby, on the southern boundary, and a District Centre consumer requiring drive-through collection must presently make a separate vehicle trip of approximately 3.0 kilometres. Secondly, no existing outlet within the District Centre combines walk-in and drive-through packaged liquor access with a supervised, family-oriented hospitality venue: the requirement of consumers attending the District Centre, or the venue, to complete a take-away purchase within the same visit is defined by the trip, and it is met at the District Centre or it is not met at all.

5.11 The Applicant does not contend that drive-through service, tavern integration or independent personalised service is wholly absent from the locality. The Ashby outlet provides a drive-through, offers staff guidance, operates its bottle shop in conjunction with a tavern-class venue, and trades under an independently owned banner. The submission is location- and trip-specific: those service elements are not available within the Banksia Grove District Centre, where the resident catchment is concentrated and growing, and the requirements identified above are therefore not sensibly or rationally met by the existing premises, having regard to contemporary standards and consumer expectations.

## Conclusion

5.12 For those reasons, and subject to confirmation of the proposed retail area, trading hours, operating model and Western Australian producer schedule, the Applicant invites the licensing authority to be satisfied for the purposes of Section 36B(4) of the Act that the local packaged liquor requirements of consumers in the defined locality cannot reasonably be met by the existing packaged liquor premises in that locality. The matters arising under Section 38(4) of the Act, being harm and ill-health, amenity, and offence,

annoyance, disturbance and inconvenience, are addressed in the Public Interest Assessment to which this document is Attachment 10, together with the operational and harm minimisation controls the Applicant offers for the proposed premises.