



Government of **Western Australia**
Department of **Racing, Gaming and Liquor**

Your Ref :

Our Ref : 13545

Enquiries: Daryl McLauchlan
 (08) 9425 1848

The Applicant
Singlefile Estate Wines Pty Ltd
PO Box 487
WEST PERTH WA 6872

Dear Sir/Madam

: SINGLEFILE ESTATE WINES PTY LTD

I confirm our discussion regarding the planning approval for this premises and the requirements under section 46 of the Liquor Control Act 1988 (The Act) relating to the type of licence category applicable to your application.

As discussed, the provision of section 46 of the Act require the licensing authority to assess a special facility licence application, whereby it shall not grant a special facility licence if granting a licence of another class would achieve the purpose for which the special facility licence is sought.

It would appear that your application may be able to be catered for under a tavern licence, however this final determination will be made by a Deputy Director.

Should this be the case and a tavern licence is deemed more appropriate the applicant will be required to lodge planning approval from the Shire of Denmark evidencing approval for a tavern use. Any conditions the shire attaches to that approval (which may be the same conditions applied by the shire to the special facility planning approval) would then form the basis of the tavern licence conditions should the licence be granted.

Any change to these licence conditions in the future would require the applicant to lodge fresh planning approval from the Shire of Denmark for the proposed licence condition changes.

I trust that this advice clarifies the matter for both the shire and yourself.

Should you have any queries regarding the above please contact me on [08] 9425 1848.

Yours faithfully

Daryl McLauchlan
Senior Premises Inspector
9 July 2010

cc: Shire of Denmark

Attachment 7.1

Level 1, 87 Adelaide Terrace, East Perth, Western Australia, 6004

Postal Address: PO Box 6119, East Perth, Western Australia, 6892

Tel: (08) 9425 1888 Facsimile: (08) 9325 1041 Country Callers: 1800 634 541

Email: rgl@rgl.wa.gov.au Web Site: www.rgl.wa.gov.au



9.1.5 CELLAR SALES AND ANCILLARY PRODUCT SALES

File Ref:	A408
Applicant / Proponent:	Singlefile Estate Wines Pty Ltd.
Subject Land / Locality:	No. 90 (PT494) Walter Road, Denmark
Disclosure of Officer Interest:	The author's partner works at the nearby Lake House winery and it could be considered the author has a financial interest. This disclosed interest has not affected the author's recommendation.
Date:	9 April 2010
Author:	Duncan Ross, Senior Planning Officer
Authorising Officer:	Sam Williams, Director of Planning & Sustainability
Attachments:	Yes

Summary:

The proponent wishes to convert an existing outbuilding into a Cellar Sales premises on an established vineyard as outlined (Attachment 1). All wine currently produced by the vineyard is sold off site under the established Producers Licence, generally to restaurants and liquor outlets in and around Perth and Denmark.

The application requires special consideration for the following reason:

- In addition to the wine produced on site, it is proposed to sell a small percentage of imported wines (from around Australia and overseas) and boutique beers as described in Attachment 2 – Proposed Operating Details, dated 12 February 2010. Cellar Sales usually involves the sale of wine produced solely on site in accordance with an established 'Producers' liquor licence.

The usual process would thereby involve the application being determined under delegation by the Director of Planning and Sustainability, however given the nature of the proposal, it is recommended Council be made aware of and subsequently determine this application.

It is recommended the application be approved, subject to conditions.

Background:

Cellar Sales is an 'SA' land use class, which means that Council may at its discretion permit use in the zone after giving notice of application in accordance with Clause 6.4 of the TPS No.3. The proposal was subject to the required period of public comment and no submissions were received.

The proposal is generally consistent with the definition of 'Cellar Sales' contained within the Town Planning Scheme No. 3 (TPS No.3) as follows:

"Cellar Sales - means the demonstration and/or sale of wine products derived from an established vineyard and/or orchard on the owner's property and includes the sale of ancillary products."

Ancillary sales would generally extend to the sale of gifts such as coffee table books, t-shirts, aprons etc as proposed by the proponent's.

Given the operational details of the proposal, the proponent's will most likely require a 'Tavern' licence from the Office of Racing, Gaming and Liquor, although there are other options such as a tourist related 'Special' licence. Having spoken to the said Office, it has been stated the application can be assessed under the TPS No.3 land use class of 'Cellar Sales' and this will not affect the proponent's ability to sell imported wines and boutique beers or obtain the necessary liquor licence to operate in accordance with the details outlined in Appendix 2.

TABLE 1 below, sourced from the Office of Racing, Gaming and Liquor defines the different licence types relevant to this application:

TABLE 1: Department of Racing, Gaming and Liquor Definitions	
Producer's Licence	A producer's licence authorises the licensee to sell liquor that has actually been produced by, or under the control or direction of, that person. The holder of a producer's licence can only sell and supply liquor on and from its licensed premises and not otherwise.
Tavern Licence	Authorises the sale and supply of liquor for consumption on and off the licensed premises. A holder of a tavern licence does not need to provide accommodation.
Special Facility Licence - Tourism	A special facility licence may be granted for the purpose of allowing the sale of liquor to persons likely to be attracted to, or present at, a place that, in the opinion of the licensing authority, is or will become — (a) an attraction for tourists; or (b) a facility that enhances the State's tourist industry.

Under the TPS No.3 it is recommended avoiding the issue a of 'Tavern' land use approval, defined as follows:

Tavern - means land and buildings the subject of a Tavern licence granted under the provisions of the Liquor Act, 1970 (as amended).

This would limit the Shire's ability to control the conditions of which the activity could operate under, however under a modified 'Cellar Sales' land use class, the conditions of approval can be applied by the Office of Racing, Gaming and Liquor. Council should therefore support the application to operate as outlined, and subject to approval of this application, write to the Office of Racing, Gaming and Liquor advising of the decision and specific conditions of Council approval.

Assuming planning approval is granted, the activity will also need to be issued the following certificates under the Liquor Control Act 1988 by Council:

- Section 39 – Certificate of Local Health Authority;
- Section 40 – Certificate of Local Health Authority.

These will be issued upon approval of this application.

Comment:

The property is located in an area well known and surrounded by existing vineyards with operational cellar doors.

It is important to note, at a general level, the existing building will need to be upgraded, issued with the relevant building classifications during the Building Licence application and inspected by the Shire's Principal Environmental Health Officer (PEHO) prior to opening. This will also include assessment of existing effluent disposal systems. All building upgrades can be satisfactorily addressed during the building licence application and require limited consideration during this current planning consent application.

The operational details bind the way in which the activity will operate, including the number of patrons, operational hours, type of products sold and future events, such as bands and musicians that will be on site. Conditions of approval will also control the activity in accordance with Council requirements.

The main consideration requiring assessment of this application is the fact the proponent's want to deviate away from the general standards afforded to cellar sales as found elsewhere in the Shire. The proponent states (in excess of) 70% of all sales will be derived from wine produced by the property, with the remaining 30% being imported wines or boutique beers. This figure is deemed acceptable as there will be instances when people want to experience something other than what is produced on site, and this could include imported wines and boutique beers.

This approach will be self regulating to a certain degree. People visit Denmark wineries to experience, in most cases, the wines that are grown locally. It is unlikely a large percentage of the sales from this premise will involve imported wines and boutique beers as from a purely business perspective wines produced and sold on site will return higher profits than those needing to be imported. Therefore, the proponent's would be wise to promote their own product as much as possible.

Whilst there is a risk this application could set a precedent for similar applications within the Shire, it is not considered that this will be detrimental to the amenity, character or primary purpose of existing wineries or rural areas within the Shire. Denmark, as an increasingly popular tourist destination should be seeking to provide as many attractions as possible with a wide degree of differentiation, and business variation should be encouraged where possible. Existing wineries throughout the Shire currently promote numerous points of difference including, the setting, the quality of wines, the winemakers, the sale of ancillary products (e.g. artworks), live music or the wine prices. The sale of small volumes of imported wines and boutique beers is another example of differentiation which should be encouraged.

Whilst there is the perception that wineries are extremely profitable enterprises, the fact remains that significant investment and expenditure is required to maintain such a venture and Council should encourage such ventures to continue to invest in the Shire, particularly if it wants to continue to promote itself as a wine region.

Other considerations include:

- Events proposed to be held on site are generally dealt with on a case by case basis by the Council and the Office of Racing, Gaming and Liquor (by issuing 'Special' liquor licences) and it is recommended this approach continue to apply in this instance.
- The operating hours, although stated as being at the proponent's discretion should be limited to between 10am and 7pm (7 days per week). Any variations to this shall require further Council approval.
- The Cellar Sales building will need to be inspected by the Principal Environmental Health Officer (PEHO) for final approval prior to opening.
- Council generally limits the number of people after assessing amongst other considerations the number of toilets, capacity of seating areas and the number of car parks. 50 people are deemed appropriate by the Shire's PEHO in this instance without providing a third toilet.

Consultation:

The proposal was advertised for public comment in accordance with clause 6.4 of the TPS No.3 for a period of 21 days as follows:

1. An advertisement was placed in the Albany Advertiser from Thursday 18/02/10; and
2. The application was referred to neighbours for comment.

No submissions were received.

Statutory Obligations:

Prior to operating, the proponent's will need to obtain the appropriate liquor licence from the Office of Racing Gaming and Liquor under the Liquor Control Act 1988. A copy of this shall be provided to the Shire.

Policy Implications:

The site is subject to Policy No. 29 – Rural Settlement Strategy. In summary the following objectives of the policy are relevant to this application:

6.3 Objectives

- 6.3.1 *To conserve the potential of the area to support horticulture on capable land and in such a manner that it will not further exacerbate problems identified in the above management issues.*
- 6.3.2 *To encourage horticultural activities on appropriate land.*
- 6.3.4 *To encourage the development of small scale tourist orientated developments such as holiday accommodation providing they will not compromise the primary objective 6.3.1 above.*

The application is deemed to be consistent with Policy No. 29.

Budget / Financial Implications:

There are no known financial implications upon the Councils current Budget or Plan for the Future.

Strategic Implications:

There are no known significant strategic implications relating to the report or the officer recommendation.

Sustainability Implications:

➤ **Environmental:**

There are no known significant environmental considerations relating to the report or officer recommendation.

➤ **Economic:**

The operation of an additional Cellar Door will enhance Denmark's wine producing credentials and bring tourist dollars into the Shire. Such activities have flow on effects for ancillary businesses, including accommodation providers, tourist operators, local eateries and existing cellar doors where by people visit more than one premise in a day. In addition a small number of staff will be required at the premise, creating some jobs within the Shire benefiting the local community.

➤ **Social:**

There are no known significant social considerations relating to the report or officer recommendation.

Voting Requirements:

Simple majority.

6.32pm – The Director of Finance & Administration left the meeting.

OFFICER RECOMMENDATION

ITEM 9.1.5

That the application submitted by Singlefile Estate Pty Ltd to convert an existing outbuilding to allow for modified Cellar Sales at No. 90 (PT494) Walter Road, Denmark be approved subject to the following conditions:

1. The activity being undertaken and developed in accordance with the attached stamped approved plans and where marked in red dated 22 January 2010.
2. The cellar sales/kitchen building shall be connected to an onsite water supply and effluent disposal system to the satisfaction of the Shire's Principal Environmental Health Officer.
3. The hours of operation shall be restricted to between 10am – 7pm (7 days a week) unless a variation is approved in writing by Council.
4. The number of people on site shall be initially limited to 50, without further upgrading of toilet numbers to the satisfaction of the Shire's Principal Environmental Health Officer.
5. The proponents providing a list of all sale products (wines, boutique beers, ancillary products etc.) to the satisfaction of the Director of Planning and Sustainability and only these products to be sold on site.
6. The site providing a minimum of 13 car parking bays (including 1 disabled) to be a minimum of 5.4m x 3.0m; constructed, drained and signed to the satisfaction of Shire of Denmark.
7. A minimum of 70% of all alcoholic products sold on site shall be produced by the winery and the proponents shall keep a record of this, and present this to Council on an annual basis or when otherwise requested.

Advice Notes:

- i. No signage has been approved as part of this application.
- ii. Future events which require modifications to any approved liquor licence or condition above will be dealt with on a case-by-case basis in accordance with relevant Shire policies.
- iii. The Shire's Building Surveyor advises that the application will require a building licence and the issue of a Certificate of Classification.
- iv. The Cellar Sales and kitchen will need to comply with the Food Act 2008, the Food Regulations 2009 and AS4674 Design Construction and fit out of food premises. The fit-out of the Cellar Sales building shall be in accordance with the direction of the Shire's Principal Environmental Health Officer and no activity shall commence until a final inspection and approval to operate has been granted by the Shire's Principal Environmental Health Officer
- v. A copy of the approved liquor licence shall be provided to Council.

At the meeting held on the 20 April 2010, there was general concern relating to the reference to 70% alcohol and whether this would create a precedent for existing and future cellar sales operators.

The Director of Planning & Sustainability provides the following Alternate Recommendation to address the concerns raised.

COUNCIL RESOLUTION & ALTERNATE OFFICER RECOMMENDATION MOVED: CR BARROW	ITEM 9.1.5
---	------------

SECONDED: CR BARNES

6.38pm – The Chief Executive Officer left the meeting.

6.39pm – The Chief Executive Officer returned to the meeting.

6.41pm – The Director of Finance & Administration returned to the meeting.

That the application submitted by Singlefile Estate Pty Ltd to convert an existing outbuilding to allow for modified Cellar Sales at No. 90 (PT494) Walter Road, Denmark be approved subject to the following conditions:

1. The activity being undertaken and developed in accordance with the attached stamped approved plans and where marked in red dated 22 January 2010.
2. The cellar sales/kitchen building shall be connected to an onsite water supply and effluent disposal system to the satisfaction of the Shire's Principal Environmental Health Officer.
3. The hours of operation shall be restricted to between 10am – 7pm (7 days a week) unless a variation is approved in writing by Council.
4. The number of people on site shall be initially limited to 50, without further upgrading of toilet numbers to the satisfaction of the Shire's Principal Environmental Health Officer.
5. The proponents providing a list of all alcohol sale products (wines, boutique beers etc.) to the satisfaction of the Director of Planning and Sustainability.
6. The site providing a minimum of 13 car parking bays (including 1 disabled) to be a minimum of 5.4m x 3.0m; constructed, drained and signed to the satisfaction of Shire of Denmark.
7. A minimum of 70% of all alcoholic products sold by volume on site shall be produced by the winery and the proponents shall keep a record of this, and present this to Council on an annual basis or when otherwise requested.

Advice Notes:

- i. No signage has been approved as part of this application.
- ii. Future events which require modifications to any approved liquor licence or condition above will be dealt with on a case-by-case basis in accordance with relevant Shire policies.
- iii. The Shire's Building Surveyor advises that the application will require a building licence and the issue of a Certificate of Classification.
- iv. The Cellar Sales and kitchen will need to comply with the Food Act 2008, the Food Regulations 2009 and AS4674 Design Construction and fit out of food premises. The fit-out of the Cellar Sales building shall be in accordance with the direction of the Shire's Principal Environmental Health Officer and no activity shall commence until a final inspection and approval to operate has been granted by the Shire's Principal Environmental Health Officer
- v. A copy of the approved liquor licence shall be provided to Council.

LOST: 4/7

Res: 130410

COUNCIL RESOLUTION & CR THORNTON'S RECOMMENDATION ITEM 9.1.5
MOVED: CR SAMPSON **SECONDED: CR PHAIR**

That the planning application submitted by Singlefile Estate Pty Ltd to convert an existing outbuilding to allow for modified Cellar Sales at No. 90 (PT494) Walter Road, Denmark be approved subject to the following conditions:

1. Approval being received from the Office of Racing, Gaming & Liquor for a Special Facility Licence – Tourism.
2. Council to advise the Office of Racing, Gaming & Liquor that should approval be granted for a Special Facility Licence – Tourism a condition of approval under section 40 of the Liquor Control Act be;
 - a. A minimum of 70% of all alcoholic products sold on site shall be produced by the winery;
 - b. The hours of operation to be restricted to between 10am – 7pm (7 days per week).
3. The development being in accordance with the plans dated 22 January 2010 (as marked in red).
4. The cellar sales/kitchen building being connected to an onsite water supply and effluent disposal system to the satisfaction of the Council's Principal Environmental Health Officer.
5. The development providing a minimum of 13 car parking bays (including 1 disabled bay of minimum size 5.4m x 3.0m) constructed to the satisfaction of the Shire of Denmark.
6. The number of guests be restricted to 50 until further upgrading of ablution facilities occurs.

Advice Notes:

- i. No signage has been approved as part of this application.
- ii. Future events which require modifications to any approved liquor licence or condition above will be dealt with on a case-by-case basis in accordance with relevant Shire policies.
- iii. The Shire's Building Surveyor advises that the application will require a building licence and the issue of a Certificate of Classification.
- iv. The Cellar Sales and kitchen will need to comply with the Food Act 2008, the Food Regulations 2009 and AS4674 Design Construction and fit out of food premises. The fit-out of the Cellar Sales building shall be in accordance with the direction of the Shire's Principal Environmental Health Officer and no activity shall commence until a final inspection and approval to operate has been granted by the Shire's Principal Environmental Health Officer
- v. A copy of the approved liquor licence shall be provided to Council.

CARRIED: 11/0

Res: 140410

REASONS FOR CHANGE

1. The control and auditing of alcoholic products is by way of the Liquor Control Act and Council can request conditions under section 40 of this Act (point 2).
2. Deleting point 5 as sale products and brands vary dependent on demand. The imposition is onerous for both the Council and the proponent as products will be continually revolving and changing.