

FOOD AND WINE SALES PROVISIONS

Background

The Shire recognizes the experiential and tourism value of wineries and other rural enterprises in the rural areas of the Shire and seeks to support this activity.

The Shire is an important visitor and tourism destination and tourism spending contributes significantly to the economic prosperity of the region with the wine and food experience being an important component of this.

Many local attractions such as wineries, incorporate or propose the ancillary sale of food to accompany these attractions. It is recognized that these activities can provide a supplement to production and the sale of other kinds of rural produce and be enhanced through the ancillary serving of food.

A 'Restaurant' is a prohibited use in the Agriculture zone and a use that can only be carried out following the issue of discretionary approval in the Viticulture/Tourism and other zones. The practice of the Shire of Busselton to date has been to only allow restaurants in the Agriculture zone where the Scheme has been amended on a site by site basis. However this practice has discouraged the serving of light refreshment meals with wine tasting/sales due to the expensive and laborious process of amending the Scheme on a site by site basis. The Scheme however also provides for the carrying out of a use that is ordinarily ancillary, subsidiary or incidental to the primary purpose for which approval has been issued.

The extent of an activity to meet the requirements of the Scheme as an ancillary, subsidiary or incidental use is not defined in the Scheme. Guidance on this issue is provided by case law and this has been considered in the development of the policy provisions. Refer *West Coast Enterprises Pty Ltd and Shire of Exmouth (2007) WASAT 316*.

The purpose of these provisions is to acknowledge the way certain provisions in the Scheme can be interpreted (specifically clause 21(4) which deals with ancillary use approval), and define the level of operation and scale of food serving activities that could be considered as an acceptable ancillary use to an approved winery, rural enterprise or rural industry within the Agriculture and Viticulture/tourism zone given the benefits of the integration of these activities.

The provisions recognise that the 'ancillary use' component should be limited to avoid small facilities serving food in an ancillary fashion, evolving into actual restaurants, and to acknowledge the sensitivities of existing restaurants to the effects that any changes to current policy/practice may have. The provisions also recognise that the intent of the Scheme is to direct stand alone urban style restaurants to existing urban areas where they are permitted uses.

Objectives

1. To recognize that the serving of food in association with and as a small component only of a Winery, appropriate Rural Enterprise or Rural Industry is ancillary to the primary use and an important part of the tourism attraction of the Shires' rural areas.
2. For the purpose of the Shire's implementation of the Scheme, to define the character of and scale at which such activities can be undertaken and recognized as ancillary to a Rural Enterprise, Rural Industry or Winery.
3. To ensure that the Scheme objectives to conserve the productive potential of rural land, encourage low-key rural tourism, and exclude urban development from rural areas are achieved.

Application

The provisions apply to the serving of food ancillary to the operation of an approved Winery or an appropriate Rural Enterprise or Rural Industry within the Agriculture, Viticulture/Tourism, Rural Landscape or Conservation zone, or from any property on which the Scheme has made provision for such use.

The Shire will require a planning consent to be obtained for land use permissible under this policy, even where such use does not entail the physical development of the land i.e. a change of use, or validation of a non conforming or approval of an existing use.

Note: the preparation and sale of food from a development as an ancillary use will entail further consideration by the Shire's Health and Building sections.

Policy Provisions/Assessment Criteria

Planning consent or non-conforming use rights for the use class of Winery, Rural Enterprise or Rural Industry, permits as an ordinarily ancillary component of the business the preparation, serving and sale of food for consumption on the premises provided this component of the use meets the following requirements at all times:

5.1. Is ancillary, subsidiary or incidental to the principal activity(s) for which the Rural Enterprise, Rural Industry or Winery has approval in terms of scale, intensity of activity and throughput, as demonstrated by:

5.1.1 commercial value of turnover of the various components of the operation.

5.1.2 Is physically integrated with (under the same roofed area or forming part of an integrated structure) the principal business activity for which the Rural Enterprise or Winery has been approved and is not run as a separate facility.

5.1.3 Has a maximum net useable floor area (including any non enclosed verandah dining area but excluding kitchen and food preparation areas) not exceeding 30 m² devoted to food consumption or seating capacity for no more than 20 persons at any one time whichever is the lesser.

5.1.4. Relies upon shared services and facilities and is not operated as a separate independent activity with independent advertising.

5.1.5. Utilizes shared amenities including a common public vehicular entry and common servicing access.

5.2 In assessing development proposals for wineries, rural enterprises or rural industries which identify an area of the development for the serving of food the above criteria will be taken into account in determining the suitability and ancillary nature of the activity in addition to any other relevant Scheme provision. Food preparation areas should be appropriately sized to reflect the ancillary scale of the food service component. Applications for a change of use of existing floorspace to provide food service (i.e. where no physical development is proposed) will still be assessed against this policy and will need to demonstrate compliance.

5.3 In undertaking its compliance obligations pursuant to the Scheme the Shire will be guided by the above policy provisions.

ADOPTION NOTICE

ADOPTION OF PLANNING POLICY – Rural Areas Land Use and Development Policy

In accordance with Clause 103 of District Town Planning Scheme 20, and Council Resolution dated the _____, notice is hereby given that the Council resolution took effect on the _____ to finally adopt the above Planning Policy -.