

**2.6: DEVELOPMENT APPLICATION – CHANGE OF USE - TAVERN LOT  
119 (NO. 1309) LOWER DENMARK ROAD, ELLEKER**

Land Description	:	(Lot 119) No. 1309 Lower Denmark Road, Elleker
Proponent	:	M & G Parsons
Owner	:	M & G Parsons
Business Entity Name	:	Elleker General Store
Attachments	:	Site Plan and Covering Letter
Responsible Officer(s)	:	E/Director Planning and Development Services (D Putland)

**Maps and Diagrams:**



**IN BRIEF**

- A development application has been received for a Change of Use to include Tavern at Lot 119 (1309) Lower Denmark Road, Elleker.
- The existing approved uses are General Store (which includes a bottle shop) and Restaurant which currently are licensed to operate under two separate Liquor Licences. Extended trading is currently allowed for the General Store and Bottle Shop under two extended trading permits.
- The operation of the business is not intended to change. The purpose of this application is to combine the two Liquor Licences and two extended trading permits into one liquor licence. The only liquor licence that the Department for Racing, Gaming and Liquor can issue for this purpose is a Tavern licence.
- Under the City of Albany's Planning Processes Policy, a Tavern is a "3C" whereby City staff have no delegation and the application is required to be determined by Council.

**RECOMMENDATION**

ITEM 2.6: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY

RECOMMENDATION 1:

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for a Tavern at Lot 119 (1309) Lower Denmark Road, Elleker subject to the following conditions after the Department of Racing, Gaming and Liquor issues a tavern liquor licence:

- a) The tavern must always be set up and presented for dining.
- b) Tables can't be removed or shifted in order to create dance floors.
- c) The kitchen must be open and operating at all times liquor is available and the regular full menu must be available at all times.
- d) Liquor may only be consumed by patrons seated at a dining table.
- e) Liquor for consumption on the premises shall be by table service only by staff, there shall not be bar service.

RECOMMENDATION 2:

THAT Council AUTHORISES the Executive Director of Planning and Development Services to ISSUE a Section 40 Certificate indicating that a Tavern is supported and planning scheme consent will be issued once a liquor licence is granted subject to the conditions above in Recommendation 1.

**ITEM 2.6: AMENDED OFFICER RECOMMENDATION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR GREGSON**  
**SECONDED: COUNCILLOR ATTWELL**

- 1. THAT COUNCIL resolves to ISSUE a Notice of Planning Scheme Consent for a Tavern at Lot 119 (No.1309) Lower Denmark Road, Elleker after the Department of Racing, Gaming and Liquor issues a Tavern liquor licence.**
- 2. THAT Council AUTHORISES the Executive Director of Planning and Development Services to ISSUE a Section 40 Certificate indicating that a Tavern is supported and planning scheme consent will be issued once a liquor licence is granted.**

**CARRIED 9-0**

**Officer's Reason (Executive Director Planning and Development Services):**

Following the Agenda Briefing Meeting the applicant has provided additional clarification on the proposal and advised that he wishes to operate a full tavern without the current restrictions on his Liquor without a Meal Permit. Specifically; the restriction on table service only and not being able to advertise that customers can consume liquor onsite without having a meal are seen as significant limitations on the operation of the business.

The Amended Officer Recommendation acknowledges the additional explanation provided and the original report outlines the acceptability of approving a Tavern on this site under the Town Planning Scheme.

## **BACKGROUND**

1. The subject site is a 1.98ha lot located on the south side of Lower Denmark Road in Elleker. It is zoned 'Special Use' under Town Planning Scheme No.3 and is area No.10 under this 'Special Use' zoning.
2. Under the Special Use 10 provisions relating to this zone, with Council's permission the following can be considered:
  - Shop
  - Petrol filling station
  - Cafe/restaurant
  - Caretakers house
  - Home occupation
  - Variety of tourist and commercial tenancies
  - Holiday accommodation
  - Travellers rest area
3. The site currently operates as a Restaurant and a General Store. The General Store incorporates a bottle shop / liquor store. The Restaurant and General Store operate under separate Liquor Licence and Extended Trading Permits. The applicant wishes to combine these licences and permits into one. The only liquor licence that can be issued by the Department of Racing, Gaming and Liquor that combines these licensed activities is a Tavern Licence.
4. The applicant is not proposing any changes to how the business operates but requires the change of use to Tavern to enable a Tavern Liquor Licence to be granted.
5. "Tavern" is defined in Town Planning Scheme No.3 as *"a premises in respect of which a tavern licence has been granted under the provision of the Liquor Act 1970 (as amended)*.
6. The City has recently been advised that a liquor licence must be granted before the City can approve the use. However, the Department of Racing, Gaming and Liquor requires confidence that the City has or is likely to grant the use before issue of a liquor licence.

## **DISCUSSION**

7. The current Restaurant Liquor Licence and Extended Trading Permit for Liquor without a Meal permits sale and consumption of liquor on the premises provided the premises remain set up as a restaurant with tables and chairs; provision of liquor is by table service only (no bar service). Liquor is only available whilst the restaurant kitchen is open and the full regular menu is available.
8. The Liquor Store Liquor Licence and Extended Trading Permit for Sunday Trading permits sale of packaged liquor for consumption off-premises.

9. The proponent seeks Planning Scheme Consent for a change of use from Restaurant and General Store to a mixed use of Tavern and General Store. The purpose of this change of use is to combine the two existing Liquor Licences and two Extended Trading Permits into one Liquor Licence covering the same activities. The nature of current activities onsite would not alter as a result of this proposed change of use.
10. The Department of Racing, Gaming and Liquor require confirmation of compliance with planning requirements before they will progress a Liquor Licence application.
11. Under the Special Use zone No.10, the provisions state that the following can be considered with Council's permission:
  - Shop
  - Petrol filling station
  - Cafe/restaurant
  - Caretakers house
  - Home occupation
  - Variety of tourist and commercial tenancies
  - Holiday accommodation
  - Travellers rest area
12. A suitably conditioned tavern approval can be considered as a hybrid of the shop and restaurant uses listed.
13. Under the provisions of Town Planning Scheme No.3 a Tavern is an "AA" use within the Rural zone which means it is "*A use that is not permitted unless approval is granted by Council and not before advertising has been undertaken*".
14. The required advertising has been undertaken as detailed in paragraph 19 below.
15. The proposal is considered as a straight conversion/amalgamation of the existing restaurant and liquor store. The approval should be conditioned such that there would be no change in how it would/could operate. This would require conditions restricting the sales of liquor for consumption on the premises to table service only and only whilst the kitchen is open with the full main menu available.
16. Alternatively, the proposal could be considered acceptable as a full tavern without such restrictions and a bar could be used for sale of liquor direct to patrons without food required to be available.
17. Council may also refuse the application, however this is not supported as the applicant has stated that he does not intend to change how the business currently operates.

#### **GOVERNMENT CONSULTATION**

18. The applicant has received advice from The Department of Racing, Gaming and Liquor, regarding combining their existing licences and permits. The City is not required to consult Government Agencies on this matter.

#### **PUBLIC CONSULTATION / ENGAGEMENT**

19. The application was referred to all landowners within a 500m radius of the site by mail, a notice was placed in a local newspaper and a sign was placed onsite. The 21 day advertising period commenced on Thursday 31 May 2012 and finished on Wednesday 20 June 2012.
20. Only one submission has been received in response to the consultation. This supports the proposal and states “I agree, good for all”.

### **STATUTORY IMPLICATIONS**

21. The subject site is zoned ‘Special Use’ under Town Planning Scheme No.3 and is area No.10 under this ‘Special Use’ zoning.
22. Under Special Use zone No.10, the provisions state that the following can be considered with Council’s permission:
  - Shop
  - Petrol filling station
  - Cafe/restaurant
  - Caretakers house
  - Home occupation
  - Variety of tourist and commercial tenancies
  - Holiday accommodation
  - Travellers rest area
23. Although a Tavern is not specifically listed within the permitted uses, it is the opinion of City staff that there is scope for it to be assessed under the “Variety of tourist and commercial tenancies” use.
24. The adjoining lots are zoned “Rural”. Within TPS3 a Tavern is an “AA” use within a Rural zone which means it is “*A use that is not permitted unless approval is granted by Council and not before advertising has been undertaken*”. Therefore it is a use that can be considered by Council.

### **STRATEGIC IMPLICATIONS**

25. This item relates to the following elements of the City of Albany Strategic Plan (2011- 2021):

***Key Focus Area***

*Sustainability and Development*

***Community Priority***

*A Sustainable Future*

***Proposed Strategies***

- *Establish satellite township hubs in areas such as Young’s Siding, Redmond, Manypeaks and Wellstead to provide services (basic shopping necessities and recreational areas.)*

***Community Priority***

*Tourism Development*

***Proposed Strategies***

- *Improve and expand tourism infrastructure and attractions.*

- *Encourage diversity in tourism product, including food and wine, indigenous tourism, heritage tourism, through partnerships with key tourism stakeholders.*

**POLICY IMPLICATIONS**

26. There are no Policy implications.

**RISK IDENTIFICATION & MITIGATION**

27. The risk identification and categorisation relies on the City's Risk Management Framework.

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
<i>The applicant appeals to a State Administrative Tribunal if the proposal is refused.</i>	<i>Likely</i>	<i>Minor</i>	<i>Medium</i>	<i>If a decision is made to refuse the application, sound reasoning is required to provide solid defence at a State Administrative Tribunal.</i>
<i>Concerns that "Tavern" may cause anti social behaviour etc.</i>	<i>Low</i>	<i>Minor</i>	<i>Low</i>	<i>Condition to allow continuation of existing use.</i>

**FINANCIAL IMPLICATIONS**

28. The proponent has paid the appropriate fee and the application has been processed within identified timelines and budget constraints.

**LEGAL IMPLICATIONS**

29. If Council refuses the application, the proponent would then be entitled to seek a review of that decision with the State Administrative Tribunal and the City of Albany may be required to defend the reasons for refusal at a State Administrative Tribunal hearing.

**ALTERNATE OPTIONS**

30. Council may refuse the application as it is not expressly stated that a tavern is a use that can be considered in the Special Use Zone No.10.

31. Council may also choose to approve the proposal without the restrictive conditions and allow the operator greater flexibility in their future use of the property.

**SUMMARY CONCLUSION**

32. The proponent seeks planning consent for a change of use from General Store and Restaurant to General Store and Tavern.
33. The business currently operates under two separate Liquor Licences and two Extended Trading Permits.
34. The applicant wishes to combine these licences and permits into one. The only liquor licence that can be issued by the Department of Racing, Gaming and Liquor that combines these licensed activities is a Tavern Licence.
35. The proponent is not proposing any changes to the operation of the business.
36. Although a Tavern is not specifically listed within the permitted uses of the zone, it is the opinion of City staff that there is scope for it to be assessed under the “Variety of tourist and commercial tenancies” use.
37. City staff consider that a Tavern is consistent with the current approved uses and is consistent with the objectives of the zone and can be supported.

<b>Consulted References</b>	:	Town Planning Scheme No. 3
<b>File Number (Name of Ward)</b>	:	A186789 (West Ward)
<b>Previous Reference</b>	:	NIL