

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

LOCAL GOVERNMENT AND PLANNING

Time: Three Hours This paper consists of **five** questions.

Candidates are required to attempt any **four** questions.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **four** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

Clr Springsteen is a councillor of White Cliffs City Council, a midwestern NSW council. Springsteen is the chairperson of the White Cliffs Chamber of Commerce (WCCC) and also happens to be a well known country music singer and songwriter. He was instrumental in gaining the support of the Chamber of Commerce to propose to Council that it provide financial assistance to the WCCC to enable a country music festival to take place in the City in June 2014. At the last meeting of Council he took part in the discussion of a report by the General Manager about the proposal and voted in favour of a motion to provide financial support for the festival. Councillor Fairfax is a journalist employed by the White Cliffs Chronicle, which newspaper has expressed strong support for the festival. Cr Fairfax also participated in the discussion and voted in favour of the motion.

A local resident has made a complaint to the Director-General of the Department of Premier and Cabinet maintaining that both Councillors had pecuniary interests in the matter and had failed to disclose those interests to, and participated in, the meeting.

The Director-General has written to both councillors notifying them of the complaint and seeking their responses and any information they think is relevant to their conduct, to enable him to decide whether to formally investigate the matter.

Both councillors have consulted you about the matter. They said they thought they were acting in the best interests of the City in participating in the debate and voting and it did not occur to either of them that they had pecuniary interests

Advise your clients whether either has breached the Local Government Act and whether, if it is your opinion either has committed a breach, that councillor has a defence, making reference to relevant cases. Also, draft letters to the Director-General on behalf of each of your clients. If you require further facts, explain what you would want to know and why it would be relevant to your advice or the letters.

(20 marks)

Question 2

“Parliament has given councils power to compulsorily acquire their own roads (which they already own) and then compulsorily acquire land adjoining, or lying in the vicinity of those roads – without the constraint on councils’ power of resale, which had been upheld in the High Court (*R&R Fazzolari v Parramatta CC ; Mac’s P/L v Parramatta CC* (2009) 165 LGERA 68). The Parliament has passed a law which is an extreme departure from a fundamental right”.

Discuss this statement.

(20 marks)

(Question 3 follows)

Question 3

“In determining whether land is used for a particular purpose, an enquiry into how the purpose can be achieved is necessary. The use of land involves no more than the physical acts by which the land is made to serve some purpose.

The nature of the use needs to be distinguished from the purpose of the use, since uses of different natures can still be seen to serve the same purpose.

The characterisation of the purpose of a use of land should be done at a level of generality which is necessary and sufficient to cover the individual activities, transactions or processes carried on, not in terms of the detailed activities, transactions or processes.”

Discuss this statement with reference to decided cases.

(20 marks)

Question 4

Attempt BOTH parts of this question.

(a) The National Parks and Wildlife Service (NSW) owns two widely separated house properties in Parkville, which it makes available to two married locally based officers. Both houses are larger than the respective officers need. Because of the market rents charged to the officers they are compelled to take in boarders to reduce the burden of the rents. Parkville City Council has levied rates on each of the properties.

The Crown has appealed to the Land and Environment Court against the levying of the rates, maintaining that the properties are leased essentially for the public purpose of facilitating the efficient administration of National Parks and Wildlife Service (NSW) and that, accordingly, the properties are exempt from rates.

Advise the Council, with reference to relevant legislation and decided cases, on its prospects of success in defending the appeal.

(10 marks)

(b) **Discuss the so-called “Newbury test” for determining the validity of a condition of development consent and also discuss the test for severance of an invalid condition of consent.**

(10 marks)

(Question 5 follows)

Question 5

In June 2013, Salvatore received notification from Lakeview Council of his neighbour's development application for first floor additions to her home. In the notice, the council undertook to take account of issues raised in submissions and stated "if you make a submission you will be informed of when the matter will be considered by the Development Committee and by Council and of outcomes of meetings."

Salvatore perused the plans at the council's offices and made a submission by way of objection. He opposed a first floor terrace, shown in the plans, which he maintained would enable Jill's family to overlook his back garden and pool area and thereby have an adverse impact upon his and his family's residential amenity. He wanted the terrace refused by a condition of consent.

When the development proposal was to be considered by the Development Committee ("the committee") in September 2013 Salvatore was invited to attend and address the meeting. He did so and heard the committee express support for his proposal that the terrace be deleted from the development by a condition of consent and it resolved to recommend accordingly to the council. He decided that he no longer needed to object to the granting of consent and so informed the members of the committee.

After the committee meeting Jill wrote to the council advising that she would agree to a privacy screen as an alternative to the deletion of the terrace. When the council considered the committee's recommendation and Jill's privacy screen proposal, it resolved to refer the matter to the next committee meeting. Salvatore received notice of the next committee meeting which advised him of Jill's proposal of a privacy screen. He did not attend the meeting because he had spoken with several councillors who were members of the committee and believed that the committee would not support the privacy screen proposal, which he regarded as inadequate. Jill attended the committee meeting and said that Salvatore's wife had told her that the privacy screen was an acceptable solution.

The committee resolved at the meeting to recommend to the council: "That a 1.8 metre high lattice privacy screen be provided along the north-western edge of the terrace to minimise overlooking of the adjoining property". At its next meeting the council adopted the recommendation of the committee and granted consent to the development proposal including the terrace, subject to a condition requiring provision of the privacy screen.

Salvatore denies that he received notification of the outcome of the committee meeting and his wife denies that she agreed that the privacy screen was acceptable. The Council maintains that a notification of the outcome of the committee meeting was posted to Salvatore.

Advise Salvatore as to any grounds upon which he may challenge the development consent and upon what legal basis, including expressing your opinion as to his prospects of success and the risks involved. If Salvatore wants to pursue the matter, would you make any suggestions for consensual resolution of the dispute?

(20 marks)

END OF PAPER