

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

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, plagiarism 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

“Judicial review is neither more nor less than the enforcement of the Rule of Law over executive action; it is the means by which executive action is prevented from exceeding the powers and functions assigned to the executive by law and the interests of the individual are protected accordingly.”

Discuss this statement by reference to the principles of administrative law which apply to councils. In your answer make reference to decided cases. Also, what are the consequences for the Westminster system when the Parliament reverses decisions of a court exercising judicial review or terminates or prevents pending or prospective proceedings?

Question 2

Cr John Coroneos is a surveyor by profession who established his own practice in the Boorindal Local Government area in 1985. Between 1995 and 2007 he was a director and shareholder of Coroneos & Jones Pty Ltd, Consulting Surveyors, which carried on business in Boorindal. He was the senior practitioner within the company's practice. In September 2008 he was elected as a Councillor of Boorindal Shire Council.

On 30 December 2007 Cr Coroneos ceased to be a shareholder and director of Coroneos & Jones Pty Ltd. However, since disposing of his shares and ceasing to hold office in the company he had carried out consultancy work for it at its request. This was mainly where he had some special knowledge as a result of previous involvement.

Whilst he was a director of the company he had carried out work for Davey Pty Ltd. The last work he had done for that company was in early 2007.

A development application by Coroneos & Jones Pty Ltd (showing Davey Pty Ltd as the owner) will be considered by the council at its next meeting.

The general manager has maintained to Cr Coroneos that he has a pecuniary interest in the matter because of the perceived ability of Coroneos & Jones Pty Ltd to obtain approvals for matters before the council and that this would reasonably be expected to enhance the firm's reputation in the local area. It was also contended that this in turn would result in a steady continuation and a possible increase in the volume of Cr Coroneos' consultancy work and, accordingly, that he had a pecuniary interest in the matter. Cr Coroneos said he would get legal advice. Cr Coroneos has sought your advice in the matter.

Advise Cr Coroneos as to:

- (a) What action he should take about the matter at the next meeting; and**
- (b) What response, if any, he should make to the general manager.**

(Question 3 follows)

Question 3

Attempt **BOTH** parts of this question.

- (a) “Planning decisions can have real impacts on local communities and economic growth. We need a clear and simple system of decision making on planning proposals, culminating in a right of appeal to a standing judicial body. More layers of bureaucracy have made the planning system more bloated, confusing and unresponsive”.

Discuss this statement.

- (b) **Discuss the importance of the characterisation of purposes and uses in development control.**

Question 4

In August 2012 Club Pacifica, an international operator of holiday resorts, made application to Oceania City Council for development consent to permit the construction of a major resort on ocean-front land. The proposed development was highly controversial in the local community. The Council’s Chief Town Planner prepared a detailed and comprehensive report for consideration by the Council, expressly drawing attention to the topics which he contended the Council must take into consideration in dealing with the application. All relevant paragraphs of section 79C(1) of the Environmental Planning and Assessment Act 1979 were addressed in the report.

The report recommended approval of the development application and appended 12 pages of conditions of development consent. At the meeting which considered the development application and the Chief Town Planner’s report, Councillor Eager, who was one of a number of councillors who constituted the majority group of councillors, moved a motion for approval of the application subject to a number of conditions which were materially different from those proposed by the Chief Town Planner. Councillor Eager’s proposed conditions were not made available in writing to councillors outside his group and he did no more than read the conditions aloud to the other councillors. The conditions proposed by Councillor Eager did not address certain issues considered in the Chief Town Planner’s report, being increasing public access to the beach, and measures designed to protect and conserve the coast for future generations. The Council by a narrow majority approved the development on 12 February 2013 subject only to the conditions proposed by Councillor Eager.

A local group of persons contemplates bringing Class 4 proceedings in the Land and Environment Court seeking a declaration that the consent is invalid and of no effect. Advise the group as to the grounds on which it could appeal and on its prospects of success, having regard to decided cases.

(Question 5 follows)

Question 5

Attempt **BOTH** parts of this question.

(a) Discuss the actionable liability of councils for provision of information and in making representations.

(b) The Riverwood Local Environmental Plan 2003 contains the following provision:

- (10) Notwithstanding any other provision of this plan, a person may, with the consent of the council, carry out development on the land to which this clause applies for the purpose of a fruit and vegetable store with a maximum floor area of 150 square metres.”

Is the above provision a development standard amenable to an objection under State Environmental Planning Policy No. 1 – Development Standards?

END OF PAPER