

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 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

Attempt **BOTH** parts of this question.

(a) Your clients, William and Annukka, own a highly valued property, being a lot in a two lot subdivision, which enjoys extensive Sydney Harbour views including views with the Sydney Harbour Bridge in the distance. The property slopes towards the water. The other lot in the subdivision, between your clients' lot and the water, is subject to a restrictive covenant, which restricts its development with the purpose of protecting the views from your clients' property.

Your clients have learned that their Council's Local Environmental Plan has been amended by inclusion of the following provision:

2A Suspension of covenants, agreements and instruments

- (1) For the purposes of enabling development on land in any zone to be carried out in accordance with this Plan or with a development consent granted under the [Environmental Planning and Assessment] Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.
- (2) Under section 28 of the Act, the Governor, before making this clause, approved of sub-clause (1).

Advise William and Annukka about the effect of the above provision and what ramifications it might have for them.

(b) **Discuss the power of dismissal of a council and appointment of an administrator under section 255 of the Local Government Act 1993.**

(20 marks)

Question 2

"Nowadays, planning instruments and State Government decisions often play scant regard to the promotion of orderly development. Rather, they have given way to development at any cost and for its own sake. Responsibility for planning and decision making, in other than routine and minor matters, has been usurped by the State at the expense of local government. Public participation has been diminished, and ESD, if it is acknowledged at all, is paid mere lip service."

Discuss this statement including any comments you wish to make about the publication: "A New Planning System for NSW – The White Paper".

(20 marks)

(Question 3 follows)

Question 3

Attempt **BOTH** parts of this question.

(a) Does the Local Government Act 1993 establish a satisfactory framework to enable councils to achieve the stated purposes of that Act and effectively pursue their charter? Reference should also be made to relevant provisions of the Constitution Act 1902.

(b) “Section 24 [of the Local Government Act 1993] is drafted in the widest terms. It is entirely permissive and in no way prescriptive. Relevantly, it empowers a Council to carry out activities appropriate to the current and future needs within its local community and of the wider public.”

Discuss this statement.

(20 marks)

Question 4

Attempt **BOTH** parts of this question.

(a) Your client, Country Pubs Pty Ltd owns a small hotel in the area of Boulder Shire Council. A fire, caused by an electrical fault, destroyed part of the hotel. Before you received instructions, the company was wrongly advised that rebuilding the hotel did not require consent – it was just “providing new for old”. Your client proceeded to rebuild the hotel and was careful to ensure that the work complied with the provisions of the Building Code of Australia. Council has given your client a notice of its intention to give an order requiring that the building work be demolished.

Advise your client how it might “regularise” its breach of the Environmental Planning and Assessment Act 1979 and prepare a letter to Council setting out what your client proposes to do, in accordance with your advice, making reference to relevant cases.

Also, advise your client how the matter could be resolved consensually if Council proves not to be receptive to your proposal.

(b) Discuss the role and powers of the general manager and the relationship of the general manager with the mayor and the councillors.

(20 marks)

(Question 5 follows)

Question 5

Hot Springs Shire Council granted development consent on 26 August 2013 to an organisation, which was already conducting an outdoor swimming pool on the site under existing use rights, for a gymnasium which was to include, as part of the structure, innovative and controversial stress inducing adventure-type exercise equipment. During the Council's assessment of the development application, claims were made by members of the local community that use of the equipment was likely to cause heart attacks. The conditions of consent were:

1. Council's standard conditions of consent;
2. The Chief Town Planner to determine the number of patrons who can use the whole complex, including the swimming pool, at any time;
3. Council reserves the right to restrict the opening hours of the whole complex, including the swimming pool, should there be any disturbance of the local residential amenity;
4. The Applicant shall enter into a deed of indemnity with Council under which the Council shall be relieved against liability in any action for negligence which may be brought against it as a result of the granting of this consent.

A local community group seeks your advice on bringing proceedings in the Land and Environment Court seeking a declaration that the consent is invalid, maintaining that each of the above conditions is invalid. Advise the group on the legislative basis for such a challenge and its prospects of success, in the light of decided cases. Also advise on the risks of bringing such proceedings.

(20 marks)

END OF PAPER