

## PLANNING LAW 2004

### EXAM

Students must do each of the following three questions.

#### Question A. (60 Marks)

V has bought a 200 hectare rural property located near Springton, in the Eden Valley. The local Council is the District Council of Mount Pleasant. The land is within the Rural 1 (Outside Watershed) Zone in the applicable Development Plan.

The property has been used for grazing and cereal cropping for the last 100 years or so. It abuts an arterial road. It has a creek running through it. There is an old dwelling located 50 metres or so from the road. This dwelling was last occupied 5 years ago when the previous owner moved to live in Springton, but continued to farm the property. The dwelling is designated as a place of local heritage value by the Development Plan.

Mr X owns the adjoining property and uses it to graze sheep. The creek runs through V's property and then into X's property.

V proposes to:

- 1 Establish posts, strainers and wires as trellising for growing vines;
- 2 Plant vines for grape production;
- 3 Build a dam on the creek with 100 Megalitre capacity, and a dam wall 4 metres high at its highest point. The dam wall will be made of clay found locally on the property;
- 4 Convert the dwelling into a winery, which will process all the grapes grown on the property in addition to a small quantity of grapes grown on other nearby properties. The conversion into a winery will involve the removal of some internal walls, and the construction of other internal walls and the installation of stainless steel vats and other equipment;
- 5 Establish a carpark immediately outside the proposed winery, with a gravel driveway to the road. This will involve cutting down two 100 year old gum trees which are 3 metres in circumference measured a metre above the ground;
- 6 Put an advertising sign near the road promoting cellar door sales at the winery.

**In answering each of the following questions, give reasons, including references to sections of the Act, Regulations or clauses of Schedules, if relevant.**

- A.1 Discuss whether each of V's proposals involves or constitutes "development" for the purposes of the Development Act.
- A.2 Assume that at least some element of V's proposal is development. Who is the "relevant authority" for the proposal under the Development Act?

- A.3 What process should the relevant authority use to determine the nature of the proposed development under regulation 16 of the Development Regulations? What do you think is the nature of the proposed development?
- A.4 Should the relevant authority seek any further information from V before processing the application?
- A.5 Will the relevant authority need to advertise the proposal, or notify any member of the public, before making a decision on the proposal?
- A.6 Will the relevant authority need to refer the proposal to any other agency or authority prior to making a decision? What role will any such agency or authority have in the decision to approve or refuse the proposal?
- A.7 How would V determine whether any component of his proposal is "complying" development?
- A.8 How would V determine whether any component of his proposal is "non-complying" development?
- A.9 If the relevant authority approves the proposal, what right of appeal would X have?
- A.10 If the relevant authority refuses the proposal, what right of appeal would V have against the refusal?

**Question B (20 Marks)**

**In answering each of the following questions, give reasons, including where relevant references to relevant sections of relevant Acts, regulations and schedules.**

- B.1 If the proposal proceeds, and poisonous weedkiller used on the vines gets into the creek, and goes into X's property and kills some of his sheep, what avenues are available to him to take action to remedy this problem?
- B.2 If V starts his project without getting development approval first, what options are available to the relevant authority to get V to stop the project until approval is granted?
- B.3 What options would be available to X to prevent V from starting the project before development approval is issued?

**Question C (20 Marks)**

V wishes to put the winery on its own allotment, so that it can be sold separately from the vineyard in the future if necessary. Outline the procedures necessary to effect this land division under the Development Act. (Do not discuss the procedures necessary to gain approval for the physical redevelopment of the winery and the establishment of its use).