



Local Government and Planning Law Specialist Accreditation Assessment Requirements 2010

These notes should be read in conjunction with the Guide to Application and Assessment. They will assist practitioners interested in becoming accredited in Local Government and Planning Law to understand and prepare for the assessment process.

Included are:

- A** The performance standard which is the benchmark for competent practice in this area and the performance criteria which form the basis for the assessment
- B** A list of the core skills and areas of knowledge
- C** The methods and dates of assessment which applicants are required to undertake

A. PERFORMANCE STANDARD

Standard of Accredited Specialist

The Standard of an Accredited Specialist in Local Government and Planning Law is that of a '***specially competent practitioner***' in the core skills and practical capabilities in the selected area of practice, as assessed against the spectrum of capability of all practitioners in that area of practice. This standard is to be distinguished from the idea that the Scheme requires the highest technical legal knowledge across all aspects of the selected area of practice.

B. CORE SKILLS AND KNOWLEDGE AREAS

Practitioners wishing to be accredited in Local Government and Planning Law should be able to:

- Display knowledge of the law and procedure which underpins the performance of tasks in this area of practice; and
- Demonstrate the following skills to the level of a specially competent practitioner

In all tasks, and at all times, the accredited solicitor:

- Acts in a timely and competent manner;
- Keeps the client fully informed, using plain language; and
- Demonstrates professional responsibility.

B. 1 CORE SKILLS

1. The solicitor gathers information by:

1.1 Taking initial instructions

The solicitor:

- 1.1.1 Establishes the legal status and capacity of the client, the client's intentions and expectations and the issues to be addressed;
- 1.1.2 Assists the client in addressing the issues by identifying appropriate outcomes and the best means of achieving them;
- 1.1.3 Elicits information from the client and ascertains the client's objectives by
 - observing the client, asking effective questions, listening carefully and confirming mutual understanding; and
 - guiding the process by a knowledge of the law and procedures and by giving appropriate advice; and
- 1.1.4 Discusses the question of costs and identifies the party who is to be responsible for costs.

Note

The client may be:

- a property owner, occupier or developer;
- an objector to development;
- public interest groups
- a local council or councillor;
- a statutory authority or a government department; or
- a commercial rival to an applicant for development consent.

1.2 Gathering information from external sources

The solicitor:

- 1.2.1 Conducts the appropriate searches and makes the appropriate requests for documents and information to verify and add to information obtained from the client;
- 1.2.2 Knows the procedures for obtaining the documents and information required and conducts the inquiries with attention to detail and a concern for accuracy; and
- 1.2.3 Liaises with other experts to obtain information.

Note

Information from external sources may include:

- notices, certificates and correspondence from a local government or other authority;
- relevant environmental planning instruments, government policies, codes, management plans and possibly informal information such as mayoral minutes;
- reports of the authority, meeting minutes and resolutions;
- applications to the authority for approvals, certificates or information including plans, application forms, and associated documents;
- advice from specialist consultants including architects, town planners, ecologists, engineers, valuers and land economists;
- information from statutory authorities such as Departments dealing with Natural Resources, Planning, Local Government, Heritage Office, Housing; Environment and Conservation;
- case law from reference services, internet, courts (especially Land and Environment Court), other professionals etc; and
- property information including certificates of title, deposited plans, rating and valuation information.

2. Analysing the practical and legal options:

2.1 Establishing the options

The solicitor:

- 2.1.2 Analyses the information obtained and identifies:
 - the relevant issues of fact and law;
 - matters requiring further research;
 - the extent to which the relevant legal principles are clear or contestable and engages in legal research to ascertain legal principles or to develop arguments where those arguments are contestable;
- 2.1.3 Interprets the information obtained and assesses the impact of that information on the client's position, objectives and expectations; and
- 2.1.4 At each stage of the matter, determines whether to seek counsel's opinion;
- 2.1.5 Prepares a list of the options or alternative courses open to the client; and
- 2.1.6 Identifies the benefits and disadvantages of each option from the client's perspective.

Note

The issues may involve:

- refusal of permission for use or development of property;
- legal consequences of something done or proposed to be done in relation to property (eg. rates);
- development proposal by an authority;
- objection to proposed development which may impact on the use or development of other property;
- proposal of an authority to take away or acquire rights over the property of others; and
- civic office and administration.
- options for criminal prosecutions and defence

2.2 Considering the options

The solicitor, in analysing the benefits and disadvantages of each option, considers:

- 2.2.1 The need to retain consultants such as those referred to above to provide advice so as to understand better the strengths and weaknesses of the client's case;
- 2.2.2 all of the relevant documentary records, such as documents prepared by experts on behalf of the client, council reports and relevant correspondence;
- 2.2.3 the need for a view of any relevant property;
- 2.2.4 the client's general commercial position, including the range of outcomes which the client would find acceptable, the financial means available to the client and any timing issues arising from such matters as contractual obligations;
- 2.2.5 all of the alternatives to litigation including political or commercial negotiations;
- 2.2.6 the possibility of instituting proceedings to preserve rights;
- 2.2.7 the commencement of proceedings for resolution of any short preliminary questions of law which may then be used to the client's advantage to resolve the matter completely;
- 2.2.8 mediation either within or outside the structure of the Land and Environment Court;
- 2.2.9 negotiating with a statutory authority; and
- 2.2.10 amending applications and requesting reconsideration of the matter.

2.3 Providing advice

In giving final advice on strategy or action the solicitor must bear in mind that the experienced legal adviser works closely with the client in moulding expectations and realising those expectations.

3. The solicitor implements instructions by:

3.1 Representation

The solicitor advises the client of the appropriate level and means of representation as an alternative to litigation or alternate dispute resolution.

Note

This may involve personal attendance at council meetings, upon councillors, council staff or other authorities, letters, petitions and sending another legal or other relevant expert representative. Representation could be by way of formal submission to government, commissions of inquiry, ministers or departmental officers, the ombudsman, the ICAC or other complaint bodies.

3.2 Alternative Dispute Resolution

The solicitor:

- 3.2.1 is familiar with the ADR options available in respect of a particular matter and is able to recognise whether the matter is amenable to proceed in this way; and
- 3.2.2 is able to suggest or recognise alternative solutions.

3.3 Litigation

The solicitor:

- 3.3.1 selects the appropriate venue for conduct of the proceedings and recognises the jurisdiction of the relevant forum (in particular the Land and Environment Court (in respect of Class 1, 2, 3, 4, 5, 6 and 7 matters), Pecuniary Interest and Disciplinary Tribunal, Equity Division of the Supreme Court, Court of Appeal, District Court and Local Court, Administrative Decisions Tribunal);
- 3.3.2 is completely familiar with the procedure, practice directions and rules applying

in the relevant jurisdictions;

- 3.3.3 acts promptly and efficiently in relation to time limits applicable to the proceedings (in particular commencement of proceedings, filing of expert reports and affidavits, etc);
- 3.3.4 considers whether it is appropriate to brief counsel, and if so, takes instructions and prepares a detailed brief;
- 3.3.5 identifies and briefs relevant experts to be utilised in the proceedings (such as town planners, engineers, acoustical consultants, ecologists and others) and obtains expert opinions from them;
- 3.3.6 reviews expert reports and prepares affidavits (if necessary);
- 3.3.7 identifies the need to inspect documentary material of other parties;
- 3.3.8 drafts the majority of initiating process without assistance of counsel including relevant applications and affidavit material in Class 4 and 5 proceedings; and
- 3.3.9 attends collovers and upon most notices of motion in the Land and Environment Court and appears in basic Class 1 and 2 appeals and in straightforward class 4 matters requiring injunctive relief.

4. The solicitor advises on outcomes:

4.1 Litigation

The solicitor:

- advises on the outcome; and
- advises on practical implementation of the outcome.

Note

These steps may involve advice on time limits, appeal options, costs and implementation factors.

4.2 General Matters

The solicitor:

- 4.2.1 upon giving advice checks whether the advice answered the client's questions and whether any further advice is required;
- 4.2.2 upon acting in ADR advises on the practical implementation of the outcome; and
- 4.2.3 having made a representation advises on the practical implementation of the outcome.

5. Implementing outcomes:

The solicitor has the knowledge and drafting skills to complete final documentation and to advise on the effect of the documents.

B. 2 KNOWLEDGE AREAS

PLEASE NOTE: The Local Government and Planning Law Assessment Requirements were published in December 2009. Candidates taking part in the 2010 accreditation program should be aware of all recent and impending amendments to legislation. All assessments will be based on the law and procedures applicable as at the date of the assessment.

B.2.1 Core knowledge

Constitution of Local Government Authorities

- Constitution and alteration of local government areas
- The council as a body corporate
- The governing body of a council
 - Mayor
 - Councillors
 - Dismissal Committees
 - General manager

Civic Office and Administration

- Elections, constitutional referenda
- The council decision making process
 - Meetings
 - Fixing the council's seal
 - Delegations
 - Tendering
 - Voting
 - Council as an applicant for approval
 - Conflict between public duty and private interests
 - Code of conduct
 - Duties of disclosure
 - Pecuniary interests
 - Non pecuniary interest
 - Personal liability of council members and staff
 - Surcharge
 - Organisation structure
 - General manager and other senior staff
 - Performance based contracts
 - Public officer
 - Equal employment opportunity
 - Remuneration of councillors and mayors

Functions

- Council's charter
- Service functions
- Regulatory functions
- Approvals and orders
- Local policies
- Building certificates
- Appeals
- Internal reviews
- Acquisition of land
- Enforcement
 - civil proceedings
 - prosecutions

- carrying out work
- Entry onto land and other powers
- Classification and management of council land
- Functions under other Acts
- Tendering
- Ancillary functions
- Joint ventures
- Public Private Partnerships

Management

- Management Plans
- Plans of management for community lands
- Financial management
- Accounting records
- Financial reports and auditing
- Annual reports
- State of environment reports
- Council polls
- Open meetings
- Retention and preservation of records
- Public availability of information
- Privacy
- Freedom of Information law

Administrative Review

- Judicial review
- Inquiries, surcharge, investigation of complaints
- Pecuniary Interest and Disciplinary Tribunal
- The Minister and Department
- The Ombudsman
- The Independent Commission Against Corruption
- Administrative Decisions Tribunal

Procedural Fairness

- The hearing rule
- The bias rule
- The no evidence rule
- The duty to give reasons
- The duty to initiate inquiries
- Specific application to councils
- Specific applications to State Government in relation to councils
- The duty to act reasonably

Actionable Liability and Rights

- Judicial remedies - damages, specific performance etc
- Non judicial remedies - administrative remedies
- Self help
- Defences, immunities and rights - non feasant, statutory authority, statutory exculpation
- Estoppel
- Council insurance and indemnity
- General non contractual liability and rights
- Vicarious liability
- Specific context
 - Land owner, occupier or provider of services and facilities
 - Providers of information or advice
 - Planning authority
 - Approval or consent authority

- Building controller and regulator
- Roads authority
- Special statutory liability and rights
- Contractual liability and rights
- Defamation by and of Council

Decision Makers and/or Recommendatory Bodies

- The Minister
- The Director-General
- Local Government
- Planning Assessment Commission
- Joint Regional Planning Panels
- Relevant Planning Authorities (s54)
- Voluntary Independent Hearing and Assessment Panels
- SEPP 65 Design Review Panels

Land use planning

- Environmental planning instruments:
 - State
 - Local
- Strategic plans
- Development control plans
- Other local policy documents
- Section 117 directions
- Model Provisions
- Standard Instrument
- Moves towards policy and statutory change
- Planning proposals, the 'gateway' process and making a planning instrument
- Tree preservation orders and other means to protect/conservate trees and vegetation

Development applications and consents

- Requirements for a valid application
- Determination of permissibility
- Environmental assessment
- Environmental impact statements and species impact statements
- Categories of development
 - exempt
 - complying
 - requiring concurrence
 - designated
 - advertised
 - integrated
- Public consultation
- Determination
- Review
- Commencement and lapsing
- Conditions of consent
- Development contributions and Planning agreements
- Modification
- Retrospective approvals
- Certification
- Certifiers
- Existing and continuing uses

Environmental assessment of activities (Part 5 EPA Act)

- Relevant activities
- Determining authority
- Consideration of environmental factors
- Environmental impact statements and species impact statements
- Making the decision

Major Infrastructure and Other Projects (Part 3A)

- Relevant Projects
- Role of Minister for Planning
- Environmental assessment merit
- Concept plans
- Critical infrastructure
- Making the decision

Heritage Conservation

- The Heritage Act 1977
- Aboriginal heritage administration
- Heritage agreements
- Environmental planning instruments
- Implementation and enforcement
- Devolution of heritage protection to local government
- Community participation

Appeals, Objections, Judicial Review

- Time limits
- Locus standii
- Costs Compensation
- Proof
- Commencing proceedings
- Service
- Structure of the Land and Environment Court jurisdiction Rules
- LEC Planning Principles
- Procedures in various classes
- Powers of registrars and commissioners
- Proceedings by third parties
- Judicial review and appeals generally
- Time for compliance with orders and contempt
- Procedures to ensure compliance:
 - sequestration
 - contempt
 - other
- Stay of proceedings including attempts to regularise illegal activity

Finance

- Sources of finance
- Rates, charges and fees
 - making
 - collecting
 - levying
 - categories
 - rateable land
 - concessions
 - exemptions
 - records
 - proof

- adjustments of charges
- types of charges
- regulation & control of fees, rates & charges
- valuations for rating purposes challenging liability for rates or valuation
- Loans
- source restrictions
- requirements
- Grants
- Investments

Enforcement

- Pollution control & waste management (especially under the Protection of the Environment Operations Act)
- Regulatory authority
- Duty to notify pollution incidents
- Clean-up notices
- Prevention notices
- Compliance cost orders
- Noise control notices
- Noise abatement orders
- Powers of authorised officers
- Offences and orders under the Native Vegetation Act and consents and orders under that Act
- Offences and requirements of the National Parks and Wildlife Act including in relation to Aboriginal Relics and sites
- Offences
- Enforcement
 - prosecutions
 - penalty notices
 - civil enforcement
 - Public register obligations
 - Council's role under the Contaminated Land Management Act
 - use of site auditors
 - matters to be included in 149 certificates
 - duty to report contamination
- Waste Avoidance and Resource Recovery Act 2001
- Enforcement role of council regarding obligations on non-licensed waste activities, facilities & transporters

Real property considerations

- Public positive covenants
- Restrictive covenants
- Easements
- Removal of obsolete covenants
- Effect of covenants on land use
- Conflict between covenants & development consents
- Acquisition of easement by compulsion

B.2.2 Core Legislation

The following legislation has been divided into 'core legislation' (in bold); 'important legislation' (in ordinary type); and 'peripheral legislation' (in italics.)

Commonwealth

Australian Heritage Council Act 2003

Competition Policy Reform Act 1995
Disability Discrimination Act 1992
Environmental Protection and Biodiversity Conservation Act 1999
Telecommunications Act 1997
Trade Practices Act 1974

New South Wales

Access to Neighbouring Land Act 2000
Administrative Decisions Tribunal Act 1997
Animals Act 1977
Building Code of Australia
Catchment Management Authorities Act 2003
Civil Liability Act 2002
Civil Procedure Act 2005
City of Sydney Act 1988
Coastal Protection Act 1979
Community Land Development Act 1989
Companion Animals Act 1998
Competition Policy Reform (NSW) Act 1995
Contaminated Land Management Act 1997
Conveyancing Act 1919
Crimes (Appeal and Review) Act 2001
Crimes (Sentencing Procedures) Act 1999
Criminal Procedure Act 1986
Crown Lands Act 1989
Restricted Premises Act 1943
Dividing Fences Act 1991
Duties Act 1997
Encroachment of Buildings Act 1922
Environmental Planning and Assessment Act 1979
Environmentally Hazardous Chemicals Act 1985
Evidence Act 1995
Fair Trading Act 1987
Filming Approval Act 2004
Fire Brigades Act 1989
Fisheries Management Act 1994
Food Act 2003
Freedom of Information Act 1989
Geographical Names Act 1966
Government Information (Public Access) Act 2009
Heritage Act 1977
Home Building Act 1989
Impounding Act 1993
Independent Commission Against Corruption Act 1988
Interpretation Act 1987
Land Acquisition (Just Terms Compensation) Act 1991
Land and Environment Court Act 1979
Library Act 1939
Liquor Act 2007
Local Government Act 1993
Marine Parks Act 1997
Mine Subsidence Compensation Act 1961
Mining Act 1992
Miscellaneous Acts (Planning) Repeal and Amendment Act 1979
National Parks and Wildlife Act 1974
Native Vegetation Act 2003
Natural Resources Commission Act 2003

Noxious Weeds Act 1993
Ombudsman Act 1974
Occupational Health and Safety Act 2000
Protected Disclosures Act 1994
Protection of the Environment Administration Act 1991
Protection of the Environment Operations Act 1997
Public Health Act 1991
Recreational Vehicles Act 1983
Roads Act 1993
Rural Fires Act 1997
Soil Conservation Act 1938
State Emergency and Rescue Management Act 1989
State Emergency Service Act 1989
Strata Schemes (Freehold Development) Act 1973
Strata Schemes (Leasehold Development) Act 1986
Swimming Pools Act 1992
Sydney Water Act 1994
Summary Offences Act 1988
Threatened Species Conservation Act 1995
Trees (Disputes Between Neighbours) Act 2006
Unclaimed Money Act 1995
Uniform Civil Procedure Rules 2005
Valuation of Land Act 1916
Waste Avoidance and Resource Recovery Act 2001
Water Act 1912
Water Recycling and Processing Corporation Act 2001
Water Management Act 2000

Relevant regulations (especially the Environmental Planning and Assessment Regulation 2000, including model provisions), gazetted orders, standard instruments under s.33A Environmental Planning and Assessment Act and court practice directions.

All State Environmental Planning Policies

C. METHODS OF ASSESSMENT

Below are listed the methods of assessment which all candidates must undertake. In your responses you will be assessed on the associated assessment criteria. You will be required to perform each criterion to the level expected of a specially competent practitioner

TAKE HOME ASSIGNMENT

An assignment consisting of a series of questions requiring short answers will be distributed to candidates for completion at home over a period including 3 weekends. The purpose of the assessment is to test breadth and level of knowledge including identification and application of legal principles and understanding of procedures.

Distribution Date: Wednesday, 26 May 2010
Return Date: Wednesday, 16 June 2010

Assessment criteria:

- (A) Ability to identify relevant issues from a given fact situation
- (B) Depth of knowledge of the law and skill in applying that knowledge to the given fact situation
- (C) Knowledge of procedural rules and practices
- (D) Ability to provide practical, clear and accurate advice.

MOCK FILE

The purpose of the mock file is to assess the applicant's ability to perform tasks undertaken by solicitors in this area of practice. The mock file will be sent to the applicant's nominated address on the indicated date. Applicants will be required to work independently and to return the completed work on the specified date.

Distribution Date: Wednesday, 26 May 2010
Return Date: Wednesday, 16 June 2010

Assessment criteria:

- (A) Gathering information
- (B) Analysing facts and legal effects
- (C) Analysing the practical and legal options
- (D) Reviewing and implementing instructions
- (E) Finalising a matter.

PEER INTERVIEW

Applicants will be interviewed by a panel of practitioners. The interview will run for approximately 30 minutes and will be recorded. **The interview will deal with issues arising from the mock file and the take home assignment.** For this reason, it is recommended candidates retain a copy of their mock file and assignment answers.

Date: Saturday, 31 July 2010
Venue: College of Law, 2 Chandos St, St Leonards

Applicants will be notified of the time in mid July.

Assessment criteria:

- (A) Clarity of spoken answers
- (B) Legal approach and presentation
- (C) Confirmation of understanding of written responses
- (D) Application of legal principles to facts

LOCAL GOVERNMENT AND PLANNING LAW ADVISORY COMMITTEE 2010

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