

PLANNING AND ENVIRONMENTAL LAW PRACTICE PRACTICAL GUIDE



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1. HOW TO USE THIS PRACTICAL GUIDE

This practical guide has been developed for your assistance in the College of Law unit Planning and Environmental Law Practice. This guide is structured in a way that aims to equip you with the problem solving skills to help you in Planning and Environmental Law practice, which involves:

- assessing and advising clients of the merits of matters arising from planning and environmental law matters
- identifying the appropriate jurisdiction
- drafting documents such as a planning application or objections
- initiating or responding to a planning and environmental law claim
- representing clients by acting in disputes
- conducting dispute resolution procedures in the court system or alternative dispute resolution
- documenting settlements
- implementing settlements or orders.

The types of assessment in this College of Law elective unit include an oral assessment of your learning and review of the tasks submitted.

This practical guide is structured in a way that simulates this type of assessment. Lawskool Pty Ltd recommends that you follow this practical guide in the order as it appears, and work through the fact scenarios to each practical task in a way that ensures you understand the steps taken along the way. The tasks in this practical guide are presented as examples of the types of tasks in Planning and Environmental Law Practice in the College of Law, culminating in the oral assessment with oral assessment tips at the end of this guide.

Throughout your studies, you may adopt an engaged learning style that enables you to actively explore ideas and issues about a topic, and connect with your peers and mentors about real life situations and how they apply to the topic. Lawskool Pty Ltd hopes that you may use this practical guide as a tool in your engagement with Planning and Environmental Law Practice in the College of Law.

2. FILE NOTE OF INTERVIEW, RESEARCH AND FURTHER ADVICE

Names: Adam Johnson attendance with Glen Daniels

Date: 7 January 2016

Time Spent: 10 units (60 minutes)

Client Details: Glen Daniels Managing Director of CheapPetrol

Name of Matter: CheapPetrol appeal to Victorian Civil & Administrative Appeals Tribunal regarding property at 25 Bayside Parade

Instructions from client:

1. Glen Daniels is the Managing Director of CheapPetrol and he comes to see you.
2. For the past 30 years CheapPetrol has owned a property at 25 Bayside Parade.
3. On the site a service station with 10 fuel pumps.
4. The service station was leased to a tenant/operator up until eighteen months ago. That means the service station has been operating, continuously for 28 years, as leased by the company, at 25 Bayside Parade.
5. About three months ago the company applied to the local council for a development permit to demolish the service station and to erect a 24 hour "drive in" convenience store with three fuel pumps.
6. The application also sought consent for CheapPetrol Ltd to be able to rent out to the public 7 car spaces on the site at 25 Bayside Parade on a weekly and casual basis.
7. The current zoning for the property (and it has been the zoning for the

past 10 years) is “townhouses/residential units”, permissible with development consent.

8. The development which CheapPetrol has applied for is prohibited.
9. CheapPetrol has been trying unsuccessfully to lease the service station since the last tenant/operator vacated the premises eighteen months ago.
10. Since the time the last tenant/operator left the leased premises, the service station has not been used and public access to the site has been prohibited.
11. There have also been a number of management discussions at CheapPetrol over the past year or so as to whether the company should itself operate the service station instead of looking for a tenant/operator, but nothing concrete has eventuated.
12. The activity of a service station has been lawfully carried out pursuant to development consent obtained 30 years ago, that is before the change of zoning 10 years ago of the 25 Bayside Parade site to “townhouses/residential units”.
13. Last week CheapPetrol were advised that the council has refused consent for the entire development application - demolition of the service station, erection of the 24 hour “drive in” convenience store with 3 fuel pumps, and the renting out of 7 car spaces on the site.
14. CheapPetrol have instructed you that they wish to appeal against the council’s refusal to the Victorian Civil and Administrative Tribunal (‘VCAT’).
15. You need to research whether CheapPetrol has a right to appeal the council’s decision at VCAT.
16. If they have a right to appeal you must appear at the review and appeal against the responsible authority’s refusal of a development permit.

Issues:

(i) Legal

1. Is there any validity in the council's argument that the lawful existing use of 25 Bayside Parade site has been abandoned because the service station has not been used or operated for the past eighteen months?
2. In any case, when can a lawful existing use be said to have been "abandoned"?
3. Can CheapPetrol apply for a change of the existing use to a "convenience store" (and related activities referred to in its application) when the current zoning prohibits those activities?
4. Is there any case law which would support a favourable determination by the tribunal of CheapPetrol's application?
5. I need to find out the approach of the tribunal to awarding costs to either party at the conclusion of this review.
6. My application should refer to any case law and/or legislation that I consider relevant and which support my submissions.

(ii) Non Legal

1. There is a need to ensure Glen Daniels satisfaction and to achieve the best possible outcomes for him and CheapPetrol.

Further information required:

(i) Who to supply?

1. I do not require any further information from the client. The client has provided me with the necessary information in our meeting.
2. I am to supply Glen Daniels with written advice, which as I explained to him during the interview, I will send in about one week's time after further research.



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