



LAW 490

Local Government and Planning Law

S1 Day 2014

Dept of Law

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General Information

Unit convenor and teaching staff

Unit Convenor

Paul Govind

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Credit points

3

Prerequisites

(6cp in LAW or LAWS units at 300-level) or (39cp including ENV267) or (ENVG212 and 6cp at 300 level and admission to BPlan)

Corequisites

Co-badged status

Please note that this unit is co-taught with LAW 861

Unit description

This unit examines contemporary issues in land use planning law. The focus is on land in an urban context with particular emphasis on the regulation of land use under the Environmental Planning and Assessment Law 1979 (NSW). The unit provides an understanding of the workings of land use regulation in New South Wales and the underlying social, cultural and economic objectives of the key legislation. A critical analysis is undertaken of the effectiveness of the current regulatory regime including reform proposals and options. Discussion and analysis of the relevant case law with practical examples of planning issues are included.

Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

Learning Outcomes

On successful completion of this unit, you will be able to:

Describe the key principles and policies underlying planning and development law.

Identify, compare and apply the regulatory scheme for assessment of development at state and federal levels and explain and apply knowledge of the regulatory scheme for assessment of development at local and state levels. This study will include the powers,

functions and environmental responsibilities of each tier of government with a focus on local government environmental decision-making.

Identify the principles and policies of protecting biodiversity and promoting Ecologically Sustainable Development relevant to planning, and development law

Critique and analyze the effectiveness and accountability of private bodies, public authorities and citizens involved in environmental planning and assessment with a focus on local government.

Identify and critique public participation mechanisms and the role of the Land and Environment Court in the assessment of development and protection of the environment.

Analyze planning law problems and report research findings in appropriate oral and written arguments.

Identify and critique the new planning legislation for NSW and the potential transitional provisions including time frame for implementation of new planning and development law.

Assessment Tasks

Name	Weighting	Due
<u>Class Participation</u>	15%	Ongoing
<u>LEP research task</u>	0%	Week/Module 3
<u>Take-Home Exam</u>	50%	June 18
<u>Research Essay</u>	35%	April 17; April 28
<u>Development application</u>	0%	Week/Module 9

Class Participation

Due: **Ongoing**

Weighting: **15%**

Class participation will be assessed in weekly tutorials for internal students and during the On Campus Session (OCS) for external students. Students should ensure they have completed the required reading before tutorials or the OCS. The dates from the OCS can be found on the timetable.

Students must be prepared to discuss this material during the OCS.

Readings and tutorial questions will be supplied in a separate document posted on the iLearn webpage.

Participation will involve: exploring, analysing and applying the principal issues covered in the

unit, answering questions put directly to you, engaging in formal and informal debates, group work, and constructing and presenting legal arguments.

Class participation will be assessed on:

- Demonstration of knowledge of the readings.
- Level of critical analysis displayed
- Relevant original contributions
- Ability to engage constructively with other students

Your ability to make an educated and legally feasible arguments in class. Note that no marks are awarded just for attending class, and that assessment is based on the quality, not quantity, of your work in class. Students should also note that the onus to participate in class is on you, not on the Convener. In other words, it is not the job of the Convener to engage you in discussion so that you may avail yourself of the class participation assessment.

On successful completion you will be able to:

- Describe the key principles and policies underlying planning and development law.
- Identify, compare and apply the regulatory scheme for assessment of development at state and federal levels and explain and apply knowledge of the regulatory scheme for assessment of development at local and state levels. This study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision-making.
- Identify the principles and policies of protecting biodiversity and promoting Ecologically Sustainable Development relevant to planning. and development law
- Critique and analyze the effectiveness and accountability of private bodies, public authorities and citizens involved in environmental planning and assessment with a focus on local government.
- Identify and critique public participation mechanisms and the role of the Land and Environment Court in the assessment of development and protection of the environment.
- Analyze planning law problems and report research findings in appropriate oral and written arguments.

LEP research task

Due: **Week/Module 3**

Weighting: **0%**

The LEP (Local Environmental Plan) is a vital instrument in environment and planning law. The task, which is non assessable but mandatory, requires students to search for and identify the LEP that regulates the area in which they live.

Having located the relevant LEP students must then answer a set of prescribed questions that shall be made available within the first week of session 1.

The task is designed to introduce students early to the rationale, objects and purpose of planning instruments in a manner that utilises the context of a local community that the student is inherently familiar with. This will prepare students for the later tasks of analysing how LEPs and other planning instruments are made, the legal value attached to them and other themes that correlate with the overall objectives of the course.

This task is to be submitted via iLearn.

On successful completion you will be able to:

- Describe the key principles and policies underlying planning and development law.
- Analyze planning law problems and report research findings in appropriate oral and written arguments.

Take-Home Exam

Due: **June 18**

Weighting: **50%**

A take-home exam involving hypothetical scenarios for critical analysis will be released via the iLearn page. Further details will be provided during the course of the semester.

On successful completion you will be able to:

- Describe the key principles and policies underlying planning and development law.
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- Identify the principles and policies of protecting biodiversity and promoting Ecologically Sustainable Development relevant to planning and development law
- Critique and analyze the effectiveness and accountability of private bodies, public authorities and citizens involved in environmental planning and assessment with a focus on local government.

- Identify and critique public participation mechanisms and the role of the Land and Environment Court in the assessment of development and protection of the environment.
- Analyze planning law problems and report research findings in appropriate oral and written arguments.

Research Essay

Due: **April 17; April 28**

Weighting: **35%**

All students are required to answer a research essay question in 2,500 words based *primarily* (but NOT exclusively) on the unit readings for weeks 1 to 6 and additional references as set out on the *Course Schedule and Reading List*. Further research should also be undertaken.

The question(s) will be released in the early stages of the semester.

The assignment is due April 17 (Internal students) and April 28 (External students)

On successful completion you will be able to:

- Describe the key principles and policies underlying planning and development law.
- Identify, compare and apply the regulatory scheme for assessment of development at state and federal levels and explain and apply knowledge of the regulatory scheme for assessment of development at local and state levels. This study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision-making.
- Identify the principles and policies of protecting biodiversity and promoting Ecologically Sustainable Development relevant to planning and development law
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Development application

Due: **Week/Module 9**

Weighting: **0%**

This non assessed task requires that students locate a development application that is advertised on the website of their local council. They then need to briefly outline the key legal elements that a decision maker should consider when deciding to approve the application.

This task is to be submitted via iLearn.

Delivery and Resources

The unit will be taught as both an External unit and as an Internal unit. Attendance at the On Campus Session (OCS) is **compulsory. If you cannot attend the OCS then you are advised to not enrol in the course. If you refer to the assessment section you will see that class participation is assessed during the OCS.**

Changes from 2013

Environment and planning law remains in a state of flux in the early stages of 2014. At the time of writing a process initiated by the incumbent NSW government in 2011 has yet to result in the full-scale legislative changes to the current regime under the *Environmental Planning and Assessment Act 1979* (NSW), that were outlined. It is widely believed that the new legislation will come into operation at some point in 2014.

These potential legislative changes will inevitably affect the manner in that the unit is taught and the content of the materials. The prescribed text will be the same as in 2013 and I will supply additional readings that specify the changes and when/if appropriate the official new legislative provisions. The draft legislation released in 2013 suggested that large swathes of the current EPA Act will be replicated – therefore the text book is an essential requirement - however key changes are also foreshadowed.

The upcoming period will be exciting but challenging as planning law enters a transition. Students must be made aware of this from the outset and should make their decision in accordingly.

The course will move away from the exclusive focus on planning law doctrine and devote more space to theoretical dimensions of planning as a discipline. The modules focusing on the *Local Government Act 1993* (NSW) will be moved to earlier in the curriculum. This is to encourage a greater understanding of context before tackling the planning legislation (which remains the primary focus of the course) and allowing more time for material to be collected and collated in the event of legislative change to complement the prescribed text.

Workload

Based upon University Senate Guidelines there should be 3 hours study per credit point per week. However, this is a guide only and each student should assess the hours required based on his/her own specific needs. Note that students are expected to work on private study, assignments completion, etc, in the two-week mid-semester break.

Delivery

This unit heavily utilizes iLearn for all communication purposes. Announcements, lecture recordings, assessments etc. all operate upon the iLearn platform.

It is therefore vital that students familiarize themselves with the iLearn platform and its operations if they haven't done so previously.

Students should regularly check the unit web page on iLearn to keep up with information for students entered by the Unit Convenor. There may be information placed on the web page at short notice concerning attendance, cancelled or postponed classes and relevant assessment items and dates. Attending on the right dates is your responsibility and mistakes with attendance may result in your failing of the unit.

Further, iLearn is utilised for the purposes of discussion forums both teacher led and those that are exclusively for the use of students. It is highly recommended that students keep up to date with forum discussion as it features topical news items relevant to the course etc.

Resources -

Lyster, R., Lipman, Z., Franklin, N., Wiffen., G and Pearson, L *Environmental and Planning Law in NSW* (3rd Edition, The Federation Press, 2012)

Some weeks will feature additional or alternative readings. These readings are available on E-Reserve which is accessible through the library website via <http://www.lib.mq.edu.au/>. These readings must be completed in advance of classes.

NB: A weekly lecture guide and tutorial questions will be supplied in a separate document posted on the iLearn website.

Unit Schedule

Module	Introduction to Unit
1	The relationship between planning and environmental law, the role of local government, factors that influence views and perceptions, importance of legislation, relevance of a tiered government system and identification of key concepts and values, introduction to key legislation including the <i>Environmental Planning and Assessment Act</i> and <i>Local Government Act</i> and others.

Module 2	Local Government Overview - Role in Planning and Development Law Powers, Functions and Environmental Responsibilities; history; broadening and narrowing the sphere of influence; relationship with state government - Overview of <i>Local Government Act</i>
Module 3	Land Use Planning – Theoretical Background Planning as a discipline; history of planning; different planning theoretical frameworks; definitions and rationale; current operation of Planning Law; strategic planning; relationship between environment planning and development; key decision makers; underlying tensions and conflicts
Module 4	Planning Through the Environmental Prism Relationship between land development and environmental protection; introduction to Ecologically Sustainable Development; overview of sustainability across NSW and Commonwealth law and policy; <i>Environmental Planning and Assessment Act 1979 (NSW)</i> - Overview;; history; aims and objectives
Module 5	Environmental Planning Instruments SEPPs; LEPs; legal authority to create and manage plans; operation of zones; relationship to development applications and approval; adherence to best practice planning principles
Module 6	Development Control and Approval Process - NSW Overview of different types of development; criteria; relationship between development zoning and planning; legal obligations attached to certain development categories; Environmental Impact Assessment

<p>Module 7</p>	<p>Major Projects and the Approval Process - NSW State Significant Development; State Significant Infrastructure</p>
<p>Module 8</p>	<p>Environmental Assessment and Approval Process - Federal Relationship between State and Commonwealth; Overview of assessment and approval process under the EPBC Act 1999 (Cth)</p>
<p>Module 9</p>	<p>Land and Environment Court History of Land and Environment Court; Participation, Appeals, Reviews; Merits and Judicial Review; Enforcement specific local government focus? Role of Commissioners; alternate dispute resolution methods; public participation; public interest litigation</p>
<p>Module 10</p>	<p>Changes to Planning Law in NSW [please note this module might be moved to earlier in the schedule depending on legislative changes]</p>
<p>Module 11</p>	<p>Intersection between Planning Law and other Environmental Legal Regimes SRLUP and CSG; Heritage Law; the future of Planning Law</p>
<p>Module 12</p>	<p>Emerging Environmental Challenges to Local Government Global environment issues, climate change, water management and biodiversity; prospect of increased liability; context of proposed changes to NSW Planning Laws and devolution of responsibility</p>
<p>Module 13</p>	<p>Revision of unit</p>

Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy http://mq.edu.au/policy/docs/academic_honesty/policy.html

Assessment Policy <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Grievance Management Policy http://mq.edu.au/policy/docs/grievance_management/policy.html

Disruption to Studies Policy http://www.mq.edu.au/policy/docs/disruption_studies/policy.html *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: https://students.mq.edu.au/support/student_conduct/

Attendance Policy

Internal students are required to attend the weekly tutorials – at least 80%. Students with more than three unexplained absences will get a zero mark for class participation, irrespective of marks gained in other assessment items, will be awarded a ‘Fail’ grade. If a student is unable to attend any seminar, he or she should consult the **Special Consideration Policy noted below and**, within a reasonable time, provide a written explanation of the reason(s) for the absence together with any appropriate corroborating evidence, e.g. medical certificate. The written explanation must be personally signed by the student and forwarded to the convenor.

Assessment Policy

Students must comply with the due date. In the absence of a successful application for special consideration, any assessment task submitted after its published deadline will not be graded and receive a mark of zero.

Special Consideration Policy

http://www.mq.edu.au/policy/docs/special_consideration/policy.html

Applying for Special Consideration

Students applying for Special Consideration circumstances of three (3) consecutive days duration, within a study period, and/or prevent completion of a formal examination must submit an on-line application with the Faculty of Arts. For an application to be valid, it must include a completed Application for Special Consideration form and all supporting documentation.

The online Special Consideration application is found at: http://www.arts.mq.edu.au/current_students/undergraduate/admin_central/special_consideration.

Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

Learning Skills

Learning Skills (mq.edu.au/learningskills) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

Student Enquiries

For all student enquiries, visit Student Connect at ask.mq.edu.au

IT Help

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

Graduate Capabilities

Capable of Professional and Personal Judgement and Initiative

We want our graduates to have emotional intelligence and sound interpersonal skills and to demonstrate discernment and common sense in their professional and personal judgement. They will exercise initiative as needed. They will be capable of risk assessment, and be able to handle ambiguity and complexity, enabling them to be adaptable in diverse and changing environments.

This graduate capability is supported by:

Learning outcomes

- Describe the key principles and policies underlying planning and development law.
- Identify, compare and apply the regulatory scheme for assessment of development at state and federal levels and explain and apply knowledge of the regulatory scheme for assessment of development at local and state levels. This study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision-making.
- Identify and critique public participation mechanisms and the role of the Land and Environment Court in the assessment of development and protection of the environment.
- Analyze planning law problems and report research findings in appropriate oral and written arguments.

Assessment tasks

- LEP research task
- Take-Home Exam

Commitment to Continuous Learning

Our graduates will have enquiring minds and a literate curiosity which will lead them to pursue knowledge for its own sake. They will continue to pursue learning in their careers and as they participate in the world. They will be capable of reflecting on their experiences and relationships with others and the environment, learning from them, and growing - personally, professionally and socially.

This graduate capability is supported by:

Learning outcomes

- Describe the key principles and policies underlying planning and development law.
- Critique and analyze the effectiveness and accountability of private bodies, public authorities and citizens involved in environmental planning and assessment with a focus on local government.

Assessment tasks

- Take-Home Exam
- Research Essay

Discipline Specific Knowledge and Skills

Our graduates will take with them the intellectual development, depth and breadth of knowledge, scholarly understanding, and specific subject content in their chosen fields to make them competent and confident in their subject or profession. They will be able to demonstrate, where relevant, professional technical competence and meet professional standards. They will be able to articulate the structure of knowledge of their discipline, be able to adapt discipline-specific knowledge to novel situations, and be able to contribute from their discipline to inter-disciplinary solutions to problems.

This graduate capability is supported by:

Learning outcomes

- Describe the key principles and policies underlying planning and development law.
- Identify, compare and apply the regulatory scheme for assessment of development at state and federal levels and explain and apply knowledge of the regulatory scheme for assessment of development at local and state levels. This study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision-making.
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- Critique and analyze the effectiveness and accountability of private bodies, public authorities and citizens involved in environmental planning and assessment with a focus on local government.

Assessment tasks

- Class Participation
- LEP research task
- Take-Home Exam
- Research Essay

Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

Learning outcomes

- Identify the principles and policies of protecting biodiversity and promoting Ecologically Sustainable Development relevant to planning. and development law
- Critique and analyze the effectiveness and accountability of private bodies, public authorities and citizens involved in environmental planning and assessment with a focus on local government.
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Assessment tasks

- Class Participation
- Take-Home Exam
- Research Essay

Problem Solving and Research Capability

Our graduates should be capable of researching; of analysing, and interpreting and assessing data and information in various forms; of drawing connections across fields of knowledge; and they should be able to relate their knowledge to complex situations at work or in the world, in order to diagnose and solve problems. We want them to have the confidence to take the initiative in doing so, within an awareness of their own limitations.

This graduate capability is supported by:

Learning outcomes

- Identify, compare and apply the regulatory scheme for assessment of development at state and federal levels and explain and apply knowledge of the regulatory scheme for assessment of development at local and state levels. This study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision-making.
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written arguments.

Assessment tasks

- LEP research task
- Take-Home Exam

Creative and Innovative

Our graduates will also be capable of creative thinking and of creating knowledge. They will be imaginative and open to experience and capable of innovation at work and in the community. We want them to be engaged in applying their critical, creative thinking.

This graduate capability is supported by:

Learning outcomes

- Identify the principles and policies of protecting biodiversity and promoting Ecologically Sustainable Development relevant to planning. and development law
- Critique and analyze the effectiveness and accountability of private bodies, public authorities and citizens involved in environmental planning and assessment with a focus on local government.
- Identify and critique public participation mechanisms and the role of the Land and Environment Court in the assessment of development and protection of the environment.

Assessment tasks

- Class Participation
- Research Essay

Effective Communication

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

Learning outcomes

- Describe the key principles and policies underlying planning and development law.
- Identify, compare and apply the regulatory scheme for assessment of development at state and federal levels and explain and apply knowledge of the regulatory scheme for assessment of development at local and state levels. This study will include the powers, functions and environmental responsibilities of each tier of government with a focus on

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Assessment tasks

- Class Participation
- Take-Home Exam
- Research Essay

Engaged and Ethical Local and Global citizens

As local citizens our graduates will be aware of indigenous perspectives and of the nation's historical context. They will be engaged with the challenges of contemporary society and with knowledge and ideas. We want our graduates to have respect for diversity, to be open-minded, sensitive to others and inclusive, and to be open to other cultures and perspectives: they should have a level of cultural literacy. Our graduates should be aware of disadvantage and social justice, and be willing to participate to help create a wiser and better society.

This graduate capability is supported by:

Learning outcome

- Identify the principles and policies of protecting biodiversity and promoting Ecologically Sustainable Development relevant to planning. and development law

Assessment tasks

- Take-Home Exam
- Research Essay

Socially and Environmentally Active and Responsible

We want our graduates to be aware of and have respect for self and others; to be able to work with others as a leader and a team player; to have a sense of connectedness with others and country; and to have a sense of mutual obligation. Our graduates should be informed and active participants in moving society towards sustainability.

This graduate capability is supported by:

Learning outcomes

- Describe the key principles and policies underlying planning and development law.
- Identify, compare and apply the regulatory scheme for assessment of development at state and federal levels and explain and apply knowledge of the regulatory scheme for assessment of development at local and state levels. This study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision-making.
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Assessment tasks

- LEP research task
- Take-Home Exam
- Research Essay

Changes from 2013

Environment and planning law remains in a state of flux in the early stages of 2014. At the time of writing a process initiated by the incumbent NSW government in 2011 has yet to result in the full-scale legislative changes to the current regime under the *Environmental Planning and Assessment Act 1979* (NSW), that were outlined. It is widely believed that the new legislation will come into operation at some point in 2014.

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