



LAW 861

Local Government and Planning Law

S1 Day 2014

Dept of Law

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General Information

Unit convenor and teaching staff

Unit Convenor

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Credit points

4

Prerequisites

Admission to MIntEnvLaw or MEnvLaw or PGDipEnvLaw or PGCertEnvLaw or MEnvMgt or PGCertEnvMgt or MPP or PGDipPP or MWldMgt or PGDipWldMgt or LLM or 42cp in LAW units at 400 or 500 level or (admission to JD and 32cp in LAW units at 800 level)

Corequisites

Co-badged status

Unit description

This unit examines the practical operation of environmental regulation at the local level and contemporary issues in planning law. It examines local councils as significant bodies, usually overlooked as mechanisms of government regulation, and in particular the environmental responsibilities of local government. It provides an understanding of the workings of land -use regulation, in particular under the Environmental Planning and Assessment Act 1979 (NSW), and the underlying environmental, social, cultural and economic objectives of the key statutes. A critical analysis is undertaken of the effectiveness of the current regulatory regime including reform proposals and options.

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 and analyze key principles and policies underlying planning and development law.

Distinguish and interpret the regulatory scheme for assessment of development at local, regional, state and commonwealth levels. This will also include the powers, functions

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

Identify and assess the principles and policies of protecting biodiversity, promoting ESD and adapting and mitigating the effects of climate change 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.

Describe 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 produce 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>	10%	Every week (alternatively OCS)
<u>Reflective paper</u>	10%	31/03/2014
<u>Research Essay</u>	30%	17/04/2014 or 24/04/2014
<u>Research Assignment</u>	50%	16/06/2014

Class Participation

Due: **Every week (alternatively OCS)**

Weighting: **10%**

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 and the Tutor
- ? 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.

A feedback form will be provided at roughly half way through the semester so that students can assess their progress.

On successful completion you will be able to:

- Describe and analyze key principles and policies underlying planning and development law.
- Distinguish and interpret the regulatory scheme for assessment of development at local, regional, state and commonwealth levels. This will also include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision –making.
- Identify and assess the principles and policies of protecting biodiversity, promoting ESD and adapting and mitigating the effects of climate change relevant to planning and development law.

Reflective paper

Due: **31/03/2014**

Weighting: **10%**

This is a relatively short, reflective paper that is aimed specifically at post graduates with the intention of introducing students to different ways of evaluating the effectiveness of environmental law.

Students are to select a topical planning or development issue from the media and discuss the environmental implications including their understanding of how law might regulate such issues.

The paper is not intended to be research intensive and as such is much more conceptual in

focus. The key is identifying what the potential legal issue has arisen from the planning/development issue, the environmental dimension, how and why law is triggered and the potential outcome.

Maximum word length is 1,000 words.

On successful completion you will be able to:

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

Research Essay

Due: **17/04/2014 or 24/04/2014**

Weighting: **30%**

All students are required to answer a set essay question in 2,500 - 3,000 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 due course.

Your answer should:

- ? Critically assess the statement, and discuss the extent to which you agree or disagree with the statement
- ? Consider the relative strengths and weaknesses of the statement
- ? Consider principles/instruments that underpin planning and environmental law
- ? Answers must consider legislation and case law where appropriate and relevant
- ? Consider the question in the context of relevant proposals for law reform

Students should utilise the course readings and additional references but some further research should also be undertaken. The assignment must be typed. The paper should be well structured including sub-headings where appropriate. The introduction should set out the scope of the paper. Be sure to answer the question asked.

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

On successful completion you will be able to:

- Describe and analyze key principles and policies underlying planning and development law.
- Distinguish and interpret the regulatory scheme for assessment of development at local, regional, state and commonwealth levels. This will also include the powers, functions

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

- Identify and assess the principles and policies of protecting biodiversity, promoting ESD and adapting and mitigating the effects of climate change 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.
- Analyze planning law problems and produce research findings in appropriate oral and written arguments.

Research Assignment

Due: **16/06/2014**

Weighting: **50%**

Postgraduate Students are to complete an independent research paper on a topic of their choice related to this Unit. This task allows students to undertake in-depth research and analysis of a specific aspect of planning law, the legal frameworks in a given country or the legal issues associated with a particular site. Further students are to give consideration to relevant theoretical frameworks and methodology. ***A brief outline of the research question and structure of the paper should be submitted to the Convenor for approval by Friday, Week 8.***

This is for your benefit to ensure that the topic is suitable and the structure and content appropriate. The paper should be well structured including sub-headings where appropriate. The introduction should set out the scope of the paper. You need to include sufficient detail of the specific legal principles or regime and analysis/application of that law. Your conclusion should include recommendations for new law, law reform, further research and/or creative application of the existing law where appropriate. The essay should be fully referenced according to the Australian Guide to Legal Citation 3rd Edition. Word Length: 3,000 - 3,500 words.

On successful completion you will be able to:

- Describe and analyze key principles and policies underlying planning and development law.
- Distinguish and interpret the regulatory scheme for assessment of development at local, regional, state and commonwealth levels. This will also 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.
- Describe 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 produce research findings in appropriate oral and written arguments.

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. A supplementary reading guide will be provided prior to commencement of the course. 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

<p>Module 1</p>	<p>Introduction to Unit</p> <p>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.</p>
<p>Module 2</p>	<p>Local Government Overview - Role in Planning and Development Law</p> <p>Powers, Functions and Environmental Responsibilities; history; broadening and narrowing the sphere of influence; relationship with state government - Overview of <i>Local Government Act</i></p>
<p>Module 3</p>	<p>Land Use Planning – Theoretical Background</p> <p>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</p>
<p>Module 4</p>	<p>Planning Through the Environmental Prism</p> <p>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</p>
<p>Module 5</p>	<p>Environmental Planning Instruments</p> <p>SEPPs; LEPs; legal authority to create and manage plans; operation of zones; relationship to development applications and approval; adherence to best practice planning principles</p>

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
Module 7	Major Projects and the Approval Process - NSW State Significant Development; State Significant Infrastructure
Module 8	Environmental Assessment and Approval Process - Federal Relationship between State and Commonwealth; Overview of assessment and approval process under the EPBC Act 1999 (Cth)
Module 9	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
Module 10	Changes to Planning Law in NSW [please note this module might be moved to earlier in the schedule depending on legislative changes]
Module 11	Intersection between Planning Law and other Environmental Legal Regimes SRLUP and CSG; Heritage Law; the future of Planning Law

Module 12	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
Module 13	Revision of unit

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 tutorial, 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.

External students must attend each day of the On Campus Session.

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.

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

PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen fields.

This graduate capability is supported by:

Learning outcomes

- Describe and analyze key principles and policies underlying planning and development law.
- Distinguish and interpret the regulatory scheme for assessment of development at local, regional, state and commonwealth levels. This will also include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision –making.
- Identify and assess the principles and policies of protecting biodiversity, promoting ESD and adapting and mitigating the effects of climate change relevant to planning and development law.
- Describe 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 produce research findings in appropriate oral and written arguments.

Assessment tasks

- Class Participation
- Research Essay
- Research Assignment

PG - Critical, Analytical and Integrative Thinking

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

Learning outcomes

- Distinguish and interpret the regulatory scheme for assessment of development at local,

regional, state and commonwealth levels. This will also include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision –making.

- Identify and assess the principles and policies of protecting biodiversity, promoting ESD and adapting and mitigating the effects of climate change 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.
- Describe 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

- Reflective paper
- Research Essay
- Research Assignment

PG - Research and Problem Solving Capability

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

Learning outcomes

- Distinguish and interpret the regulatory scheme for assessment of development at local, regional, state and commonwealth levels. This will also include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision –making.
- 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.
- Describe 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 produce research findings in appropriate oral and written arguments.

Assessment tasks

- Research Essay
- Research Assignment

PG - Effective Communication

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

Learning outcomes

- Describe 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 produce research findings in appropriate oral and written arguments.

Assessment tasks

- Class Participation
- Reflective paper
- Research Essay
- Research Assignment

PG - Engaged and Responsible, Active and Ethical Citizens

Our postgraduates will be ethically aware and capable of confident transformative action in relation to their professional responsibilities and the wider community. They will have a sense of connectedness with others and country and have a sense of mutual obligation. They will be able to appreciate the impact of their professional roles for social justice and inclusion related to national and global issues

This graduate capability is supported by:

Learning outcomes

- Identify and assess the principles and policies of protecting biodiversity, promoting ESD and adapting and mitigating the effects of climate change 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.

- Describe 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
- Reflective paper
- Research Essay
- Research Assignment

PG - Capable of Professional and Personal Judgment and Initiative

Our postgraduates will demonstrate a high standard of discernment and common sense in their professional and personal judgment. They will have the ability to make informed choices and decisions that reflect both the nature of their professional work and their personal perspectives.

This graduate capability is supported by:

Learning outcomes

- Describe and analyze key principles and policies underlying planning and development law.
- Distinguish and interpret the regulatory scheme for assessment of development at local, regional, state and commonwealth levels. This will also include the powers, functions and environmental responsibilities of each tier of government with a focus on local government environmental decision –making.
- Identify and assess the principles and policies of protecting biodiversity, promoting ESD and adapting and mitigating the effects of climate change relevant to planning and development law.
- Describe 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

- Research Essay
- Research Assignment