



LAW 861

Local Government and Planning Law

S1 External 2015

Dept of Law

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General Information

Unit convenor and teaching staff

Unit Convenor

Paul Govind

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Contact via paul.govind@mq.edu.au

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 or LAWS 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:

Acquire specialized knowledge of the 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 study will include the powers, functions

and environmental responsibilities of each tier of government with a focus on local government decision-making in the context of land use management.

Critically analyze the prospects for implementing Ecologically Sustainable Development using legal regulatory instruments at both the state and federal level.

Examine the relevance of theories of public participation in the context of environmental law role in assessing the effectiveness and accountability of public authorities (executive and judicial) and citizens involved in environmental planning and assessment with a focus on the local and state levels of government.

Acquire an advanced and integrated understanding of both the merits and judicial review procedures of land use development decisions in the Land and Environment Court of New South Wales.

Display expertise in forecasting environmental challenges that will affect planning law in the future and how to combat these issues whilst balancing competing interests related to economic benefits of land use planning and development.

Display independent and autonomous research and expert judgment regarding legal and policy resolution of future problems for land use planning and development law.

Assessment Tasks

Name	Weighting	Due
<u>Class Participation</u>	10%	Every week (alternatively OCS)
<u>Reflective paper</u>	10%	23/03/2015
<u>Research Essay</u>	30%	13 April 2015
<u>Research Assignment</u>	50%	9 June 2015

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:

- Acquire specialized knowledge of the 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 study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government decision-making in the context of land use management.
- Critically analyze the prospects for implementing Ecologically Sustainable Development using legal regulatory instruments at both the state and federal level.
- Display independent and autonomous research and expert judgment regarding legal and policy resolution of future problems for land use planning and development law.

Reflective paper

Due: **23/03/2015**

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 theoretical frameworks in the context 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:

- Examine the relevance of theories of public participation in the context of environmental law role in assessing the effectiveness and accountability of public authorities (executive and judicial) and citizens involved in environmental planning and assessment with a focus on the local and state levels of government.
- Acquire an advanced and integrated understanding of both the merits and judicial review procedures of land use development decisions in the Land and Environment Court of New South Wales.
- Display independent and autonomous research and expert judgment regarding legal and policy resolution of future problems for land use planning and development law.

Research Essay

Due: **13 April 2015**

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 13, 2015.

On successful completion you will be able to:

- Acquire specialized knowledge of the 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 study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government decision-making in the context of land use management.
- Critically analyze the prospects for implementing Ecologically Sustainable Development using legal regulatory instruments at both the state and federal level.
- Examine the relevance of theories of public participation in the context of environmental law role in assessing the effectiveness and accountability of public authorities (executive and judicial) and citizens involved in environmental planning and assessment with a focus on the local and state levels of government.
- Display expertise in forecasting environmental challenges that will affect planning law in the future and how to combat these issues whilst balancing competing interests related to economic benefits of land use planning and development.

Research Assignment

Due: **9 June 2015**

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. Broad based themes and frameworks that can be used as the basis for the essay will be released by the convenor once Session 1 has commenced. 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:

- Acquire specialized knowledge of the 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 study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government decision-making in the context of land use management.
- Critically analyze the prospects for implementing Ecologically Sustainable Development using legal regulatory instruments at both the state and federal level.
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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.**

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. Readings are available via the “Unit readings” tab in MultiSearch on the library website. Readings are available via the “Unit readings” tab in MultiSearch on the library website 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 1	<p><u>Introduction to Unit - Where is planning law headed and where has it been?</u></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>Recent history of attempted change; is planning law in a state of flux in NSW? the relevance of ecologically sustainable development (what does this concept mean? What role does the idea fulfill?); planning instruments (regulatory, fixed, flexible etc.), importance of culture understanding our perceptions of risk; current debates surrounding reduction of so-called green tape.</p>
Module 2	<p><u>Local Government Overview - Role in Planning and Development Law</u></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>Theories and rationales that frame the debate surrounding local government; see international law and policy (international soft law) for guidance re the role of LG in environmental law and policy</p>
Module 3	<p><u>Land Use Planning – Theoretical Background</u></p> <p>Planning as a discipline; purpose of land use planning – why regulate land use? 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>Introduction to concept of 'environmental risk' - different versions or perceptions of risk; risk to environment (ecosystems) consequent risk to infrastructure and human populations.</p>

Module 4	<p><u>Planning Through the Environmental Prism</u></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</i></p>
Module 5	<p><u>Environmental Planning Instruments</u></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	<p><u>Development Control and Approval Process - NSW</u></p> <p>Overview of different types of development; criteria; relationship between development zoning and planning; legal obligations attached to certain development categories; relationship between legal instruments and broader governmental policy on land use planning and development; Environmental Impact Assessment.</p> <p>Case law dealing with Environmental Impact Assessment – when is it triggered, what is to be included, what is it's overall purpose in the context of decision making</p>
Module 7	<p><u>Major Projects and the Approval Process - NSW</u></p> <p>State Significant Development; State Significant Infrastructure</p>
Module 8	<p><u>Environmental Assessment and Approval Process - Federal</u></p> <p>Relationship between State and Commonwealth; Overview of assessment and approval process under the EPBC Act 1999 (Cth); Federal government's one stop shop policy and effect upon environmental outcomes.</p>
Module 9	<p><u>Land and Environment Court</u></p> <p>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; pub</p>
Module 10	<p><u>Emerging Environmental Challenges to Local Government</u></p> <p>Global environment issues, coastal zone management and prospect of increased liability; biodiversity conservation and preservation; context of proposed changes to NSW law relating to planning and development and devolution of responsibility; management of population distribution; theme of risk management.</p>
Module 11	<p><u>Climate change and planning law (case study)</u></p> <p>Role of planning law as an effective tool in mitigating greenhouse gas emissions; adapting to climate related impacts such as sea level rise; increased bush fire risk; prospects of risk to present and future development gains.</p>

Module 12	<p><u>Natural disasters and planning law (case study)</u></p> <p>The use of planning and development law to mitigate/reduce risks of natural disasters; distinction between rapid and slow onset disasters; devolution of responsibility for managing disaster risk; public/private divide; relevance of climate change.</p>
Module 13	<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/

Results

Results shown in *iLearn*, or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit ask.mq.edu.au.

Attendance Policy

Internal students are required to attend the weekly tutorials – If you cannot attend a tutorial you must email your tutor to inform them of your absence. Extended absences from tutorials must meet the criteria for the Disruption to Studies Policy and be approved by the Unit Convenor. Applications for Disruption to Studies are made online at ask.mq.edu.au.

Tutors will raise any concerns about poor participation with the student involved. Students will

be given an opportunity to submit remedial work where there are concerns about participation or unexplained absences

Assessment Policy

Students must comply with the due date. In the absence of a successful application under the Disruption To Studies Policy, 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 - 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

- Acquire specialized knowledge of the 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 study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government decision-making in the context of land use management.
- Critically analyze the prospects for implementing Ecologically Sustainable Development using legal regulatory instruments at both the state and federal level.
- Acquire an advanced and integrated understanding of both the merits and judicial review procedures of land use development decisions in the Land and Environment Court of New South Wales.
- Display independent and autonomous research and expert judgment regarding legal and policy resolution of future problems for land use planning and development law.

Assessment tasks

- Research Essay
- Research Assignment

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

- Acquire specialized knowledge of the 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 study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government decision-making in the context of land use management.
- Critically analyze the prospects for implementing Ecologically Sustainable Development using legal regulatory instruments at both the state and federal level.
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New South Wales.

- Display expertise in forecasting environmental challenges that will affect planning law in the future and how to combat these issues whilst balancing competing interests related to economic benefits of land use planning and development.

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 study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government decision-making in the context of land use management.
- Critically analyze the prospects for implementing Ecologically Sustainable Development using legal regulatory instruments at both the state and federal level.
- Examine the relevance of theories of public participation in the context of environmental law role in assessing the effectiveness and accountability of public authorities (executive and judicial) and citizens involved in environmental planning and assessment with a focus on the local and state levels of government.
- Acquire an advanced and integrated understanding of both the merits and judicial review procedures of land use development decisions in the Land and Environment Court of New South Wales.
- Display independent and autonomous research and expert judgment regarding legal and policy resolution of future problems for land use planning and development law.

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 study will include the powers, functions and environmental responsibilities of each tier of government with a focus on local government decision-making in the context of land use management.
- Examine the relevance of theories of public participation in the context of environmental law role in assessing the effectiveness and accountability of public authorities (executive and judicial) and citizens involved in environmental planning and assessment with a focus on the local and state levels of government.
- Acquire an advanced and integrated understanding of both the merits and judicial review procedures of land use development decisions in the Land and Environment Court of New South Wales.
- Display expertise in forecasting environmental challenges that will affect planning law in the future and how to combat these issues whilst balancing competing interests related to economic benefits of land use planning and development.

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

- Acquire an advanced and integrated understanding of both the merits and judicial review procedures of land use development decisions in the Land and Environment Court of

New South Wales.

- Display expertise in forecasting environmental challenges that will affect planning law in the future and how to combat these issues whilst balancing competing interests related to economic benefits of land use planning and development.
- Display independent and autonomous research and expert judgment regarding legal and policy resolution of future problems for land use planning and development law.

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

- Critically analyze the prospects for implementing Ecologically Sustainable Development using legal regulatory instruments at both the state and federal level.
- Examine the relevance of theories of public participation in the context of environmental law role in assessing the effectiveness and accountability of public authorities (executive and judicial) and citizens involved in environmental planning and assessment with a focus on the local and state levels of government.
- Acquire an advanced and integrated understanding of both the merits and judicial review procedures of land use development decisions in the Land and Environment Court of New South Wales.

Assessment tasks

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

Changes from Previous Offering

Changes from 2014:

Environment and planning law remains in a state of flux in the early stages of 2015. In 2014 the change of leadership in the NSW government meant that the process initiated by the ousted O'Farrell regime in 2011 has yet to result in the full-scale legislative changes to the current legislative apparatus under the *Environmental Planning and Assessment Act 1979* (NSW).

The election of the Abbott government at federal level has also resulted in changes to planning and development law and consequently how this unit is taught. The emergence of the 'one stop shop' policy has altered the relationship between state and federal levels of environmental assessment and approval.

This year will see a slight change in emphasis. Across the globe the role of local government is receiving more attention in the context of international and national environmental change motivated in part by the identification of environmental risk. As such risk will be one of the guiding overall themes for the course in the context of contemporary and future challenges to planning and development law.