LAW 490

Local Government and Planning Law

S1 Day 2015

Dept of Law

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General Information

Unit convenor and teaching staff Unit Convenor Paul Govind paul.govind@mq.edu.au Contact via paul.govind@mq.edu.au
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
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, explain and apply the regulatory scheme for assessment and approval of land use development at federal, state and local 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 analyse and evaluate the principles and policies and promoting Ecologically Sustainable Development in contexts relevant to planning and development law at the state and federal level.
Evaluate 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.
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 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.
Undertake research of contemporary and future problems for land use planning and development law and policy and report such research findings in appropriate oral and written arguments.

Assessment Tasks

Name	Weighting	Due
Class Participation	15%	Ongoing
LEP research task	0%	End of Week/Module 3
Research Essay	35%	April 10
FInal Assessment	50%	June 12

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, explain and apply the regulatory scheme for assessment and approval of land use development at federal, state and local 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 analyse and evaluate the principles and policies and promoting Ecologically Sustainable Development in contexts relevant to planning and development law at the state and federal level.
- Evaluate 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.
- 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 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.
- Undertake research of contemporary and future problems for land use planning and development law and policy and report such research findings in appropriate oral and written arguments.

LEP research task

Due: **End of 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 (like all assessment tasks) 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 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 Essay

Due: **April 10**
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 10, 2015.

On successful completion you will be able to:

- Describe the key principles and policies underlying planning and development law.
- Identify, explain and apply the regulatory scheme for assessment and approval of land use development at federal, state and local 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 analyse and evaluate the principles and policies and promoting Ecologically Sustainable Development in contexts relevant to planning and development law at the state and federal level.

- Evaluate 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.
- Analyze 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.
- Undertake research of contemporary and future problems for land use planning and development law and policy and report such research findings in appropriate oral and written arguments.

FInal Assessment

Due: **June 12**
Weighting: **50%**

A take-home exam involving hypotheitcal 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.
- Identify, explain and apply the regulatory scheme for assessment and approval of land use development at federal, state and local 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 analyse and evaluate the principles and policies and promoting Ecologically Sustainable Development in contexts relevant to planning and development law at the state and federal level.
- Evaluate 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.
- 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 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.

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 dicussion 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. 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	Introduction to Unit - Where is planning law headed and where has it been? 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 *Environmental Planning and Assessment Act* and *Local Government Act* and others. 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.
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 *Local Government Act* 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
Module 3	Land Use Planning – Theoretical Background 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. Introduction to concept of 'environmental risk' - different versions or perceptions of risk; risk to environment (ecosystems) consequent risk to infrastructure and human populations.
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; *Environmental Planning and Assessment Act 1979* (NSW) - 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; relationship between legal instruments and broader governmental policy on land use planning and development; Environmental Impact Assessment 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
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); Federal government's one stop shop policy and effect upon environmental outcomes.
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	Emerging Environmental Challenges to Local Government 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.
Module 11	Climate change and planning law (case study) 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.
Module 12	Natual disasters and planning law (case study) The use of planning and development law to mitigate/reduce risks of natural disasters; distinction between rapid and slow onset disasters; devolution of responsbility for managing disaster risk; public/private divide; relevance of climate change.
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/

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.

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 indentification 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.