



LAWS540

Local Government and Planning Law

S1 External 2017

Dept of Law

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General Information

Unit convenor and teaching staff

Unit Convenor

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Credit points

3

Prerequisites

(24cp in LAW or LAWS units) or (39cp at 100 level or above including POL207) or ((ENVG212 or GEOP212) 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:

Apply the key principles, policies and ideologies 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.

Critically analyse and evaluate the principles and implementation of Ecologically

Sustainable Development in contexts relevant to planning and development law at each level of government

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.

Critically analyze the Environmental Planning and Assessment Act and related planning instruments in providing legal regulation for land use management.

Students will demonstrate an ability to exercise autonomy in their research and writing.

General Assessment Information

In the absence of a successful application for special consideration due to a disruption to studies, any assessment task submitted after its published deadline will not be graded and will receive a mark of zero. Applications for a Disruption to Studies are made electronically via ask.mq.edu.au and should be accompanied by supporting documentation. Students should refer to the [Disruption to Studies policy](#) for complete details of the policy and a description of the supporting documentation required.

“Word limits will be strictly applied and work above the word limit will not be marked.

“All assessments in the Unit are to be submitted electronically. Plagiarism detection software is used in this Unit.”

Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Class Participation</u>	10%	No	Ongoing
<u>LEP research task</u>	0%	No	End of Week/Module 3
<u>Research Essay</u>	40%	No	April 21
<u>Final Assessment</u>	50%	No	6 - 8 June

Class Participation

Due: **Ongoing**

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
- 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 Convenor. In other words, it is not the job of the Convenor to engage you in discussion so that you may avail yourself of the class participation assessment.

On successful completion you will be able to:

- Apply the key principles, policies and ideologies 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.
- Critically analyse and evaluate the principles and implementation of Ecologically Sustainable Development in contexts relevant to planning and development law at each level of government
- 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.
- Critically analyze the Environmental Planning and Assessment Act and related planning instruments in providing legal regulation for land use management.

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:

- Apply the key principles, policies and ideologies 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 21**

Weighting: **40%**

All students are required to answer a conceptually based research essay question in 2,500 words based *primarily* (but NOT exclusively) on the unit readings for weeks 1 to 7 and additional references as set out on the *Course Schedule and Reading List*. As stated in the Learning Outcomes students are required to conduct research outside the provided material to find ideas

and information appropriate to solving problems (or answering questions) that are posed to them and relevant to the issues under examination.

The question(s) will be released in the third week of the semester.

This task (like all assessment tasks) is to be submitted via iLearn.

On successful completion you will be able to:

- Apply the key principles, policies and ideologies 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.
- Critically analyse and evaluate the principles and implementation of Ecologically Sustainable Development in contexts relevant to planning and development law at each level of government
- 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.
- Critically analyze the Environmental Planning and Assessment Act and related planning instruments in providing legal regulation for land use management.
- Students will demonstrate an ability to exercise autonomy in their research and writing.

Final Assessment

Due: **6 - 8 June**

Weighting: **50%**

An assessment task involving hypothetical scenarios and giving appropriate legal advice testing practical application of law to facts will be released via the iLearn page. Further details will be provided during the course of the semester.

This task (like all assessment tasks) is to be submitted via iLearn.

On successful completion you will be able to:

- Apply the key principles, policies and ideologies 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.
- Critically analyse and evaluate the principles and implementation of Ecologically Sustainable Development in contexts relevant to planning and development law at each level of government
- 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.
- Critically analyze the Environmental Planning and Assessment Act and related planning instruments in providing legal regulation for land use management.

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 9 hours study per credit point per week (including recess and exam period) . 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* (4th Edition, The Federation Press, 2016)

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	<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 Act 1979</i> (NSW) - Overview; history; aims and objectives</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; public interest litigation</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	Revision of unit
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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_2016.html

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

Complaint Management Procedure for Students and Members of the Public http://www.mq.edu.au/policy/docs/complaint_management/procedure.html

Disruption to Studies Policy (in effect until Dec 4th, 2017): http://www.mq.edu.au/policy/docs/disruption_studies/policy.html

Special Consideration Policy (in effect from Dec 4th, 2017): <https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policies/special-consideration>

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.

Detailed marking rubrics will be made available on iLearn. Markers in this Unit undertake a process to establish a common marking standard and all Fail papers are double marked.

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://www.mq.edu.au/about_us/offices_and_units/information_technology/help/.

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

Graduate Capabilities

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

- Critically analyse and evaluate the principles and implementation of Ecologically Sustainable Development in contexts relevant to planning and development law at each level of government
- 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.
- Students will demonstrate an ability to exercise autonomy in their research and writing.

Assessment tasks

- Class Participation
- Research Essay

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

- Apply the key principles, policies and ideologies 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.
- 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.
- Critically analyze the Environmental Planning and Assessment Act and related planning instruments in providing legal regulation for land use management.

Assessment tasks

- LEP research task
- Final Assessment

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

- Apply the key principles, policies and ideologies underlying planning and development law.
- 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.

- Students will demonstrate an ability to exercise autonomy in their research and writing.

Assessment tasks

- Research Essay
- Final Assessment

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

- Apply the key principles, policies and ideologies 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.
- Critically analyse and evaluate the principles and implementation of Ecologically Sustainable Development in contexts relevant to planning and development law at each level of government
- 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.
- Critically analyze the Environmental Planning and Assessment Act and related planning instruments in providing legal regulation for land use management.
- Students will demonstrate an ability to exercise autonomy in their research and writing.

Assessment tasks

- Class Participation
- LEP research task
- Research Essay
- Final Assessment

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

- Critically analyse and evaluate the principles and implementation of Ecologically Sustainable Development in contexts relevant to planning and development law at each level of government
- 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.
- Critically analyze the Environmental Planning and Assessment Act and related planning instruments in providing legal regulation for land use management.
- Students will demonstrate an ability to exercise autonomy in their research and writing.

Assessment tasks

- Class Participation
- Research Essay
- Final Assessment

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, explain and apply the regulatory scheme for assessment and approval of land use development at federal, state and local levels.
- Critically analyse and evaluate the principles and implementation of Ecologically

Sustainable Development in contexts relevant to planning and development law at each level of government

- 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.
- Critically analyze the Environmental Planning and Assessment Act and related planning instruments in providing legal regulation for land use management.

Assessment tasks

- LEP research task
- Final Assessment

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

- Apply the key principles, policies and ideologies 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.
- Critically analyse and evaluate the principles and implementation of Ecologically Sustainable Development in contexts relevant to planning and development law at each level of government
- 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.

Assessment tasks

- Class Participation
- Research Essay
- Final Assessment

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

- Critically analyse and evaluate the principles and implementation of Ecologically Sustainable Development in contexts relevant to planning and development law at each level of government

Assessment tasks

- Research Essay
- Final Assessment

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

- Apply the key principles, policies and ideologies 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.
- Critically analyse and evaluate the principles and implementation of Ecologically

Sustainable Development in contexts relevant to planning and development law at each level of government

- 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.

Assessment tasks

- LEP research task
- Research Essay
- Final Assessment

Changes from Previous Offering

Please note, the 4th edition of the textbook will be used in 2016 and is available in March, 2016.