



# LAW 861

## Local Government and Planning Law

S1 Day 2019

*Macquarie Law School*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

Paul Govind

[paul.govind@mq.edu.au](mailto:paul.govind@mq.edu.au)

Contact via [paul.govind@mq.edu.au](mailto:paul.govind@mq.edu.au)

620 6 First Walk (formerly W3A)

Wednesday 2- 4pm

Credit points

4

Prerequisites

Admission to MEnvPlan or MIntEnvLaw or MEnvLaw or MEnvMgt or MPlan or MWldMgt or GradCertEnvPlan or LLM or GradDiplntRel or MPPP or GradDipPP or 42cp in LAW or LAWS units at 400 or 500 level or (admission to JD and 24cp 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 and demonstrate specialized knowledge of the principles and policies underlying planning and development law.

Distinguish and interpret the regulatory scheme for land use management. This study will

include the powers, functions and environmental responsibilities of each tier of government.

Critically analyze the challenges for implementing Ecologically Sustainable Development using legal regulatory instruments at all levels of government.

Examine the relevance of legal review mechanisms 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.

Demonstrate 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.

## General Assessment Information

**Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline. No late submissions will be accepted for timed assessments.**

Detailed marking rubrics will be made available on iLearn.

All assessments that receive a FAIL grade are double marked.

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

Where there is a word limit no work over the limit will be read by the marker.

All written work must (where relevant) be referenced in accordance with the ***Australian Guide to Legal Citation (4th edition)***. Please use this link: <https://law.unimelb.edu.au/mulr/aglc>

## Assessment Tasks

Name	Weighting	Hurdle	Due
<a href="#">Class and online Participation</a>	20%	No	Every week (alternatively OCS)
<a href="#">Research Essay</a>	30%	No	11:55pm; 22 April

Name	Weighting	Hurdle	Due
<u>Research Assignment</u>	50%	No	11:55pm; 7 June

## Class and online Participation

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

Weighting: **20%**

Participation is composed of two tasks - in class and online participation.

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 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.

### Online participation

Starting in Week 3 a forum will be open each week for a period of two weeks.

Each forum will be based upon a media article selected and posted by the Convenor that focuses upon an issue relevant to environmental planning law.

Students are to post a reflective response to topics/issues raised in the article. Your reflections should draw on your past knowledge and experience, your new knowledge (from the textbook, readings and lectures) and your conclusions about any changes in your attitudes or future practice that will be based on this experience. Further guidance on how to draft a reflective response will be provided through the iLearn page for the unit.

You need to **complete a forum posting and reply to a posting by another student** that meets the relevant rubric (made available on iLearn) in at least 2 of the 4 forums over the session in order to be eligible to submit and receive a grade for your Assessment Task.

Students may post on as many forums as they like through the session and nominate the 2 postings of their preference for the purposes of assessment.

Once you have posted your reflections, you will be able to see the questions and answers of your fellow seminar colleagues. You may respond and engage in discussion with as many of the postings each week as you wish.

On successful completion you will be able to:

- Acquire and demonstrate specialized knowledge of the principles and policies underlying planning and development law.
- Distinguish and interpret the regulatory scheme for land use management. This study will include the powers, functions and environmental responsibilities of each tier of government.
- Critically analyze the challenges for implementing Ecologically Sustainable Development using legal regulatory instruments at all levels of government.
- 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: **11:55pm; 22 April**

Weighting: **30%**

All students are required to answer a set conceptually based essay question 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*. Further research should therefore also be undertaken.

The question(s) will be released in week 3 of the 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.

Word length - 2,500 words (excluding references).

The task is to be submitted through turnitin via iLearn.

On successful completion you will be able to:

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- Critically analyze the challenges for implementing Ecologically Sustainable Development using legal regulatory instruments at all levels of government.
- Examine the relevance of legal review mechanisms 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: **11:55pm; 7 June**

Weighting: **50%**

Students are to draft a submission in relation to a major project that is under assessment by the NSW government.

The submission is to be based upon a scenario provided by the Convenor.

The scenario will require the student to research the discrete and relevant areas of Planning Law and where relevant Environmental Law. The relevant areas of law will be drawn from the modules covered through the entire unit.

The primary emphasis should be on a critical evaluation of Planning Law and an analytical approach to the issues being considered.

Students will be assessed on the basis of their understanding and identification of the relevant legal principles, analysis and evaluation of the issues, quality and depth of research, critical and interdisciplinary approach, organisation, structure and proper referencing style. Clarity of expression, presentation of argument, responsiveness to question will also be taken into account.

Students must consult the prescribed reading materials. However, this is a research based assessment and students are expected to extend research beyond course materials and references prescribed in the Unit Guide.

Word Length - 3,000 (excluding references).

The task is to be submitted through turnitin via iLearn.

On successful completion you will be able to:

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- Examine the relevance of legal review mechanisms 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.
- Demonstrate 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.
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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

The workload in a 3cp undergraduate unit and a 4cp postgraduate unit is equivalent to 150 hours. A student should devote ten hours of study per week to the unit (inclusive of listening to lectures, required reading, tutorials and assessment preparation.)

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 need access to a computer and reliable internet

access in order to operate iLearn.

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 -**

**There is no prescribed textbook for this course in 2019. The materials will consist of articles (peer reviewed and non-peer reviewed), book chapters, cases, legal instruments and other publications.**

**This will be detailed in a List of Readings published on iLearn in the week prior to the commencement of Session 1, 2019.**

**Some key chapters of the textbook used in previous years will be listed. Copies will be placed on reserve in the Library.**

Lyster, R., Lipman, Z., Franklin, N., Wiffen., G and Pearson, L *Environmental and Planning Law in NSW* (4th Edition, The Federation Press, 2016)

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

## **Unit Schedule**

Week 1 - Overview of planning and development law system in NSW and Commonwealth jurisdictions

Week 2 - Theoretical basis of land use planning; role of law in regulating land use planning

Week 3 - Land use planning and environmental protection; role of law in introducing environmental considerations into planning law

Week 4 - History of environment and planning law in NSW and introduction to the Land and Environment Court

Week 5 - Planning law instruments in NSW

Week 6 - Development application, assessment and approval processes; role of Environmental Impact Assessment in NSW

Week 7 - Major projects/infrastructure development assessment process in NSW

Week 8 - Dispute Resolution; analysis of the role of the Land and Environment Court



Week 9 - Federal legal oversight of development and Environmental Impact Assessment

Week 10 - Case Study: Climate change and planning law

Week 11 - Case Study: Biodiversity Protection and planning law

Week 12 - Review and revision

Week 13 - Final Assessment due

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central>). Students should be aware of the following policies in particular with regard to Learning and Teaching:

- [Academic Appeals Policy](#)
- [Academic Integrity Policy](#)
- [Academic Progression Policy](#)
- [Assessment Policy](#)
- [Fitness to Practice Procedure](#)
- [Grade Appeal Policy](#)
- [Complaint Management Procedure for Students and Members of the Public](#)
- [Special Consideration Policy](#) (**Note:** *The Special Consideration Policy is effective from 4 December 2017 and replaces the Disruption to Studies Policy.*)

Undergraduate students seeking more policy resources can visit the [Student Policy Gateway](https://students.mq.edu.au/support/study/student-policy-gateway) (<https://students.mq.edu.au/support/study/student-policy-gateway>). It is your one-stop-shop for the key policies you need to know about throughout your undergraduate student journey.

If you would like to see all the policies relevant to Learning and Teaching visit [Policy Central](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/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/study/getting-started/student-conduct>

## Results

Results published on platform other than [eStudent](#), (eg. iLearn, Coursera etc.) 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](https://ask.mq.edu.au) or if you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@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](http://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](http://ask.mq.edu.au)

If you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@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/](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

### 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 and demonstrate specialized knowledge of the principles and policies underlying planning and development law.
- Distinguish and interpret the regulatory scheme for land use management. This study will

include the powers, functions and environmental responsibilities of each tier of government.

- Critically analyze the challenges for implementing Ecologically Sustainable Development using legal regulatory instruments at all levels of government.
- Demonstrate 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 and demonstrate specialized knowledge of the principles and policies underlying planning and development law.
- Distinguish and interpret the regulatory scheme for land use management. This study will include the powers, functions and environmental responsibilities of each tier of government.
- Critically analyze the challenges for implementing Ecologically Sustainable Development using legal regulatory instruments at all levels of government.
- Demonstrate 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**

- Class and online 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 land use management. This study will include the powers, functions and environmental responsibilities of each tier of government.
- Critically analyze the challenges for implementing Ecologically Sustainable Development using legal regulatory instruments at all levels of government.
- Examine the relevance of legal review mechanisms 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.
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- 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 - 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 land use management. This study will

include the powers, functions and environmental responsibilities of each tier of government.

- Examine the relevance of legal review mechanisms 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.
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- 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**

- Demonstrate 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 and online Participation
- 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 challenges for implementing Ecologically Sustainable Development using legal regulatory instruments at all levels of government.
- Examine the relevance of legal review mechanisms 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.
- Demonstrate 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 and online Participation
- Research Essay
- Research Assignment