
PLANNING LAW 413 and 512

Environmental Planning Law

Department of Planning
Faculty of Built Environment, Art and Design (BEAD)

UNIT OUTLINE

Semester 1 2010



Essential Administrative Information

Most of the information you need below can be found at the unit webpage in the online handbook. search at <http://handbook.curtin.edu.au/unitSearch.html>

Unit Title	Curtin Planning Law 413 Curtin Planning Law 512
Unit Description	Environmental Planning Law
Unit Study Package Number	308987 (v.1) 5158 (v.9)
Teaching Area	Lecture Room 320 Department of Urban and Regional Planning
Credit Value	25.0
Mode(s) of study	Either or both of Internal and External
Co-, Pre- and Anti-requisites	Planning Law 413 12755 (v.3) Governance 111 and 307900 (v.1) Introduction to Planning Law 112
Additional requirements	Nil
Core Unit status	If you are taking this unit as a required (core) unit in your course of study, you may be terminated from your course of study if you fail this unit twice
Result Type	Grade and Mark
Ancillary Fees and Charges	All fee information can be obtained through the Fees Centre. Visit http://www.fees.curtin.edu.au/index.cfm and/or by contacting the relevant Faculty Office.
Unit Controller	Denis McLeod
Contact Details	Phone 9383 3133 Location McLeods Barristers & Solicitors, Stirling Law Chambers, 220-222 Stirling Highway, Claremont 6010 Email dmcleod@mcleods.com.au
Unit Controller 2	Garry Middle Phone 9266 9058 Location <i>Building 201 Rm 608</i> Email: g.middle@curtin.edu.au
Unit Website	http://webct.curtin.edu.au [or replace with address]
Divisional Website	http://www.humanities.curtin.edu.au

Student Rights and Responsibilities

It is the responsibility of every student to be aware of all relevant legislation and policies and procedures relating to their rights and responsibilities as a student. These include:

- ◇ the Student Charter
- ◇ the University's Guiding Ethical Principles
- ◇ the University's policy and statements on plagiarism and academic integrity
- ◇ copyright principles and responsibilities
- ◇ the University's policies on appropriate use of software and computer facilities

Information is available through the University's "Student Rights and Responsibilities" web page:

<http://students.curtin.edu.au/administration/responsibilities.cfm>.

Please read this outline fully and keep it handy for reference throughout the semester.

Introduction

Persons proposing to undertake professional practice in the area of land use planning need a sound background in the statute and general law principles relevant to that practice. This course aims to provide that. Information and materials will be provided to enable students with a reasonable commitment to equip themselves with the information on the law necessary to introduce them to practice as professional planners.

The course will:

1. Introduce students to the statutes, rules, regulations and other sources of planning law; and
2. Apply to that law the benefit of practical experience in the application of the law, so as to facilitate the sensible and insightful use of the law in planning practice.

Learning Outcomes

The basic aim of the course is to make available the benefit of experience in planning law practice in an attempt to initiate student planners into the intricacies and problems of the interface between planning related laws and planning practice. To that end the following outcomes are intended:

- To place planning law in context with the totality of environment related law.
- To place environmental planning law in an overall context with land law and land tenure.
- To study the existing law of Western Australia relevant to planning, and the roots of that law.
- To consider other areas of law to the extent that they are relevant to environmental planning law and planning practice in W.A.

Content and Activities

The content and activities of the course can be summarized as the application of practical legal experience to the complex web of planning related laws so as to enable persons engaged in the planning profession to feel more relaxed about using and applying the laws in practice. To that end, lectures and other learning sessions will draw from the following topics:

1. Overview of the course.
2. Finding and citing the law.
3. The idea of environmental planning law, and its context with environmental law, administrative law, and land law.
4. The history of environmental planning law.
5. Land, land law, and land law concepts and principles important to environmental planning law.
6. Torrens title and subdivision of land for professional planners.
7. The Torrens system of registration of title to land.
8. The *Planning and Development Act 2005*, and its relationship to the *Town Planning and Development Act 1928*; the *Metropolitan Region Town Planning Scheme Act 1959*, and the *State Planning Commission Act 1985*.
9. Examination of the *Planning and Development Act 2005* in detail as a definition of the principal areas of planning practice.
10. The *Town Planning Regulations 1967*; and the *Planning and Development Regulations 2009*, and their practical application. Any new regulations applying under the P&D Act 2005, when they are published, will be considered alongside, or as substitutes for the above Regulations.
11. Local Planning Schemes; Redevelopment Schemes; significant State Planning Policies; other policies, and the multitude of other planning instruments that planners have to create or otherwise come to terms with.

12. The Metropolitan Region Scheme; other Region Schemes; WAPC Notices of Delegation; significant State Planning Policies, and the practical application of all of these.
13. A general consideration of Schemes, including:
 - (a) Zoning Schemes;
 - (b) Resumption Development Schemes;
 - (c) Guided Development Schemes;
 - (d) Redevelopment Schemes.
14. The laws relating to review of Planning Decisions, including:
 - (a) Part 14 of the *Planning and Development Act 2005*;
 - (b) *State Administrative Tribunal Act 2004*;
 - (c) *State Administrative Tribunal Rules 2004*;
 - (d) *State Administrative Tribunal Regulations 2004*.
15. Development control: methods used, and issues arising.
16. Conditions of Planning Approval: validity and reasonableness.
17. Enforcing Schemes.
18. Comparison of WA planning laws with planning laws in other jurisdictions.
19. Planning related authorities: The WAPC and the Ministry; Local Governments; Planning Minister; State Administrative Tribunal; and also EPA, Heritage Council, and Swan River Trust.
20. Land acquisition, compensation and injurious affection.
21. Administrative law.
22. Torts, contract, insurance, corruption, Codes of Conduct, Inquiries, Corruption and Crime Commission, and general liability issues for planners.

The above is a broad description of relevant topics. We will cover as many of those topics, and in as much depth, as possible.

How this unit works

(i) Lectures

Lectures are intended to introduce students to the intricacies and peculiarities of planning law in the most entertaining and informative way that this topic permits. Any interruption which adds to the illumination or entertainment value of the topic will be tolerated; other interruptions or questions should be delivered privately to the lecturer.

Preparation for lectures is vital in this course. Remember that you should be devoting 10 hours per week to this course. Leaving aside the 3 or 4 hours for lectures/tutorials/seminars, you should be putting in 6-7 hours each week in preparation. Your return from the course will be in proportion to your preparation.

(ii) Tutorials

Students may prepare for tutorials in groups of two or more or singly if preferred.

Every student must participate in the preparation of at least one tutorial topic.

The Topic for each tutorial will be made available no later than the preceding week. The topic must be researched and prepared for the relevant tutorial, and each of the students preparing the topic will be required to lead and participate in the discussion of the topic at the tutorial. Plans, overheads and other aids to presentation may be used. Other students **must be present** and should be prepared to participate in discussions, if only on the basis of a careful reading of lecture notes and hand-out material.

Each group preparing the topic for a tutorial should write up the notes into a paper to be handed in at the tutorial session. **Each student should prepare a separate paper** which should cover the **whole of the tutorial topic, not merely the part of the topic presented by that student**. If it is proposed to prepare a group paper, that proposal should be discussed with the Lecturer in advance and approval obtained.

(iii) Seminars

At seminars, topics prepared in preceding tutorials will be discussed by all students and all students should be prepared to make some informed contribution to the discussion.

Attendance is important. Non-attendance at sessions will be noted and taken into consideration in the final assessment.

Requirements to complete the unit

Some knowledge of planning principles and/or planning practice would be an advantage. Research skills are essential. Access to a computer/word processor for presentation of papers would be an advantage. Access to the major written laws detailed under "References" is essential at Learning Sessions. Access to the other written laws will be necessary to obtain full benefit from the course. **Use of public information from WAPC, DOP and service agency websites is not an acceptable substitute for research. Information provided in papers must be referenced to the actual statutory or other written law sources, or where appropriate to cases and texts or journals.**

Reading and Resources

Unit Materials

Reynolds and Solomon *The Property Development Process: Western Australia*.

Alexander, I., Greive, S., & Hedgecock, D., *Planning Perspectives from Western Australia: A Reader in Theory and Practice* (2010, forthcoming) Fremantle Press.

Development Assessment Forum (2005) *Leading Practice Model for Development Assessment* (http://www.daf.gov.au/reports_documents/leading_practice.aspx)

Hillier, J. (2002) *Shadows of Power: An Allegory of Prudence in Land-use Planning*, London: Routledge.

Kitchen, R. (2006) *Skills for Planning Practice*, Basingstoke: Palgrave.

Property Council of Australia/UDIA (2004) *Planning Processes Review (PPR) Study*, Perth: Property Council/UDIA.

Stein, Les, *Principles of Planning Law* (2008) Oxford University Press.

Thompson, M. (2007) *The Co-ordination of Land Release for Perth and Peel*, Perth: DPI.

Thompson, Susan (ed.), *Planning Australia: an overview of urban and regional planning* (2007) Cambridge University Press.

UDIA (2005) *Environmental Approvals Process Review*, Perth: UDIA.

State Administrative Tribunal (2009) *Town Planning Law Conference* (16 November 2009) http://www.sat.justice.wa.gov.au/T/town_planning_law_conference_november_2009.aspx

Western Australian Planning Commission, *Introduction to the Western Australian Planning System* (2007) <http://www.planning.wa.gov.au/Plans+and+policies/Publications/1468.aspx>

Western Australian Planning Commission, *State Planning Policy 1 State Planning Framework Policy* (2006) <http://www.planning.wa.gov.au/Plans+and+policies/Publications/750.aspx>

A reference list will be provided in the first contact session.

2. The following is also recommended for this unit:

See references below and reference list to be provided at first contact session.

References

Students should at the outset of the course have obtained a copy of the *Planning and Development Act 2005*. It can be obtained from State Print or probably through University Bookshops, or through electronic sources.

In addition to the *Planning and Development Act 2005*, it is highly desirable for you to have the following written laws as early as possible in the course:

Town Planning Regulations 1967;
Town Planning and Development (Subdivisions) Regulations 2000;
Metropolitan Region Scheme 1963.

Additionally, it would be wise also to have copies of the latest WAPC Notices of Delegation. They are available electronically.

Access to the following written laws would be useful. You should at least have access to the SAT Act and Rules, the Land Administration Act, the Environmental Protection Act, and the Heritage of W.A. Act on a 1 to 3 student basis.

State Administrative Tribunal Act 2004;
State Administrative Tribunal Rules 2004;
State Administrative Tribunal Regulations 2004;
Strata Titles Act 1995;
Land Administration Act 1997;
Public Works Act 1902;
Transfer of Land Act 1893;
Sale of Land Act 1970;
Environmental Protection Act 1986;
Heritage of Western Australia Act 1990;
East Perth Redevelopment Act 1991 and Scheme; and
Subiaco Redevelopment Act 1994; or
Midland Redevelopment Act 1999; or
Armadale Redevelopment Act 2001
Hope Valley Wattleup Redevelopment Act 2000;
Perry Lakes Redevelopment Act 2005;
Swan and Canning Rivers Management Act 2006.

Be careful to obtain all amendments for any Act or Regulations you obtain up to and including 2008.

From time to time additional references will be provided.

A principal reference list will be handed out early in the course.

Web-Based Resources

[AustLII Databases \(Australasian Legal Information Institute\);](#) [LexisNexis.](#)

Assessment

To pass this unit you must complete the preparation and presentation of a Tutorial Topic, the preparation of a Tutorial Paper, 5 short question/answer papers, and you must be present and equipped to participate during Tutorial and Seminar sessions. An examination will be set at the end of the course, but students willing and able to do a genuine research paper should seek the approval of the lecturer to do so, and to approve a topic, instead of sitting the examination.

Assessment Details

Assessment 1 (30%) - Tutorial

Continuous assessment:

Preparation of tutorial topic and presentation to group	10%
Preparation of tutorial paper	20%

Note that the **presentation** of the tutorial topic will be assessed and that assessment will form a part of the 30% mark for the tutorial section of the course. If you miss your presentation, you will miss that part of the available marks (unless special arrangements are made for external students).

Assessment 2 (40%) - Examination (or Research Paper if Approved)

The end of semester examination will be the major assessment vehicle, unless a research paper is approved. Students who believe they can prepare a separate topic of special interest within the scope of the course should discuss their proposed topic with the Presenter before the end of the fifth week.

Date for submission of completed Research Paper (if approved):

**by the second last contact week of the Semester.
to the Faculty Office or to the Unit Co-ordinator.**

N.B. Late submissions cause marking difficulties and therefore generally extensions cannot be given.

Short Question/Answer Papers (20%)

The short question/answer papers will be set to deal with key parts of the course and count for 20% of the total marks.

Participation (10%)

Participation in discussion and in the activities of the course generally will be assessed and will account for 10% of the total marks for the course. Presence of students at lectures, tutorials and seminars is essential to participation and will be taken account of in this part of the assessment.

Assessment Summary

Assessment	%	Due
Assessment 1	30	Assigned Tutorial due date
Examination	40	End of semester
Question/Answer Papers	20	Due-various dates
Participation	10	Week 14
Total	100	

Contacting us

During the semester you will need to contact team members for various reasons, and there are a number of ways to do this:

	Name	Room	Phone	Email
Coordinator	Denis McLeod		9383 3133	dmcleod@mcleods.com.au
Assisting Coordinator	Craig Slarke / Fiona Grgich		9383 3133	cslarke@mcleods.com.au fgrgich@mcleods.com.au
Technical Staff			9266 xxxx	xxxxx@curtin.edu.au
Faculty Office		201:312a	9266 2712	
Faculty Fax			9266 2711	
To Leave something for us		<p>Student work i.e. paper assignments, can be handed in to the Unit Controller or to the Faculty Student Offices, Building 201, Level 3, Room 312A. An after hours drop-off box is located at Building 201, Level 3, Room 317.</p> <p>If students wish to leave something for Department Heads it will need to be delivered to the Faculty Office Building 201, Level 3, Room 317, so that the mail can be registered.</p>		

Your tutor is a part time member of staff and is not freely available outside of your session times. Your tutor will tell you contact details in your first Learning Session.

Explanation of terms

To be explained during Learning Sessions.

Your Responsibilities in the Unit

1. You are expected to attend all sessions and to remain for the whole of each session, and attendance will be noted. One of the reasons for this is that some item of critical importance in Planning Law could be mentioned at any time and lack of knowledge of that item could critically affect you in practice.
2. You must submit the assessment materials. You cannot pass the course otherwise.
3. Short question/answer tests will be delivered at the times indicated in the Unit Study Calendar, and as 20% of the marks for the course is allocated to this element, you should ensure that you have a reasonable knowledge of all materials covered in the course to that time.
4. It will be difficult for you to manage in the course if you do not, from the outset, have a copy of the *Planning and Development Act 2005*. Note the comments under "References" above in regard to other reference material.
5. It is reasonably easy to obtain information from agencies active in the area of Planning Law through written materials published by the agencies, and through access to websites. It is expected that the research undertaken for Tutorials and Semester Projects will extend beyond the use of agency publications and website information. Downloading of agency information from websites into your papers will not enhance your marks, though they may be acceptable as support information. As a general rule agency information from websites is obtained from or based upon statutory or other sources. It is those sources which should ideally be the subject of your researches and your primary references, rather than the derivative form of information from the websites.

Policies

Late Assignments, Extensions, Supplementary Examinations, Deferred Assessment

It is your responsibility to read and familiarise yourself with the Policies and Guidelines set out by your division. You will be receiving these as a separate booklet and will include *Policies on Grading, Plagiarism, Copying Of Copyright Material By Students, Student Use Of Ict Facilities Within Humanities, Policy Statement, Introduction Guidelines, Confidentiality, and the Security Procedure at Curtin University*.

Unit Study Calendar

Semester 1 2010

Week	Date	Module	Topic	Assessment	Date Due
1	1 March	Lecture 1 Lecture 2 Lecture 3	<p>General Introduction to the Course.</p> <p>The Regulation of Planning Processes in WA</p> <p>1.1 Planners in the key planning processes.</p> <p>1.2 Provisions of the P&D Act relating to the key planning processes.</p> <p>1.3 Other statutes affecting planning processes.</p> <p>1.4 What interest is planning control intended to serve?</p> <p>Course Structure and Introduction to the Idea of Planning Law</p> <p>Framework of the law; finding the law and citation of references. Preparing Reports.</p>		
2	8 March	Lecture 4 Lecture 5 Short Test 1	<p>Environmental Planning Law in WA</p> <p>The Special Context of Planning in Perth and the Historical Background of Planning Law in WA</p> <p>Legislation for Planning Schemes and subdivision control</p> <p>Basic planning processes</p>		
3	15 March	Tutorial 1 Lecture 6 Lecture 7	<p>History of Planning Law and Torrens System</p> <p>History of Planning Law in WA</p> <p>Land; Land Law; Land Title Registration; Subdivision to produce lots with registerable titles</p> <p>Torrens system of Registration of Estates and Interests in Land; Legislation to Control Subdivision</p>		

4	22 March	<p>Tutorial 2</p> <p>Seminar 1</p> <p>Lecture 8</p>	<p>Torrens System and Subdivision</p> <p>Land and Land Law</p> <p>Subdivision and Subdivision Control; Planners in the Subdivision Process; Planning Schemes and Structure Plans Dealing with Subdivision.</p> <p>Planning and Development Act 2005. The 3 Planning Acts replaced:</p> <p>TP&D Act 1928 MRTPS Act 1959 WAPC Act 1985 P&D Act Parts 1, 2 and 3</p>		
5	29 March	Tuition Free Week			
6	5 April	Tuition Free Week			
7	12 April	<p>Tutorial 3</p> <p>Lecture 9</p> <p>Lecture 10</p> <p>Lecture 11</p> <p>Short Test 2</p>	<p>Torrens System and Subdivision</p> <p>Planning Schemes</p> <p>Categories of Planning Schemes: Region Planning Schemes; Redevelopment Schemes.</p> <p>Local Schemes: Zoning Schemes; Development Schemes.</p> <p>Making and amending of Region Planning Schemes. Metropolitan Region Scheme.</p> <p>Local Planning Schemes</p> <p>Making and amending local planning schemes.</p> <p>Planning Regulations 1967: Local Planning Strategy; Roles of local government, public, WAPC and Minister.</p> <p>Zoning Schemes; Development Schemes; Structure plans and infrastructure cost sharing.</p>		
8	19 April	<p>Lecture 12</p> <p>Lecture 13</p>	<p><i>Planning and Development Act 2005</i> Parts 6 to 9 inclusive. Other Major Planning Instruments, and Relationship Between Region Planning Schemes, Local Planning Schemes, Planning Control Provisions and other Written Laws.</p> <p><i>Planning and Development Act 2005</i> Part 10 - Subdivision and Issues Related to Subdivision.</p>		

9	26 April	<p>Tutorial 4</p> <p>Lecture 14</p> <p>Lecture 15</p> <p>Short Test 3</p>	<p>Region Planning Schemes; Local Planning Schemes and the Interrelationship Between Region and Local Schemes.</p> <p><i>Planning and Development Act 2005</i> Part 10 (cont'd). Development Control Issues including: Multiple Approvals; Conditions, Validity and Reasonableness; The Need to Consider Enforcement; Overlap of Development Control with Control of Building, Demolition, Signage, Extractive Industries, and Other Controls Affecting Land Usage.</p> <p><i>Planning and Development Act 2005</i> Part 11 - Compensation for Injurious Affection and Land Acquisition Issues Under Planning Schemes.</p> <p>Short Test 3.</p>		
10	3 May	<p>Tutorial 5</p> <p>Lecture 16</p> <p>Lecture 17</p>	<p>Development Control Issues; R-Codes; Building and Other Controls.</p> <p><i>Planning and Development Act 2005</i> Part 13 - Enforcement and Legal Proceedings; ss 214, 76 and 211 and the suggested Right of Appeal against a Scheme Amendment Refusal.</p> <p><i>Planning and Development Act 2005</i> Part 14 - Applications for Review; the SAT; Procedures on Appeal.</p>		
11	10 May	<p>Lecture 18</p> <p>Lecture 19</p> <p>Seminar 2</p>	<p>Miscellaneous Provisions of the <i>Planning and Development Act 2005</i> including: Region Scheme Funding; Schedule 7 Matters which may be Included in Schemes; Responsibility for Subdivisional Roads and Contribution between Original and Subsequent Subdividers Fronting a Road.</p> <p>Consideration of the Specific Role in the Planning System of: <i>Swan Valley Planning Act</i>; <i>Redevelopment Acts</i>; <i>Swan River Trust Act</i>; <i>Environmental Protection Act</i>; <i>Heritage of Western Australia Act</i>.</p> <p>Discussion of Issues Arising out of the Planning Related Legislation.</p>		
12	17 May	<p>Seminar 3</p> <p>Lecture 20</p> <p>Lecture 21</p> <p>Short Test 4</p>	<p>Scheme Enforcement; Applications to Review and Appeal Issues.</p> <p>Land Resumption and Compensation.</p> <p>Administrative Law.</p> <p>Short Test 4.</p>		

13	24 May	Lecture 22 Lecture 23 Tutorial 6	Administrative Law cont'd. Special Case of Local Governments in Administrative Law Controls. Land Resumption and Compensation. Administrative Law.		
14	31 May	Lecture 24 Seminar 4 Lecture 25	Semester Project Paper due. Torts, Contract, Insurance, Corruption, Codes of Conduct, Inquiries, Corruption and Crime Commission, and Liability Generally. Are the Controls on Administrative Action (a) too great, (b) inadequate ; or (c) acceptable? Planning Statutes and Subordinate Legislation. Some Issues arising out of Leading Cases.		
15	3 June (if required)	Seminar 5 Seminar 6 Tutorial 7 Short Test 5	Discussion of Issues covered throughout the Course. Discussion of Semester Project Topic. General (No paper). Short Test 5.		
16	14 June	Examinations (not for Planning Law)			