

Legal Profession Admission Board

September 2022

Planning Law

Examiner's Comments

General observations

1. Thirty seven (37) students sat the examination. None failed.
2. The examination covered subjects addressed in the course and required an understanding of general principles and planning law concepts. The questions set in the examination did not cover every subject addressed in the course.
3. The Examiner expected students to understand the subject matter, case law and materials addressed in the Law Extension Committee Planning Law course outline.
4. The Examiner set questions in the examination on subjects which, in her experience, a legal practitioner may likely come across in legal practice as a specialist working in the planning law and environmental law space or in general practice. In other words, the questions were aimed at testing basic knowledge of planning law.
5. Addressing climate change litigation in the Planning Law course is novel and this is currently a rapidly moving area of law covering many disciplines of law; for example, planning law and environmental law, corporations law, superannuation law and so on. The Examiner was an active member of the Law Society of NSW Working Party which published the Briefing Paper, *Climate Change Litigation, Trends, Cases and Future Directions*, November 2021.¹

About questions set in the examination

Students were invited to answer a maximum of four out of six questions set in the examination paper. Each question was worth a maximum of 20 marks; answering four questions was worth a maximum of 80 marks.² Four of the questions were divided into two parts with 10 marks on offer for answering each part. Another question was divided into three parts, with students required to answer two of those three parts with 10 marks on offer for each part.

¹ https://www.lawsociety.com.au/sites/default/files/2021-11/LS3660_PAP_ClimateChangeLitigation_2021-11-29.pdf

² Each candidate completed an assignment prior to sitting the examination. The assignment was worth a maximum of 20 marks; the assignment and examination paper were together worth a maximum of 100 marks.

The overall standard students achieved was good and very good. Out of the maximum possible 80 marks on offer for answering the examination paper, 46 was the lowest mark awarded out of 80 marks and 68 marks the highest mark out of 80 marks.

Final marks (that is, adding together marks awarded for completing the assignment and awarded for answering questions in the examination) ranged from 60% to 85%. This is wider in range than the previous semester when marks awarded ranged from 76% to 83%. This is probably because we had a larger group of students in this Winter Session semester as compared to the previous semester when we had ten students sitting the examination in Planning Law.

In the Examiner's opinion (and the Examiner was the lecturer³), students demonstrated a good understanding of the course, or at least that part of the course upon which they were examined. This may be because an open book examination allows students to prepare their answers in advance and provide more structured answers to examination questions as compared to a closed book examination. Students were advised in advance about topics featuring in the examination. It was a large class.

As lecturer, the Examiner found it pleasing to see a *very* large attendance at the Weekend School. Indeed, attendance at the Weekend School was the best the Examiner has seen in this subject, Planning Law. At the Weekend School, students were broken up into small groups so that they interacted together and addressed issues together when answering problem questions, thereby learning from each other as well as their lecturers,⁴ and experiencing collegiality with colleagues (as they may become) in the legal profession.

Teaching this semester was face-to-face with audio-visual recordings made up of lectures. Attendance at face-to-face lectures was low.

In the Examiner's opinion, it is vital students attend classes in person so that, among other things, they can ask questions, clarify points they do not understand, learn from each other and network with colleagues. From a lecturer's perspective, lecturing to students face-to-face creates a vibrant teaching environment to the mutual benefit of students and lecturer.

Teaching Planning Law uses pieces of legislation, environmental planning instruments and policies as well as State and local government websites. The course involves navigating back and forth using these tools to identify information students must understand. Students attending face-to-face have an enormous advantage as compared to those attending by audio-visual link.

³ Angela Penklis BA, LL.B., Solicitor of the Supreme Court of New South Wales; Deputy Chair of the Law Society of NSW Committee on Environmental Planning and Development

⁴ Lecturers at the Weekend School were Angela Penklis, see footnote 3, and Philip Sutherland LL.B. (Hons), LL.M. (Hons), Solicitor of the Supreme Court of New South Wales, lecturer and revising examiner in Planning Law. Philip was also a member of the Law Society of NSW Working Party preparing the Briefing Paper, *Climate Change Litigation, Trends, Cases and Future Directions*, November 2021. See in this regard footnote 1.

The Examiner's lecturing experience is that teaching via audio-visual link does not – however hard the lecturer tries, and the lecturer does try very hard – substitute for face-to-face teaching.

The Examiner as lecturer strongly recommends that face-to-face teaching is an imperative requirement for students enrolling in Planning Law and attending a certain minimum number of lectures face-to-face must be a requirement qualifying the student to sit the examination in Planning Law.

Comments on the assignment

Students scored well in the assignment with marks ranging from 13/20 to 17/20.

The assignment required answering a question relating to the law of characterization of development in New South Wales.

Examination questions

The Examiner has practised as a solicitor in private practice (for example, at Allens Linklaters and Minter Ellison) and in local government (that is, as head lawyer at Marrickville Council (as then called) and as head lawyer at City of Sydney) exclusively in the planning law and environmental law space for 30 years and more. Based on that experience, the Examiner considered these questions set in the examination were appropriate in a practical sense because they are topics legal practitioners may likely come across in legal practice (the number of students answering each question in the examination is set out in brackets):

1. Development and Planning Certificates (27 students)
2. Modification of Development Consent, Validity of Conditions of Consent and Infrastructure Contributions System in NSW (26 students)
3. Existing Use Rights (26 students)
4. Environmental Impact Assessment Process in NSW and Contemporary Issues in Environmental Impact Assessment (22 students)
5. Climate Change Litigation and *Sharma Case* and Trends in Climate Change Litigation in Australia (30 students), and
6. Development Standards and Variation of a Development Standard (17 students).

Comments on answering examination questions

Thirty students tackled Question 5 (*Sharma Case* and Climate Change Litigation) and so it may be useful to comment on the overall standard of their answering this question.

The two students awarded the lowest marks⁵ appeared to understand the two questions but did not provide sufficient information in the first part.

The student awarded the highest mark⁶ provided a very good case summary of material cases and analysis; their answer was very detailed and well structured.

In terms of the highest marks awarded for answering questions in the examination,⁷ students provided detailed analysis including citing cases in support of statement of principle.

The Legal Practice Admission Board instructed the Examiner that her comments cannot identify specific issues in students' answers. And so, the Examiner did not do so.

The Examiner did not give extra marks by way of compensating a student for their lack of face-to-face teaching and attending lectures.

Attendance at lectures

Attendance at lectures face-to-face this semester was very poor; for example, on one occasion, four students attending out of an enrolment of approximately 40 students. This makes for a disappointing lecturing experience. The Examiner believes this also makes for a disappointing student experience for a number of reasons about which she will explain if requested to do so. Lecturing by audio-visual link does not have the same, or adequate, interaction with students. The Examiner strongly recommends that attending lectures face-to-face is compulsory for those in the Sydney Metropolitan area,⁸ failing which the course will become, in essence, a correspondence course.

Angela Penklis

Examiner and lecturer in Planning Law

19 October 2022

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⁵ 12 marks.

⁶ 18 marks.

⁷ Two students were awarded 18 marks out of a maximum of 20 marks. One candidate was awarded 18 marks out of a maximum of 20 marks for answering question 4 (in two parts) relating to Environmental Impact Assessment. The other candidate was awarded 18 marks out of a maximum of 20 marks for answering question 5 (in two parts) relating to Climate Change.

⁸ And this must be genuinely enforced in the sense that using Granny's farm outside Ivanhoe NSW 2878, 800 kms from Sydney and 317 kms from Broken Hill, as one's home address when one lives in Glebe NSW 2037 is a breach of the rules and punishable. Each of our students is a student-at-law under the *Legal Profession Admission Rules 2005* (NSW).