LAWS90040 Construction, the Community & Neighbours

Credit Points:	12.5
Level:	9 (Graduate/Postgraduate)
Dates & Locations:	2016, Parkville This subject commences in the following study period/s: March, Parkville - Taught on campus. This subject has a quota of 30 students. Please refer to the Melbourne Law Masters website for further information about the management of subject quotas and waitlists.
Time Commitment:	Contact Hours: 24-26 hours Total Time Commitment: 136-150 hours The pre-teaching period commences four weeks before the subject commencement date. From this time, students are expected to access and review the Reading Guide that will be available from the LMS subject page and the subject materials provided by the subject coordinator, which will be available from Melbourne Law School. Refer to the Reading Guide for confirmation of which resources need to be read and what other preparation is required before the teaching period commences.
Prerequisites:	**Melbourne Law Masters Students:** None **JD Students:** Successful completion of all the below subjects:

Subject	Study Period Commencement:	Credit Points:
LAWS50026 Obligations	Semester 1	12.5
LAWS50029 Contracts	Semester 2	12.5
LAWS50030 Property	Semester 1	12.5

Corequisites:	None
Recommended Background Knowledge:	Applicants without legal qualifications should note that subjects are offered in the discipline of law at an advanced graduate level. While every effort will be made to meet the needs of students trained in other fields, concessions will not be made in the general level of instruction or assessment. Most subjects assume the knowledge usually acquired in a degree in law (LLB, JD or equivalent). Applicants should note that admission to some subjects in the Melbourne Law Masters will be dependent upon the individual applicant's educational background and professional experience.
Non Allowed Subjects:	None
Core Participation Requirements:	The Melbourne Law Masters welcomes applications from students with disabilities. The inherent academic requirements for study in the Melbourne Law Masters are: The ability to attend a minimum of 75% of classes and actively engage in the analysis and critique of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and to critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students who feel their disability will inhibit them from meeting these inherent academic requirements are encouraged to contact Student Equity and Disability Support.
Coordinator:	Prof Philip Britton
Contact:	**Lecturers** **Professor Philip Britton (http://www.law.unimelb.edu.au/staff/Philip%20Britton)** (Coordinator) Email: **law-masters@unimelb.edu.au (mailto:law-masters@unimelb.edu.au)** Phone: +61 3 8344 6190

	Website: **www.law.unimelb.edu.au/masters (http://www.law.unimelb.edu.au/masters)**
Subject Overview:	In this subject, students will explore the external constraints on construction. These are legal, via the public law of land use planning (sometimes called development control or zoning) and of applicable construction standards; and via the private law rights of those close to the project site. But they are also extra-legal, via community pressures to stop or modify planned development. The subject takes a comparative common law approach, considering a selection of Australian States and Territories (including Victoria) and New Zealand, but also England and Wales, whose law remains the origin of the relevant law in Australasia, as well as Hong Kong, Malaysia, Singapore and most of North America. Philip Britton has extensive construction law teaching experience at King's College London and in the MLM and has published on 'neighbour issues' in construction. Guest speakers will include lawyers, public officials, project principals and community activists. This subject provides an examination of the legal and non-legal issues which operate as external constraints on construction projects, within a comparative common law context. Principal topics include: # The public law of land use planning: its aims, structures, operation in practice and openness to legal challenge # The law of 'building control', via applicable construction standards: definitions, operation, enforcement and inspectors' powers, including ongoing reforms in Victoria # The private law rights 'neighbours' enjoy against the negative aspects of construction, via property/land law and the law of tort # The remedies available in court for actual or potential infringement of these rights; and judges' approaches to the choice of remedy, including (in particular) to the assessment of damages # How the structuring of the project may determine who bears the ultimate cost (or liability) if a neighbour successfully challenges the whole project, or where or how it is being constructed # The powers (legal and extra-legal) of community action groups to influence decisions about new construction and how project sponsors may respond.
Learning Outcomes:	A student who has successfully completed this subject will: # Have an understanding of the role and function of law – both public and private – in imposing potential and actual external constraints on construction projects, and of the interaction between public and private law in this field # Be able to demonstrate an appreciation of the role and operation of planning law in attempting to safeguard community goals in relation to construction; the limits of those regulatory regimes; and the possibility for legal challenge of decisions on planning issues # Have a general understanding of relevant objectives and requirements within the National Construction Code (incorporating the Building Code of Australia) and of the regimes which attempt to ensure compliance with applicable construction standards in individual projects; as well as a comparative understanding of how other common law jurisdictions operate in this area and of the difficulties of making such a regime work reliably # Be familiar with the systems of private law which give 'neighbours' rights in relation to construction potentially or actually affecting them, including 'the right of support', the acquisition of easements by prescription, restrictive covenants, the law of trespass, nuisance and liability under *Rylands v Fletcher* and variations in the scope of these rights between different common law legal systems # Acquire an in-depth understanding of the remedies which the law makes available to protect the rights of neighbours and the principles behind the courts' choice of remedy in different cases # Have an understanding of the tactics available to a developer or principal in order to minimise the risks of legal or popular opposition to a construction project # Be able to demonstrate the research and communication skills to independently investigate, examine and analyse existing and emerging legal issues relating to all types of external restraints on construction.
Assessment:	Take-home examination (5,000-6,000 words as specified in the subject reading guide) (100%) (6 - 9 May) or 10,000 word research paper (100%) (15 June) on a topic approved by the subject coordinator A minimum of 75% attendance is a hurdle requirement.
Prescribed Texts:	Specialist printed materials will be made available free of charge from the Melbourne Law School prior to the pre-teaching period.

Breadth Options:	This subject is not available as a breadth subject.
Fees Information:	Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees
Links to further information:	www.law.unimelb.edu.au/subject/LAWS90040/2016
Related Course(s):	Graduate Diploma in Construction Law Graduate Diploma in Environmental Law Graduate Diploma in Legal Studies Juris Doctor Master of Commercial Law Master of Construction Law Master of Environmental Law Master of Laws Master of Private Law