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Social Impact Assessment

Strategic Litigation Tool for Planning Law Decision-Makers

Rebecca Leshinsky

Introduction

Planning decision-making, in the project proposal stage, is a complex mix of hybrid processes – technical, collaborative and political – with numerous examples in planning literature on plan-making and formal decision-making and its implementation (Healey 1997, 1999; Hillier and Gunder 2003; Legacy 2010). Participatory consensuses in decision-making and collaborative planning have also been well canvassed in the planning literature (Baum 1996; Forester 1989; Healey 1997, 1998, 1999). Little, however, has been written on political decision-making. Even less has been written on the role of judges and planning tribunal members, as well as expert knowledge witnesses, in the planning decision-making process in common law jurisdictions (Albrechts 2003; Hill 1985; Mees 2001; Willey 2005; Leshinsky 2008). This chapter highlights findings from a study that investigated how planning law decision-makers (PLDM) gain knowledge on social impacts in the project proposal stage. The study set out to build on the work of Hill (1985), a pioneering planning theorist who explored planning decision-making contexts and strategies for evaluation processes. Hill, however, did not spend time specifically considering social impact issues in decision-making. Of interest to this chapter, is how PLDM ‘think’ and with this comes an interest in what weight decision-makers place on social impacts, and the tools that inform them about this knowledge.

The research question for the study reported on here is ‘how do PLDM gain knowledge about social impacts in decision-making for land use and development proposals?’ This is based on an exploratory quest to gain better understanding into how PLDM then utilise such knowledge to help formulate their decisions and which planning tools (human and non-human actors) assist to develop such knowledge. ‘Human actors’ here include: expert witnesses, planners and lawyers. Differently, ‘non-human actors’ in the planning network involves, *inter alia*, zoning, maps, statistics, planning

legislation and policy. With the planning system, there is a strong symbiotic nexus and fluidity between human and non-human actors. Urban and regional planning itself canvasses social and equity concerns, and problems as well as population growth, diversity, race, gender inequality, social and economic equality, ethnicity and multiculturalism, heritage, tourism, leisure, art and culture, employment, transport, infrastructure, sustainability, climate change, social justice and numerous other factors and agendas which affect the lived experiences of people. It is impossible for PLDM to be informed on all social and other impact issues for a particular proposal, as they lack the time and ability to seek all such knowledge. PLDM instead rely on expert evidence and witnesses as well as other ‘tools’, such as impact assessment studies and reports, demographic evidence and maps and plans, to inform their decision-making (Leshinsky 2008).

First, the chapter canvasses longstanding tensions in law which arise from the reliance on social facts and evidence in legal proceedings. Then, it moves to introduce the nature of social evidence in planning matters and the place for social impact assessments (SIA) as a strategic planning instrument that can inform planning decision-making. Findings from a study on social impacts in planning matters are discussed. The chapter concludes with a discussion on how PLDM can be better informed in their decision-making, whereby the consideration of a more comprehensive impact assessment process is necessary, yet not always attainable.

Social Evidence in Law: A Suspect Approach

In common law legal systems, such as those of Australia, the United Kingdom and North America there is a long established tradition of research into the place of law in society (Cotterrell 2006; Valverde 2003; Rose and Valverde 1998). A central concern of this scholarship has been to map how extra-legal knowledge has been introduced into legal processes, either as expert evidence or through other routes, and to document how courts and legislatures have made use of these facts and claims. These studies often focus on the content of the knowledge claims that are either accepted or rejected by various legal actors. In the network of the legal system, these actors include lawyers, expert witnesses, judges and tribunal members. Of interest in this network is not the prestige or quality of the knowledge, but how legal processes can be influenced by technical expertise (‘extra-legal actors’) that can provide this knowledge (Cole 2001; Jasanoff 1995).

At a more theoretical level, debates have taken place about whether law in general is increasingly governed through extra-legal norms that include scientific knowledge and statistics (Hunt and Wickham 1978). One particular area of investigation has involved a search for what makes certain courts

sympathetic or hostile to sociological and cultural evidence (Valverde 2003, 2005a) to support 'social facts'. The use of this evidence in court cases has been traditionally treated as suspect and inferior to more hard-fact scientific evidence. This has created an intense tension between social evidence and the law (Valverde 2005b; Freckleton and Selby 2005; Stein 2008). Evidence is used in court cases to inform the judge/tribunal member (and jury where relevant) on the facts of the case. The judge/tribunal member then applies the law to the facts. However, as judges and tribunal members are trained in law, and are not experts in all disciplines, they need to draw on factual evidence from expert witnesses to inform them on extra-legal knowledge. Analyses of the fortunes and misfortunes of such technical, scientific and cultural knowledge within legal contexts have enriched the practices of interpreting evidence (Valverde 2003; 2005b). Drawing on the work of Foucault (1972, 1979, 1980, 1991) and Habermas (1979, 1983, 1990), planning theorists have put considerable effort into understanding how power shapes planning (Forester 1989; Healey 1997; Innes 1995, 1996). There are fundamental questions concerning the locus of power in the legal decision-making system. Though the workings of power are relevant to our study, its foundation lies in the operation of the decision-making process itself and in particular, the admission of pieces of knowledge into the decision-making process. It relies on the view that knowledge is an ever-shifting network of ideas in which a range of actors deploy legal or quasi-legal tools on a range of texts to creatively recycle knowledge that has usually been generated elsewhere (Valverde 2005a). In planning law, these 'things' and texts include maps, plans, photographs, expert reports, witnesses, planning legislation and regulatory instruments – all human and non-human actors. In this realm it is considered that 'scientific', or hard-fact, evidence is better situated than 'non-scientific' evidence in the search for the legal truth. As a consequence, the use of social evidence in decision-making is a curious and uncertain endeavour that is often viewed as 'soft'. There is a real tension between the use of 'soft' social evidence and 'hard' scientific evidence. This may explain why environmental and economic evidence, perceived to be more like scientific evidence, has been more readily accepted in common law jurisdictions than social evidence (Smart 1989, Freckleton and Selby 2005). In Latour's (1987) work, the analyst remains open-minded about which human and non-human actors play which roles and with what effects in the particular case. This perspective provides a potential opening for the incorporation of social knowledge in decision-making. It is highly relevant to socio-legal scholars who do not wish to limit themselves to studying either law in books with legal tools or law in action (involving human actors) with social science tools (Cotterrell 1984, 1998, 2001, 2006). Valverde (2005b) opines that the Latour perspective does more than merely exhort us to study both books and people: it provokes us with the opportunity to see what happens when one

looks at 'things' and texts as if they were people, and at people as if they were part of a technical assemblage. When applied to planning law for land-use and development decisions, largely textual entities are involved (statute, planning schemes and other policy documents). For Valverde (2005b) experts such as sociologists in court cases are actors from other professional networks that overlap into the legal network. She sees articles she writes as another influence, mainly located in the law-and-society scholarly network, but still overlapping with real-life networks when used in legal decisions.

Social Issues in Planning

Howard (2004) suggests that we look to urban geographers to develop fluid and responsive mapping tools, to social scientists to provide sophisticated approaches to needs analysis, and to planners and lawyers to provide for 'gutsy' mechanisms to resource and implement social infrastructure provisions. Howard, as a social planner, can gain an understanding of what the 'social' is in the context of such social infrastructure, which includes hospitals, libraries, kindergartens, schools and parks, and how they act as facilities and spaces for public use and social needs. Social planning respects the diverse nature of the population, together with an appreciation that individuals and communities have different needs and ideas about how they want to live, work and enjoy leisure activities in the spaces they share (Thompson 2007; Greed 1999). Howard (2004, 16) reminds us that in dealing with social issues in planning there is often much frustration as there are no quick and neat answers for social concerns for a particular locality. A social impact assessment (SIA) is a newer evaluation method (Alexander 2006). It is a collection of tools (and actors) that can provide rigorous evidence-based analysis that engages with constituencies in a responsible and meaningful manner (Becker and Vanclay 2003; Vanclay 2002a; Howard 2004; Thompson 2007). In general terms, social impact assessment involves analysing, monitoring and managing the social consequences of development (Vanclay 2002a).

There are, however, different levels by which to understand SIA. Good-quality SIA, which could be considered of a high academic standard, occurs within a field of research and practice, or a paradigm that draws on a large body of knowledge, techniques and values (Vanclay 2002a; Becker and Vanclay 2003). Various individuals identify themselves as SIA professionals, or list SIA as one of their disciplines or specialty areas. There is a community of individuals engaged in research and practice of SIA and these people practise the methodology of SIA and undertake associated social and environmental research to inform the practice of SIA. As a methodology and tool, SIA is the process that SIA professionals follow in order to assess the social impacts of planned interventions or events, and to develop strategies for the ongoing monitoring and management

of those impacts. SIA should not be understood only as the task of predicting social impacts in an impact assessment process. It includes the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programmes, plans and projects) and any social change processes invoked by those interventions. Its primary purpose is to bring about a more sustainable and equitable biophysical and human environment (Vanclay 2002b).

A well-developed and good-quality SIA needs to consider this level of social detail and experts preparing such social impact assessment reports, as proofs of evidence for the planning tribunal, need to convey in their work this level of detail. Cramphorn and Davies (2004, 47) argue that understanding 'the social' in the planning process requires a whole of community approach. Speaking specifically about transport planning, but equally relevant to all significant land use and development, Cramphorn and Davies (2004) see an advantage to a whole of government (integrated) approach in assisting communities during planning processes so that social capital is strengthened rather than damaged. In the long term, such intervention could enable communities to deal better with the real changes associated with the proposal and they see such intervention better at earlier stages of the planning process.

Data Collection for the Study

This chapter reports findings from data collected from 17 Victorian state-level court and tribunal judgments and seven social impact assessment reports (SIA) from the Victorian municipality, City of Maribyrnong. The City of Maribyrnong is a municipality proximate to the Melbourne central business district (CBD) which has undergone extensive revitalisation over the past 15 years, from its predominately older industrial use, to residential densification. As part of this intense change process the municipality required in the early 2000s all developers to prepare SIA reports for large-scale residential developments. A sample of ten Victorian PLDMs were interviewed to gain rich narratives into how PLDM, as planning law professionals, viewed the 'social' in their decision-making and what role social impact assessment played in this decision-making. Data from the sample SIA, judgments and the interviewed PLDM were used to categorise a typology of social impact issues at the state and local levels. Data from the interviewed PLDM was analysed to draw out further knowledge on how social impact issues were understood by PLDM. The literature review undertaken for the study provided a global context for social impacts more broadly, and the types of social issues that are canvassed in large-scale residential planning proposals. The data was collected before 2013, when the consideration of social impacts in planning matters was not mandatory for PLDM in Victoria.

The City of Maribyrnong was selected to be a case study for the research project because in 2002 it was the first municipality in Victoria, Australia, to adopt local policy and guidelines which placed an onus on proponents to provide social impact assessment reports for significant residential development (City of Maribyrnong 2002a, 2002b). A sample of seven social impact assessment reports from the municipality were analysed which had been prepared after this local policy came into place. Spanning the years 2003–6, the reports were written by developers or planners/experts and the proposals were mostly large-scale projects including brownfield sites that were being converted to residential use for houses and mixed-use development. Other proposals included a row of stores being redeveloped into a high-rise apartment block. Of particular interest was how local policy was being interpreted by developers as well as how it was being implemented by the City of Maribyrnong.

Towards an Understanding of Social Impacts in Planning Matters

A list of the social impact issues identified from the sample social impact assessment was compiled and tabulated in Table 7.1. The table also lists the tools used by proponents (or their representatives) to measure and assess social and related impacts. The table is described as the 'local perspective' on what are social impacts and tools used to identify such impacts. Other social impacts such as housing, employment and socio-economic background were canvassed in the SIA reports interrogated. Comments from planning officers suggest that most of the sample SIA provided the officers with a comprehensive overview of the impacts and likely outcomes to be expected from land-use and development proposals. Two of the seven SIA reports were accepted by planning officers without the developer having to provide further information. Table 7.1 is a summary of the social impact issues, and tools relied upon, which derive from the sample SIA reports. The first column in the table notes the social impact issues discussed in the SIA reports and these have been grouped in accordance with the base framework for social impact issues that was established earlier for the study. Column 2 notes the category under which these social impacts fall and examples of the types of tools used to present social evidence is located in column 3 of Table 7.1 as well as a ranking of weight placed by the decision-makers on this impact. This 'weighting measure' was devised from a comprehensive content analysis of the influence of the evidence on decision-makers. Overall, the ranking processes devised provided an assessment of the types of issues that were relevant to local concerns, and many of the tools presenting evidence in the reports were very specific to the City of Maribyrnong. This was particularly so in regard to social and demographic statistical evidence which was used effectively to paint a community profile of the areas relevant to particular proposals. Such evidence helped to raise the ranking level on an issue if it

Table 7.1 Summary social impacts from sample SIA reports

Social impacts discussed in SIA	Category*	Examples of types of tools used to relay social evidence	Weight **
Aged care	Recognition	Social statistics; focus groups	M
Amenity and neighbourhood character	Encounter	Community survey; Local municipal policy instruments such as local planning scheme	M
Brothels and sex shops	Encounter	X	X
Child and family services	Recognition	Policy documents; focus groups; SEIFA#	M
Cultural heritage	Recognition	Focus groups; local, state, national & international policy documents; Victorian state legislation	M
Education	Redistribution	Policy documents; Focus groups	M
Employment	Redistribution	Social statistics; Demographics; SEIFA#	M
Environment	Redistribution	Maps; reports	M
Gaming and gambling	Redistribution	X	X
Gender inequality	Recognition	Social statistics; Demographics	M
Health	Redistribution	Policies – local & state; published reports	H
Housing	Redistribution	Socio-demographic profile statistics; local & regional policy	M
Liquor licensing	Encounter	X	X
Multiculturalism	Encounter	Social statistics; Demographics	M
Public transport	Encounter	Traffic reports	M
Safety, fear of crime, violence	Encounter	Historical data; Journal articles; reports & studies (published and unpublished); Social statistics; Published reports	M
Traffic and car parking	Encounter	Expert reports; Local policies & strategic; State policy	H
Youth services	Recognition	Demographic profiles; policy documents – local & state	H

* based on the Fincher and Iveson (2008) categorization model

X issue not raised in sample SIA

SEIFA – Socio-Economic Indexes for Areas (SEIFA) is a product developed by the Australian Bureau of Statistics that ranks areas in Australia according to relative socio-economic advantage and disadvantage. The indexes are based on information from the five-yearly Australian Census.

** Weighting by decision makers: H= high; M= medium; L= low; X=issues not raised

were accurate and informative. A shortcoming with the ranking system lies in its subjective nature, as it relies on the chapter author's interpretation of the planning officer comments and the weight these planning officers placed on social impact issues. An alternative researcher may have interpreted the data differently and assigned alternative rankings and perhaps even made use of a different methodology to that of content analysis. There is certainly scope for further data analysis and testing of the ranking and weighting of the data with a much larger sample of SIA reports. A similar system of identifying and ranking social impacts was undertaken from the international literature on social impacts and on the sample judgments from the independent adjudicative planning tribunals in the state of Victoria, Australia, and in the province of Ontario, Canada, through the Victorian planning tribunal (Victorian Civil and Administrative Tribunal) and the planning tribunal in Ontario (the Municipal Board of Ontario). These findings are not, however, reported on in this chapter (see Leshinsky 2010).

Table 7.2 is a summary of the social impact issues that derived from the sample judgments. The first column in the table notes the social impact issues discussed in the judgments and these have been grouped in accordance with the baseline framework for social impact that was set up earlier for the study. Column 2 notes the category under which these social impacts fall and this categorisation process relied on an adaptation of the Fincher and Iveson (2008) model. The weight placed by decision-makers on these tools is found in column 3. Impacts are categorised in a fashion that extends an earlier model devised by Fincher and Iveson (2008) which supports an approach to urban and regional planning for individuals and communities where just and equitable distribution of resources and services take into account recognition of the needs of individuals and communities, as well as the opportunity for encounters that people happen upon. In effect then, the categorisation process takes account of a suite of impacts, including future impacts ('encounters') that affect planning outcomes for communities and cities, and our intention is to put into place a typology of social impacts PLDM face in their decision-making process.

Ten PLDM were interviewed for this study via semi-structured interviews and included VCAT members, municipal planning officers, municipal councillors and planning panel members.

Table 7.2 lists cumulatively the social impact issues identified by the PLDM. Overall, the interviewees were acquainted with the idea of a social impact assessment. For some, SIAs were about analysing, monitoring and managing the social consequences of developments and balancing positive and negative impacts. There was a strong sense that it was about 'knowing' the community and its social and ethnic structure. The ranking of the social impacts by the interviewed PLDM into 'high', 'medium' and 'low' was a similar exercise

Table 7.2 Social and other impact issues – perspective from sample PLDM

<i>Social impact issues raised by PLDM interviewed</i>	<i>Category*</i>	<i>Weight **</i>
Aged care	Recognition	L
Amenity & neighbourhood character	Encounter	M
Brothels & sex shops	Encounter	M
Child & family services	Recognition	M
Cultural heritage	Recognition	M
Education	Redistribution	L
Employment	Redistribution	M
Multiculturalism	Recognition	M
Gambling & gaming	Redistribution	M
Gender inequality	Recognition	L
Health	Redistribution	M
Housing	Redistribution	M
Liquor licensing	Encounter	M
Public transport	Redistribution	H
Safety, fear of crime, violence	Encounter	H
Traffic and car parking	Encounter	M
Youth services	Recognition	M

* based on the Fincher and Iveson (2008) model

** Weighting by PLDM on social impacts: H= high; M= medium; L= low

taken in the ranking of the weight of evidence from tools for the sample social impact assessment reports and the judgments. To explain the ranking process for instance, on the 'aged care' issue, very little was said by PLDM and so it was ranked as 'low'. As the majority of PLDM (that is, seven of the PLDM) contributed comment and perspective on 'safety and fear of crime and violence', it received a rank of 'high'. PLDM commented in judgments (mostly in the panel reports) on the positive value of social data to inform the process so that better decisions could be made. Overall, there is scope for further data analysis and testing of the weighting of the data with a much larger sample.

Discussion and Conclusion: Towards a Cumulative Impact Approach for PLDM

On balance, the datasets from the study support the use of social impact assessment as a planning instrument that can assist in identifying, explaining and analysing social impacts. Findings from the data also suggest that, even though the terminology for social impacts varies, there was much commonality in the understanding of social impact 'issues' from all of the datasets and

literature. Findings from the sample SIA reports and the judgments suggest that social impacts were not considered in isolation but rather were more indicative of an integrated, wholesome or 'cumulative impact assessment' approach. That is, the sample SIA reports contained significant material on other related impact assessment issues such as heritage, health, safety and environmental concerns. Knowledge on other impact issues also extended to the social evidence presented in the judgments as well as comments from interviewed PLDM. That social impact issues in all these datasets were not quarantined to the social, but rather situated together with economic, environmental and other planning matters, is supportive again of a more comprehensive, inclusive and spatial approach to planning which appears to be unfolding in the state of Victoria. This is also more reflective of what is occurring in other common law jurisdictions.

One important conclusion then, from the study, is that PLDM do not merely consider social impact issues in isolation but rather, and probably more unintentionally, take a more holistic or integrated approach to impact assessment in their decision-making. The sophistication in the use of such 'social' evidence, however, brings with it a greater need for expertise in how to make use of, understand and explain such high-level evidence. Experts relaying such evidence to the tribunal and court will need to be trained in both qualitative and quantitative research methods. They will also need to be trained in the art of translating the data collected into planning submissions suitable for the municipality, the planning tribunal and appeal courts so that PLDM can grasp this technical knowledge being relayed to them. Part of the reasoning for why more high-level tools are used to present better quality social evidence in planning matters could lie in the fact that, since Maribyrnong introduced its social impact assessment policy in 2002, other Victorian municipalities have also seen value in the SIA policy and followed suit. With these changes social and economic evidence, prepared by experts in these fields, is now required to support particular permit applications at the council level, and also throughout the review process to the planning tribunal. A further reason for the growth in use of social and economic evidence at the tribunal and courts could be attributed to recent changes to liquor, brothel and gaming venue licensing laws, which also involve planning considerations. By virtue of these legislative and regulatory changes, prospective licensees and owners must adhere to stricter regulatory requirements which call for an assessment of cumulative impacts including 'community safety and wellbeing' concerns and more general 'net community benefit' impacts. These legal amendments are providing greater standing for social evidence in land-use and development matters in Australia. This aligns better with comparative models such as Canada which have for a long period mandated the consideration of social impacts. Stronger emphasis on better quality social and economic evidence to be provided by applicants

to the gaming and liquor licensing bodies, as well as to councils for planning proposal permission, sends a message to the planning system and its actors who undertake planning – planners, lawyers, policy-makers, government officers – that social evidence to highlight social impacts is important. It also serves to enhance the status of ‘social facts’ and the use of social evidence more broadly in legal proceedings.

Whilst social impact assessment reports are not all-encompassing planning instruments for PLDM, they assist as an informative tool. When prepared in an objective and professional manner they can contribute to more inclusive decision-making. A strong message was sent by policy-makers and government in 2013, when the Planning and Environment Act 1987 was further amended by the state government of Victoria, Australia, to mandate for environmental, economic and social impacts to be considered by PLDM. In turn, this opens up the opportunity for a longitudinal study on how PLDM gain knowledge on social impacts and what role SIA, or even more sophisticated cumulative impact assessment tools and reports, can play in the planning law decision-making process. Such instrumentality is not merely important as individual tools for particular planning proposals but collectively strengthens the strategic planning framework for precincts and cities. Having said this, it is still a ‘wait and see’ approach, particularly as we find ourselves, as Steele reminds us in Chapter 3 of this volume, in a period of ‘red and green tape reduction’ with implications that may be narrowing for social and environmental planning.

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8

A Design-Led Approach for Enabling Collective Imagining of Sustainable Urban Futures

Viveka Turnbull Hocking and Andrew MacKenzie

Introduction

Cities cannot be designed. A multiplicity of actions from people and everyday life make cities. The role of design in a city with strategic aspirations to become more ecologically and socially sustainable is not one of master planner/designer. Rather, it is to provide the spaces for innovation to occur.

If the world is complex and messy, then at least some of the time we're going to have to give up on simplicities. But one thing is sure: if we want to think about the messes of reality at all then we're going to have to teach ourselves to think, to practice, to relate, and to know in new ways.

(Law 2004, 2)

This chapter offers a design-led approach to imagining sustainable urban futures. This exploration is informed by a perspective that is neither from planning, nor urban design, but rather, from a theoretical design research perspective. We do not intend to be 'the expert' voices in this chapter, but rather through this chapter we argue the case for greater facilitation of design-led approaches in strategic planning that will take the participant beyond the physical objects that make up our built environment. We propose that a design-led approach is one way to engage with 'the messes of reality' (Law 2004, 2) by keeping it messy through adopting a conversational structure, like we do with you the reader in this chapter, and more generally when we converse with each other in everyday life (Glanville 2008).

To illustrate this design-led approach, we commence with a conversation between us, the authors, and you, the reader, which then expands into a broader conversational approach about the construction of knowledge, on possible sustainable urban futures. This is a fictional kind of knowledge that requires engaging in a process to imagine what could, should or ought to be.