

Look before you leap

A community guide to social impact
assessment

Alison Ziller PhD
February 2024



MACQUARIE
University

Macquarie School of Social Sciences
Faculty of Arts

Acknowledgements

Alison Ziller acknowledges the Traditional Owners of the many First People's lands in the area now known as New South Wales and pays her respects to their Elders past, present and emerging.

Alison Ziller thanks the many community groups, organisations and individuals whose experience, advice, guidance and questions about social impact assessment have shaped this Guide.

Disclaimer

Alison Ziller teaches social impact assessment at the Macquarie School of Social Sciences. She has prepared this Guide in good faith exercising all due care and attention. It is intended as general information only and may not be appropriate or accurate or complete in respect of any particular user's circumstances. The Guide is based on the documents and information the author has been able to research, obtain, review and analyse prior to the publication date. Users of this document should satisfy themselves concerning its application to, and where necessary seek additional expert and / or legal advice in respect of, their situation.

Contents

Acknowledgements	2
Abbreviations	4
Glossary of terms used in this Guide	5
INTRODUCTION	7
OVERVIEW: TWELVE KEY FACTS	8
EVIDENCE	13
1 Locality and maps	13
2 Finding expertise	14
3 Reliable data sources	15
4 Unreliable data	16
ASSESSMENT	19
Assessment criteria	19
Applying criteria to mitigations	20
Applying the criteria: Example	23
DECISIONS AND APPEALS	24
Decision sequences	25
Appeals	27
THE EMPEROR'S NEW CLOTHES	29

Abbreviations

The following abbreviations have common use in planning and in social impact assessment.

Abbreviations

ABS	Australian Bureau of Statistics
AIHW	Australian Institute of Health and Welfare
DA	Development application
DPHI	Department of Planning, Housing and Infrastructure (NSW) Formerly DPE
DPE	Department of Planning and Environment (NSW) Formerly DPIE
DPIE	Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EPA	Environmental Planning and Assessment Act 1979 (NSW)
GIS	Geographic Information System
ILGA	Independent Liquor and Gaming Authority (NSW)
IPC	Independent Planning Commission (NSW)
L&GNSW	Liquor & Gaming NSW
LEC	Land and Environment Court (NSW)
LEP	Local Environmental Plan
LGA	Local government authority
NSW	New South Wales
PHIDU	Public Health Information Development Unit
SIA	Social impact assessment (abbreviated in this Guide when referring to a document)
SIMP	Social impact management plan
SSD	State significant development
SSI	State significant infrastructure

Glossary of terms used in this Guide

Many terms in general use have specific meanings in social impact assessment.

Term	Meaning
Applicant	The person or enterprise making an application to proceed with a project.
Application	Documents submitted to request approval of a project.
Assessment	An analysis of likely consequences of an action or project.
Condition	A requirement. Something which must be done. Often called a Condition of Consent.
Consent	Approval of a project; permission to proceed.
Consent authority	The person(s) who gives or refuses consent to an application. The decision maker.
Consequence	The result or outcome of an action or a project.
Council	Local government authority.
Data	All kinds of information including statistics, research reports, submissions and survey results.
Decision maker	The person(s) who gives or refuses consent to an application. Also called the consent authority.
Foresight	'The ability to see what will or might happen in the future.' ¹
Impact	Consequence or effects of an action or project.
Merit	Quality or worthiness (e.g. of a project or a decision). ²
Physical determinism	The idea that a physical environment by itself achieves a social outcome (e.g. a building achieves social cohesion).
Precaution	Care taken in advance to prevent a bad outcome &/or achieve a good result in the future.

¹ The Britannica Dictionary, foresight: <https://www.britannica.com/dictionary/foresight>

² The Department of Planning considers a proposal has 'strategic merit' if it is consistent with 'the NSW strategic planning framework or current government policy'. <https://www.planning.nsw.gov.au/sites/default/files/2023-03/lep-making-guideline.pdf> p4. However, in social impact assessment practice the merit of a project takes account of multiple precautionary factors not limited by the responsibilities of the Department of Planning or the policies of current governments.

Project	An initiative which requires approval before it can proceed, e.g. a new school, mine, later trading hours, workers' village, new transmission lines, sale of public land, strategic plan, policy.
Proposal	Another word for a project.
Proponent	An advocate of a proposal. Sometimes used as an alternative word for the applicant proposing a project.
Public exhibition	The documents relating to the proposal are published, usually online, and submissions are invited.
Public health	Physical, mental and social wellbeing in a population.
SIA	A document describing a social impact assessment.
SIA author	The person who writes a SIA document or who signs and dates the completed document.
Social impacts	Consequences affecting people's quality of life.
Stakeholder	Anyone with an interest in a project including the applicant, people who stand to gain (e.g. make a profit, get a job) from the project and people who stand to lose (e.g. their house, their quality of life).
The public interest	Public health and wellbeing of many people in contrast to costs and benefits to private interests (e.g. business enterprises) and individuals. Also known as the common good.

Introduction

This Guide to social impact assessment is for communities concerned about the social consequences of a proposed project or development.

It explains when a social impact assessment (the process) is required, what a SIA (the document) is expected to include, and when and how decision making takes place.

The Guide sets out **what** communities should look out for, **when** they may provide a response, for example in a submission raising concerns about a proposed development or project, and the **timelines** affecting these steps.

The Guide refers to social impact assessment practices and legislation applying in NSW at the time of publication. However, most of the Guide is applicable in a general way throughout Australia.

Introductory notes:

The NSW Department of Planning, Housing and Infrastructure has undergone three name changes in recent years – see Abbreviations. In this Guide, publications are cited under the name in force at the time of publication. For simplicity, the text refers to the Department of Planning.

Social impact assessment is a process. But it is also given as a name to a document. In this Guide, the abbreviation SIA is only used when a document is being referred to.

Overview: Twelve key facts

- 1 **Definition of social impact.** A social impact is a consequence affecting people's quality of life. It can be a consequence of something physical (e.g. a new building; a mine; burning fossil fuels) or non-physical (e.g. a new policy; a threat; an administrative practice). Some social consequences affect a few people (e.g. outdoor seating affecting near neighbours), some affect everyone (e.g. climate change).

Social impacts may be positive or adverse. Some projects or decisions result in positive outcomes for some people and adverse impacts on quality of life for others.

- 2 **Definition of social impact assessment.** Social impact assessment is a process designed to foresee the likely consequences of a proposed action or project on people's quality of life. The aim is to minimise harms and improve positive outcomes.

Social impact assessment is thus the practice of precautionary foresight. It is a new name for the time honoured practice of looking before you leap.

- 3 **Legislation.** A requirement to consider social impacts is embedded in three NSW laws:

[Section 4.15 \(1\)\(b\) of the NSW Environmental Planning and Assessment Act, 1979](#)

[Section 48\(5\) of the NSW Liquor Act 2007](#)

[Section 36C of the NSW Gaming Machines Act 2001](#)

- 4 **Participants.** An assessment is made by a person and is therefore a point of view. There is no such thing as **THE** social impact assessment. Social impact assessment is done by many people:

Applicants include an assessment of social impacts in a development or licence application. For large or contentious projects a document called a Social Impact Assessment [SIA] is usually prepared.³

³ Note; SIA documents are unlikely to be prepared for development projects classified as complying development which are regarded as 'straightforward development that can be determined through a fast-track assessment by a council or an accredited certifier': <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/complying-development>
Some applications for a small bar liquor licence are not required to be accompanied by a SIA.

Stakeholders including community groups make submissions addressing foreseeable social impacts and precautionary concerns.

Staff in the decision making agency assessing an application are required to consider social impacts, including whether the SIA lodged by the applicant is fair and reasonable.

Decision makers are required by the above laws to take account of social impacts when reaching a decision.

- 5 **Guidelines.** Guidelines on how to prepare a social impact assessment [SIA] document have been available since the early 1990s. The most recent guideline for planning projects in NSW was published by the Department of Planning in 2023⁴ and for liquor licence applications⁵ and gaming machine applications⁶ by the Independent Liquor and Gaming Authority (ILGA) in 2021 and 2022.
- 6 **SIA document content.** Most guidelines expect SIA documents to provide:
 - i a description of what is proposed (e.g. a mine; a new building, later trading hours),
 - ii a description of the current situation in the project location,
 - iii a description of likely beneficial and adverse impacts,
 - iv a discussion about whether likely adverse impacts can be prevented or reduced, and
 - v a recommendation about whether the project should go ahead.
- 7 **Stages and timing.** Social impact assessment occurs at project planning, exhibition, assessment and decision making stages.

There is no relationship between application preparation time and decision making time.

⁴ DPIE Social Impact Assessment Guideline, February 2023:
https://www.planningportal.nsw.gov.au/sites/default/files/documents/2023/GD1944%20SIA%20Guideline_NE_W%20V1_14_02_23.pdf

⁵ ILGA, 2021 Guideline 6 Consideration of social impact under section 48(5) of the Liquor Act 2007:
https://www.liquorandgaming.nsw.gov.au/_data/assets/pdf_file/0009/863244/Guideline-6-Consideration-of-social-impact-under-s48-of-the-Liquor-Act-2007.pdf

⁶ ILGA 2022, Guideline 12 Class 2 Local Impact Assessments:
https://www.liquorandgaming.nsw.gov.au/_data/assets/pdf_file/0003/862851/gl4022-ilga-guideline-12-9-may-2023.pdf

For example, an applicant may consider land use development options for more than 10 years before submitting a development application [DA] which is then subject to expected timeframes for public exhibition, assessment and decision making. These expected timeframes are expressed in number of calendar days.

Stage	Time allowed
Applicant's SIA	An applicant can take as much time as they want to prepare their DA which includes a SIA. The SIA may be out of date by the time the DA is lodged.
Public exhibition	Once an application is lodged and placed on public exhibition, there will be a deadline for submissions, usually 28 calendar days. ⁷ Some agencies accept submissions after the due date and/or extend the exhibition period on request. These requests are not always granted.
Staff assessment	As much time as is needed to complete inquiries and write an assessment report. Frequently many months. ⁸
Decision maker's assessment	The Independent Planning Commission [IPC] is expected to make its decisions within limited times, e.g. a maximum of 84 calendar days when there has been a public hearing. ⁹ Planning panels are expected to determine applications within 14 calendar days. ¹⁰ The Independent Liquor and Gaming Authority [ILGA] is required to publish reasons if it does not determine a licensing application decision within 120 days. ¹¹ The NSW Land and Environment Court [LEC] has no timeframe requirements for decisions. See p. 24 for a full list of decision makers.

⁷ Minimum time frames are set out in the EP&A Act, Schedule 1-Community participation requirements: http://classic.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/sch1.html

⁸ Average times vary with the kind of project being assessed: <https://www.planning.nsw.gov.au/policy-and-legislation/housing/housing-supply-insights/quarterly-insights-monitor-q4/development-assessment-pathways#:~:text=Average%20assessment%20timeframes%20for%20the,typically%20take%20longer%20to%20assess.>

⁹ IPC Case Processing Times March 2022: <https://www.ipcn.nsw.gov.au/news/2022/04/ipc-case-processing-times-march-2022>

¹⁰ Local Planning Panels Direction – Operational Procedures: <https://www.planning.nsw.gov.au/sites/default/files/2023-05/local-planning-panels-direction-operational-procedures-from-1-february-2023.pdf>

¹¹ Ministerial directions applying to ILGA: <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ministerial-directions-applying-to-ilga>

- 8 **Opportunity.** There are five potential opportunities for communities to comment on a proposal but the principal opportunity occurs when a proposal is on public exhibition. Community submissions may be published online by the decision making agency.¹²

Stage	Community input opportunities
Applicant's SIA	Invitations to consultation events or feedback opportunities prior to the SIA being finalised. This may provide an opportunity to request critical issues be included in the scope of the SIA.
Public exhibition of application	Opportunity to make a submission via the public exhibition website. ¹³
Applicant's response to submissions	Where both submissions and applicant responses are published (e.g. by the IPC) there may be an opportunity to make further submissions especially if the response to submissions contains new material. L&GNSW does not publish submissions or applicant responses to submission.
Staff assessment	The staff assessment report on a planning proposal may be published prior to a panel hearing on a LGA website, in the case of a state significant project on the NSW Major Projects website, &/or prior to a public hearing, on the IPC website.
Decision maker's assessment	If the decision maker is the IPC and there is a public hearing at which submissions are invited.
Merit review	In some circumstances the merit of a planning decision may be reviewed in an appeal to the NSW Land and Environment Court. This often allows objectors to make further submissions. The very limited opportunities to appeal liquor and gaming decisions largely exclude community members (see Appeals below).

- 9 **Foresight rather than hindsight.** Because the assessment is about something which hasn't happened yet, social impact assessment relies for evidence on similar projects or events which have already happened.

¹² Some councils redact parts of submissions. Liquor and gaming submissions are provided to the applicant for comment but not published on the Liquor and Gaming Noticeboard.

¹³ This could be the DPHI major projects website, a council website or the Liquor and Gaming Application Noticeboard

- 10 **Lists.** Most SIA guidelines provide lists of the kinds of social impacts that might be triggered by a development or other proposal. These lists are not a guide to issues of concern in any one particular case.
- 11 **The value of local knowledge.** Most community groups have valuable and detailed local knowledge to contribute. For example:

Community A can report on its ten years' experience with mining company M and impacts of its extraction operations.

Community B can document the value of existing social infrastructure which is proposed to be lost with the siting of a new high school.

Local Aboriginal Land Council C and Aboriginal Legal Service D can document current social situations, e.g. housing stress, and describe likely social impacts of the proposed project.

Community residents located close to licenced premises E can report their experience of noise or other (anti)social effects of late trading hours.

It's a good idea to keep a paper/email trail from the time a project is first rumoured or announced. A paper trail is a record of all communications between one or more local residents and/or groups and the applicant or proponents of a project. Other information that might be kept includes information about police attendance, press clippings, submissions, council minutes and/or information that may be useful as baseline data.

Keep both a virtual and a paper version as a guard against inadvertent deletion.

- 12 **Integrity.** Precautionary foresight suggests that social impact assessment should be done with integrity and in the public interest (for the common good). While there are penalties for submitting information in an application which is false or misleading in a material (substantial) respect,¹⁴ there are no penalties for SIA authors, assessment staff or decision makers, for failing to assess social impacts or for making biased, misleading, erroneous, incompetent or incompletely informed assessments.

¹⁴ Environmental Planning and Assessment Act 1979 (NSW) s 10.6; Gaming and Liquor Administration Act 2007 (NSW) s 36

Evidence

1 Locality and maps

In NSW, decision makers are required to consider social Impacts in the 'locality',¹⁵ or the 'local or broader community'.¹⁶ This requirement is not applied to environmental impacts.

Locality needs to be defined for each project or proposal. The legislation and many guidelines assume that a project will have a (one) locality. However, for any given project, each main impact will have its own locality.

The locality for a proposed open cut mine will vary according to impact:

<i>Noise locality:</i>	areas with high levels of decibel impact.
<i>Vibration locality:</i>	areas of felt impact/destabilisation impact.
<i>Visual amenity:</i>	views lost from some locations.
<i>Dust zone:</i>	where dust is more likely to fall.
<i>Demolition zone:</i>	loss of residences, infrastructure.
<i>Native title:</i>	loss of access to / use of a claimed area.
<i>Employment:</i>	local, and further locations from where people will travel for work.

The locality of a proposed primary school will include consideration of:

<i>Pupil catchment area:</i>	i.e. school catchment boundaries.
<i>Pupil travel patterns:</i>	depending on mode of transport.
<i>Pupil use of local facilities:</i>	e.g. sports fields, pitches, pools.

In each example, the boundaries of these areas, and thus the social impact localities, will not be the same.

Maps can reveal where the impacts of multiple consequences accumulate or overlap. For example crime maps may reveal crime hotspots¹⁷ and ABS maps reveals areas of acute poverty.¹⁸

¹⁵ Section 4.15 of the NSW Environmental Planning and Assessment Act 1979

¹⁶ Section 48(5) of the NSW Liquor Act 2007

¹⁷ The NSW Bureau of Crime Statistics and Research publishes crime maps:

<http://crimetool.bocsar.nsw.gov.au/bocsar/>

¹⁸ ABS publishes interactive maps of Social and Economic Impacts for Areas (SEIFA):

<https://www.abs.gov.au/statistics/people/people-and-communities/socio-economic-indexes-areas-seifa-australia/latest-release#interactive-maps>

However, the locality of areas likely to be impacted by a project are rarely mapped in SIA documents. When estimates of impacts are presented in tables or as formulae, high impact locations where vulnerable residents are likely to be affected in multiple ways, can easily be obscured. Tables also make it difficult to see how impacts vary, for example according to terrain, wind patterns, busy traffic routes and times of day/year.

If you are making a submission with support from experts in these subjects, you can ask each expert to provide an **indicative** map, or maps, of the likely reach of specific impacts. Areas at high risk could be marked by hand and scanned.¹⁹ For large complex projects, e.g. a mine, you may decide to pay a GIS mapping service for a map showing the proposed footprint of the project (which should be available in the SIA or the Environmental Impact Statement [EIS]) and the contours of areas at, say, 1km, 2km and 5km distance from the boundary of the mine which may be at particular risk from impacts.

While an indicative map is not a map of what actually happens (e.g. where the dust actually falls), its provision is consistent with precaution and the exercise of foresight. Further, some authors of SIA documents provide indicative maps (e.g. of customer catchments) which tend to be accepted by decision makers as accurate, especially if no alternative opinion is presented.

2 Finding expertise

Community social impact submissions often benefit from contributions from a range of experts, for example people expert in pollution and contamination, noise and vibration, public health, education, social care, social wellbeing or social change management. Finding experts willing to work pro bono or for a low fee is an art in itself. Start with recommendations from other community organisations, e.g.:

- Environmental Defenders Office <https://www.edo.org.au>
- Foundation for Alcohol Research and Education <https://fare.org.au>
- Lock the Gate <https://www.lockthegate.org.au>
- Mudgee Region Action Group <https://www.lueactiongroup.org>.

¹⁹ Or you may be able to use a basic software program such as calcmaps.com.

Community groups and non-profit organisations are usually very busy. Allow time for a response.

3 Reliable data sources

There are reliable sources of valid data for social impact assessment. These sources include:

- [Census](#) and other [statistics](#) collected and published by the Australian Bureau of Statistics [ABS].
- Some local government authorities [LGAs] provide Census data in easy to use formats including in tables and maps usually under the heading Community Profile or Social atlas (or similar).
- Crime data which are statistics compiled from police records and published by the [NSW Bureau of Crime Statistics and Research](#). (Only includes crimes reported to, or attended by, police).
- Homeless NSW [Housing and homelessness dashboard](#)
- Population health data for NSW is published in [HealthStats NSW](#)
- Population health data for Australia published by the [Australian Institute for Health and Welfare](#) [AIHW]
- Public health data including social factors is published by the [Public Health Information Development Unit \[PHIDU\]](#) at Torrens University.
- Public school location, attendance and retention rates: [NSW Education Data Hub](#).
- [Licensed premises data](#) including location, liquor licence type and number of gaming machines, is published by L&GNSW.
- Results from valid social surveys (such as the [National Study of Mental Health and Wellbeing 2020-2023](#), conducted by the ABS).
- Knowledge and experience held by vital community organisations such as local schools, professional associations and refuges.

Many of these sources provide data with a choice of comparator. For example, data for a LGA might be compared with data for NSW or Australia.

4 Unreliable data

There are four kinds of unreliable data:

- reliable data which has been misused,
- data from which significant social consequences have been omitted,
- information which has been made up (is fiction or unsubstantiated), and
- data which has not been collected in a valid way.

These misuses are very common.

Dilution

You do not have to be a demographics expert to recognise when data presented in a SIA is so broad that your local situation is whited-out. This is called dilution. For example:

The likely adverse impact localities of the mine will be within 5 km of the site but the social data is presented for the local government area of 8,737 square kilometres.

According to data reported in the SIA, residents of the district are relatively economically advantaged, however, this overlooks the fact that within the district there are several pockets of severe disadvantage, one of which is close to the proposed site.

Omission

Many SIAs present a supposedly complete list of likely social impacts from which some significant consequences have, however, been omitted. Consequences which are intangible (not physically measurable), inconvenient and/or difficult to remedy are particularly likely to be omitted, as are longer term impacts on public health. For example:

Loss of sense of place, loss of connection to Country, loss of sense of safety (the risk of spill or pollution is continually present), increase in housing stress (particularly for low income residents), social impacts arising from the project's contribution to climate change, long term health consequences due to sustained exposure to a health risk such as noise or dust.

Misrepresentation

There are many ways to misrepresent a social environment or likely risk. The most common ways are:

Using numbers instead of rates: A SIA may quote the number of crimes in an area saying they appear to be few; this may hide the fact that the population is small and the *rate* (e.g. per 100,000 population) is comparatively high.

Using minimised crime data: NSW police are not required to record whether a crime is alcohol-related. Research shows that reported alcohol-related crime rates understate actual rates.

Comparing apples with oranges: The cost of a mobile home should not be compared with the cost of a house. House price includes land and building value.

Cherry picking: Misrepresenting social risks by selecting only data or research which support the author's point of view.

Cut and paste: A consultant employing cut and paste uses data or arguments developed for one SIA in another SIA for a different project in a different location, timeframe and with different critical social issues.

Unsubstantiated claims: usually in the form of assertion without evidence, for example:

Claim	Missing substantiation
<i>'Four hundred and seventy two jobs will be created'</i>	No basis given for this number.
<i>'Our proposal is "evidence-based"'</i>	No evidence provided.
<i>'This hall will create social connection'</i>	Physical determinism: the hall is just a building and its social impact will depend on how it is managed.
<i>'Retail will enliven the street'</i>	Speculation, particularly given the rise of online retail.
<i>'Responsible service of alcohol will ensure no drunkenness on the street'</i>	No evidence provided to support this assertion.

Claim Missing substantiation

<i>'Our donation to the council will foster social cohesion'</i>	The one-off donation is able to be used for anything, e.g. repair the town hall, fix potholes.
<i>'Our donation to a funding agency will promote social wellbeing'</i>	The funding agency is not required to provide grants to benefit the area in question or its social wellbeing.
<i>'This project is consistent with government policy'</i>	No policy identified.

Invalid collection methods

Some survey data cannot be relied on because of the method of collection. This includes:

Convenience surveys: in which the people surveyed are not representative of the relevant population, e.g. the survey respondents were approached in the street one afternoon, or are members of an interest group, or patrons of a business, or employees in one industry.

Push surveys: e.g. in which there are more opportunities to agree than disagree with a proposal.

The breadth of community views about a proposal may be reliably demonstrated in submissions to the decision making agency. However, the distribution of views - numbers of people for and against - is easily manipulated and may not be reliable.

Petitions signed by staff in a lunch room in favour of their employer's new project may outnumber written submissions written by other members of the community in their own time.

Assessment

Assessment criteria

The NSW Department of Planning has established five criteria against which applicants' commitments made in development proposals should be assessed. These criteria are:

Strict, Precautionary, Tangible, Deliverable, Durably effective.

'Strict and precautionary' are terms used by the Department of Planning to describe Conditions of Consent (i.e. conditions of approval) recommended by the Department.²⁰

Tangible, deliverable and durably effective, or enduring, are listed as mitigation criteria in a NSW Land and Environment Court decision,²¹ and in a Department of Planning guideline.²²

Here is a definition for each term and an example.

Definition	Example
Strict A Condition of Consent which would be difficult for the applicant to avoid doing.	The applicant must lodge a bond with the local authority prior to commencing construction.
Precautionary A required action to avoid or reduce foreseeable harm.	Pollution filters must be installed in ventilation shafts.
Tangible A requirement that would have material (measurably real) effect.	Landscaping requirements specify trees likely to survive warming conditions and drought and installation of irrigation systems to facilitate their survival.
Deliverable A required action which the applicant is able to do.	No construction work outside specified hours or on Sundays.
Durably effective The beneficial effect of a required action is likely to endure.	Funds to be provided to a local council under a voluntary planning agreement are earmarked for a specified, tangible use e.g. construction of a community health centre.

²⁰ E.g. As found in the DPE Assessment Reports re. Bowdens Silver and McPhillamys Gold mines.

²¹ Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7, para 418

²² DPE 2023, SIA Guideline for State Significant Projects, Technical Supplement, February, p15

Applying criteria to mitigations

Mitigations are actions to reduce, minimise or prevent foreseeable adverse consequences and secure and improve positive impacts.

Mitigations may appear as recommendations in a SIA or as requirements in Conditions of Consent often under the heading of Social Impact Management Plans [SIMPs].

Mitigation and SIMP requirements which meet the Department of Planning's criteria are rare.

Definition Signs of failure

Strict	No time line. No penalties. Responsibility for compliance rests with the applicant. No audit mechanism or any audit is not timely or public.
Precautionary	Risky outcomes (e.g. lead poisoning) will be measured as or after they occur.
Tangible	Actions which are listed as plans, strategies or frameworks are not tangible. They are statements of intent. Non-specific targets are also not tangible, e.g. a commitment to 'minimise disruption' or 'maximise local employment'.
Deliverable	Most applicants can only deliver actions associated with their core business, e.g. building, retail or excavation. Some proposed responsibilities, e.g. building social cohesion, are outside most applicants' skill sets, and/or not achievable by advocates of the very project causing social conflict.
Durably effective	Applicants for projects involving construction and excavation work are only present during that work. They cannot/are unlikely to be able to deliver effective initiatives after departure.

Communities can use the Department of Planning's endorsed criteria to assess and critique social initiatives proposed in either a SIA or in Conditions of Consent as part of a SIMP.

The following examples would fail these criteria.

Generalised reassurances, e.g.

‘We will fix any pollution problems if they occur’.

‘We’ll give the council some money to cover any social problems’.

‘We will make good the site afterwards’.

‘We will set targets for traineeships for local Aboriginal youth’.

These do not meet any of the above criteria.

A vague proposal that ‘community investment’ funds are spent on an annual donation to a preferred organisation, such as a local football club, while the project is underway, would not amount to an investment benefiting the community as a whole or meet the durably effective or enduring criterion.

Ephemeral events: a proposal to foster social cohesion in a local community by funding various events (e.g. fairs, community open days) would meet the tangible and deliverable criteria. But events are not durably effective in fostering social cohesion, i.e. their social effects (if any) are not enduring.

Monitoring instead of prevention: Actions to protect local residents from adverse health impacts, such as lead poisoning, should meet both the strict and precautionary criteria, i.e. be preventative rather than reparative.

A proposal to refurbish a community building so as to increase its suitability for a range of community uses (e.g. by upgrading the toilets and adding a community kitchen or an additional room, providing shade structures, refurbishing a park) would be tangible, deliverable and potentially enduring. But without earmarked funding would not meet the ‘strict’ or ‘precautionary’ criteria.

While SIMPs and Conditions of Consent are intended to ensure that social benefits are maximised and adverse social impacts are minimised, in practice they are often used to defer consideration of adverse impacts, by placing them in a 'wait and see basket'.

Adverse social impacts shunted off to a SIMP can be

- tangible, serious and irreversible: e.g. risk of lead poisoning,
- tangible and difficult to reverse: e.g. loss of critical social infrastructure,
- tangible but require more work: e.g. specific service provision required to address needs of minority groups resident in the area, &/or
- intangible and potentially long term: e.g. social division and conflict in a residential community.

A feature of social impacts deferred in this way is that, properly costed, they would often erode or extinguish the profitability of a proposal. It can be galling for communities to see tangible costs ignored which local residents are left to wear, in effect subsidising the financial benefits being realised by applicants.

Communities which feel they are being fobbed off can document this by applying the Department's criteria to weak mitigation proposals.

Applying the criteria: Example

Here is how a Condition of Consent or mitigation might look if it met these criteria.

The example assumes the proposal is to provide a new community centre to replace one to be demolished to make way for a new building.

Definition **Complying response**

Strict Full building replacement cost (land, design, construction, fit-out/equipment costs) plus 20% contingency²³ for cost overrun is required to be paid to the local council in a hypothecated bond prior to project commencement.

The dollar amount needed to be assessed on the basis of at least two construction estimates.

Precautionary Demolition of the existing centre is contingent on construction of the replacement building to at least fit-out stage – i.e. avoids deferral or failure due to repeated changes of site or facility design.

Tangible The new building provides equal or greater floor space (e.g. due to efficiencies which are designed in) compared with the current building.

The new building uses durable, utilitarian materials delivering effective responses to likely climate conditions (i.e. high degree of effective utility).

Deliverable The new building is deliverable by the council because it is fully funded.

Durably effective Design of the building facilitates flexible uses &/or small areas (e.g. for office rental) designed to contribute an income hypothecated to the management of the building thereby ensuring its durable efficacy as a community centre.

The new building is not on flood prone land and is able to function as a cooling centre.

While it might be objected that the original building was not constructed out of low cost utilitarian materials or designed to withstand a hotter climate or flood events, it makes no sense to propose, as a mitigation, a new building which is not fit for purpose.

²³ Contingency %s should reflect the size of the project & risk of price increase due to delays and inflation.

Decisions and appeals

The following NSW agencies make decisions involving social impacts.

Kind of project or proposal	Decision making body
State significant development [SSD] A proposal is considered state significant if it: is over a certain size; is in a sensitive environmental area; will exceed a specific capital investment value. ²⁴	The relevant local government authority or, where the LGA does not support the proposal, or there are 50 or more objections or the Minister so declares, ²⁵ the IPC.
State significant infrastructure [SSI] Developments above a certain size, capital value, in a sensitive environmental location or considered critical. ²⁶	Assessed by the Department of Planning and decided by the Minister for Planning.
Regionally significant development applications in Greater Sydney.	Sydney District Planning Panels: Sydney Eastern City; Sydney Central City; Sydney Western City; Sydney North, and Sydney South.
Regionally significant development applications in 4 regions of NSW.	Regional Planning Panels for Hunter and Central Coast; Southern Region; Northern Region; Western Region.
Larger, contentious, strategic or sensitive development applications in Greater Sydney & Wollongong (but which are not state or regionally significant).	Local Planning Panels. ²⁷ Note: Planning Panels act as decision makers for these LGAs, but the LGA manages the application process. If the decision is appealed, the LGA (not the Panel) defends the Panel's decision in court.
Planning projects which are not state or regionally significant in the rest of NSW (i.e. where there is no local planning panel).	Local government authorities. ²⁸
Most liquor and gaming applications.	Liquor & Gaming NSW (L&GNSW).
Contentious liquor and gaming applications.	Independent Liquor & Gaming Authority (ILGA).

²⁴ <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/state-significant-development>

²⁵ State and Regional Development SEPP 2011 (NSW) s 8A (b) and 8A(4):
<https://legislation.nsw.gov.au/view/whole/html/inforce/2020-05-15/epi-2011-0511>

²⁶ <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/state-significant-infrastructure>

²⁷ There are 36 Local Planning Panels in Greater Sydney and Wollongong

²⁸ There are 128 local government authorities in NSW

Decision sequences

Changing local planning zones, the Gateway process

Controls on land use are contained in Local Environment Plans [LEPs] which set out zones and standards applying to developments and land uses in a local government area. LEPs are updated from time to time in order to support strategic plans for how areas should be used in the future (e.g. to allow new areas to be used for housing, permit different kinds of housing or new mixes of residential and commercial uses).

Most of the work to consider these changes takes place between the Department of Planning and the relevant local council. Community consultation, occurs after these processes are completed and the proposed changes, called a Gateway Determination, are placed on public exhibition for limited time periods.²⁹

Ideally, but rarely, a Gateway proposal will be the subject of a social impact assessment. For example: a SIA was prepared for a rezoning proposal for the Explorer Street social housing estate in Eveleigh to permit a renewal project to deliver new and additional housing at the site.³⁰

Councils are required to notify and consult with impacted landowners, including adjacent landholders, when a Gateway process is happening. These landowners receive written advice about proposed changes to the LEP, but otherwise, information may be found in local council's news updates and development sections of their website.

This 'Gateway' process, as the name implies, opens the 'gate' to types of development and land uses that were previously not permitted. Thus they also function as an important community early warning system.

²⁹ For between 10 and 30 working days, DPE 2023, Local Environmental Plan Making Guideline, August, p54: <https://www.planning.nsw.gov.au/sites/default/files/2023-03/lep-making-guideline.pdf> A council may also have consultation requirements in its Community Participation Plan.

³⁰ Link as at January 2024: <https://www.planningportal.nsw.gov.au/draftplans/under-consideration/explorer-street-rezoning-proposal>

Sequential applications to the planning authority

Some project proposals are presented for planning approval in a series of segments or as a sequence. For example:

The project requires construction of a mine workers village but the location and its social consequences are deferred to another development application.³¹

The project requires construction of a high voltage transmission line / water supply pipe to the mine site but this construction project and its consequences are deferred to another development application.³²

The aim of sequencing seems to be to get a project approved before all of its consequences are taken into account.

Dual agency approvals

Some liquor licence proposals, e.g. for a new hotel, require both planning and liquor licencing approval. These decisions take place sequentially.

A proposal for a licenced premises needs planning consent before the application for a liquor licence is considered.

If the new development is proposed to have a gaming room, L&GNSW will consider that application after planning approval has been obtained for the building. Applications for gaming machines, and thus the proposal to have a gaming room, may not be considered by a planning agency.³³

It is important to contribute to planning decisions even if a licencing issue is the main concern. Community submissions give voice to concerns about social impacts, prevent suggestions that an absence of submissions means community support, and carry an opportunity to appeal. It is often a good idea to open a dialogue with the planning department in the local council (LGA), for example to obtain advice on likely timing or aspects of the proposal requiring planning consent.³⁴

³¹ E.g. McPhillamys Gold Mine

³² Bowdens Silver Mine; Narrabri Gas Project

³³ Section 209 of the Gaming Machines Act (NSW) 2001

³⁴ That is, aspects of the proposal which may not comply with planning instruments or require an assessment to be made before consent can be given or refused.

Appeals

Appeals are heard by different bodies depending on the decision being appealed.

Appeals against	Heard by
All planning decisions except merit appeals of IPC decisions after a public hearing.	NSW Land and Environment Court [LEC].
Liquor and gaming decisions.	NSW Civil and Administrative Appeals Tribunal [NCAT].

Planning decisions

Merit appeals: the merit or quality of a decision is appealed. For example, in NSW a planning decision is required (Section 4.15 of the EPA Act) to take account of social impacts and the public interest. A merit appeal may challenge whether this was done adequately – **except** where the IPC has held a public hearing,³⁵ or the Minister for Planning made the decision. The merit of IPC SSD decisions made without a public hearing, and decisions made by planning panels or local government authorities, may be appealed in the NSW Land & Environment Court.

Judicial reviews: a court is asked to review whether a decision is invalidated by legal error. IPC decisions which included a public hearing and decisions by the Minister for Planning may be the subject of a judicial review by the NSW Land and Environment Court.

The NSWLEC determined that development consent by the Minister for Planning to the construction and operation of a new high school at Bungendore was invalid, and set aside, because owner's consent had not been obtained for the portion of the site that is Crown Land. Costs incurred by Save Bungendore Park Inc. to be met by the Minister for Education and Early Learning.³⁶

³⁵ 'A public hearing is only held if a formal request is made by the Minister for Planning and Public Spaces. If such a request is made, the Commission must hold a public hearing, it is not discretionary... When the Commission, at the request of the Minister, holds a public hearing in relation to a state significant development application for which it is the consent authority, merit appeal rights in respect of any future decision on that application are extinguished.' Source: IPC website: <https://www.ipcn.nsw.gov.au/engage-with-us/our-public-hearings-and-meetings>

³⁶ [2023] NSWLEC 140, 13 December 2023
<https://www.caselaw.nsw.gov.au/decision/18c5c746af634b9e5a2d0ff1>

Merit appeals and judicial reviews

There are usually strict time limits for making appeals or requesting a judicial review. Making a valid objection to a proposal before it was decided is usually a precondition to having a right of appeal.

Liquor and gaming decisions

Liquor licence holders and licence applicants may appeal ILGA decisions in the NSW Civil and Administrative Appeals Tribunal. But individuals may only appeal these decisions if they made a submission when the application in question was exhibited on the Liquor and Gaming Noticeboard, *and* they live within 100m of the licensed premises.³⁷

Effectively this rules out appeals from community groups or residents and in fact in 7 years there have been none.³⁸

To retain community appeal options, objections to a proposed development which requires both planning and liquor &/or gaming licencing consent, e.g. a proposed new hotel, should be addressed to the responsible *planning* agency while the proposal is on planning exhibition.

Costs and complications

Cost and a number of legislative limitations discourage appeals. Nonetheless, community groups may raise funds to make an appeal &/or obtain pro-bono assistance to do so. The appeals process can be complicated by the number of state laws and responsible agencies included in the SIA. For example, a development application, may raise questions as to whether parts of the site have been deemed contaminated by the NSW Environment Protection Authority as well as the extent to which estimates provided by consultants to the developer accurately forecast pollution rates, traffic flows, noise, jobs and housing, all of which carry social impacts. Sourcing expertise in these areas can be fraught, difficult and expensive.

³⁷ 100m is the required notification area. People living outside that area may not appeal. Section 13A of the Gaming and Liquor Administration Act 2007.

³⁸ See the 21 decisions published on the ILGA website <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions/ncat-decisions>

The Emperor's new clothes

In the many versions of this old cautionary tale,³⁹ the fact that the Emperor is being deluded by some suppliers is known to his courtiers, but it took one small boy, or a commoner (depending on the version) to call out, at a public event, that the Emperor was unclothed.

In NSW, social impact assessment has been clothed with guidelines, requirements for social science expertise and five impressive criteria. However, these are only effective if they are both used and enforced. Otherwise, like the Emperor's new clothes, expert and impartial social impact assessments are conspicuous by their absence.

In the folktale, the Emperor is in thrall to his suppliers who are also trading on the reluctance of others – donors, supporters, employees – to call them out. In the context of this mutual and tacit collusion the most brazen hoodwink is attempted and nearly succeeds. The hoax persists only while these others share the suppliers' flattery and obsequiousness.

The Achilles Heel of social impact assessment is the capacity of the well-resourced to clothe their interests in apparent expertise. The resources available to most project applicants far exceed those available to any bystanders (local communities or not-for-profits) who may wish to call them out. These resources are used to present, justify and support proposed projects while underplaying their social impacts. In this writer's experience, project applicants do not pay for SIAs which say that the social consequences will be adverse and the project should not go ahead.

Calling out poor projects or inadequate decisions in these circumstances is not easy. The aim of this Guide is to help communities anticipate how an impact assessment process will proceed in terms of stages, timelines and responsibilities, the points at which intervention is possible and the criteria which can be brought to bear on assessments and decisions.

³⁹ The Emperor's New Clothes, Wikipedia: https://en.wikipedia.org/wiki/The_Emperor%27s_New_Clothes viewed 3 November 2023