

# Urban tool: The role of social impact assessment in Victorian planning decision making

Rebecca Leshinsky, Barrister, Victorian Bar, Lecturer, Victoria University Law School, Melbourne, Rebecca.Leshinsky@vu.edu.au

**Abstract:** This paper reflects my interest in how policy and law are used to develop models for more just and equitable city living. Making use of a law in action rather than a law in books approach, I draw on socio-legal scholarship and urban studies to consider knowledge formats for planning law decision makers (PLDM) in relation to social and cultural impacts for proposals for significant land use and development. I ask *how* PLDM 'know' about social and cultural impacts and what role their own social capital plays in regard to this knowledge. I also explore the role of 'social impact assessment' (SIA), as a legal actor and knowledge instrument in the decision making process. I draw on US socio-legal theory to suggest models for how 'social facts', which carry a troubled history in common law jurisdictions, could be presented as evidence by the planning expert witness in courts and tribunals. It is anticipated that this research can contribute to planning law decision makers possessing more informed knowledge capital with which to make decisions for 'good' city planning.

If a path to the better there be, it begins with a full look at the worst.  
Thomas Hardy 1887

The truth lies not in one of the disputed views but in some third possibility which has not yet been thought of, which we can only discover by rejecting something assumed as obvious by both disputants.  
F.P. Ramsey, 'Universals'

## Introduction

Melbourne is in a state of rapid change. As the city moves to a more 'compact city' (Melbourne 2030), high rise buildings are on the increase in Victoria Harbour, Southbank, the inner suburbs, and in the city center. Over 26,000 bodies corporate were created over the past five years with one in four (one million) Victorians now living, owning or working in a property affected by a body corporate (IBCMV, 2007). It is estimated that in Melbourne, some 20,000 new dwellings will be completed over the next five to ten years (IBCMV, 2007). In an attempt to achieve this aim, there are numerous proposals for significant land use and development in Melbourne and its surrounds, supported by policy and legislative change.

**Table 1: Residential apartments in Melbourne City Centre**  
(source: *The Age*, Wednesday, 27 June, 2007, p. 3)

<b>2002</b>	22,016
<b>2004</b>	26,180
<b>2006</b>	32,136

This paper focuses on aspects of planning law decision making. In regard to urban planning, Melbourne, of course, must be considered in the context of the State of Victoria. Urban and regional planning is a State jurisdictional matter which in turn, is made more specific by each Victorian municipal planning scheme. There are numerous policies and guidelines which work within the planning framework.

Today, planning and municipal law can only be properly contextualised within global planning theory and praxis. It is for this reason why my research, pillared in Melbourne, draws on examples and practice from other large cities such as New York. As NYC is one of Jane Jacobs 'great cities', it can bring to Melbourne urban planning policy, important ethical and law reform considerations. Melbourne as a mature city must have the insight and judgment not to repeat NYC planning and building mis-judgments.

Of interest to me, is *how* planning law decision makers ('PLDM') gain knowledge on social and cultural impacts for significant land use and development. By planning law decision makers, I mean municipal planning officers who make planning recommendations, elected councilors, planning tribunal and panel members, and judges in courts that deal with planning issues. In Victoria, tribunal planning appeals may, under limited circumstances, proceed to the Supreme Court.

This paper forms part of the theoretical component of my current PhD research, effectively my literature review, and the critical arguments which to date have derived from this work. The more practical aspect of my research, which consists of a series of lengthy interviews with Victorian PLDM to gain an insight in to how they 'think' and 'know' about impacts relevant for proposed land use and development, is still underway. Early results from data collection (interviewing PLDM) suggests that PLDM are keen for SIA, whether they be stand alone documents, or a chapter within an environment impact assessment, to be of a high qualitative and quantitative standard. Some of the PLDM interviewed have suggested that planning schools should introduce a compulsory socio-economic research subject into urban planning education.

Part of my interest in drawing attention to the importance of the consideration of social impact in land use and development, lies in the strong historic tradition of a social agenda in architecture and planning (Glazer 2007). Further, there is a growing body of knowledge linking social and environmental determinants (see for instance, Reidpath et al, 2002, in regard to obesity). As there is a gap in the body of work on how PLDM gain knowledge, perhaps a more comprehensive account of the 'truth' may come from the privileged place of the environment impact assessment being complimented by other tools/actors such as a social impact assessment ('SIA').

Why the need to include a comprehensive consideration of social and cultural impacts? I hope to explore these issues with examples sprinkled throughout this paper. Research by Johnson (1997), for instance, focused on the interpretations of women's needs by a suburban developer. In her analysis of the development, Johnson was critical of the developer's attention to the flexibility women required to manage their located lives, as they negotiated work, children's activities and social isolation. Johnson (2006) in other research has examined the profound change over the last 20 years in the look, size and layout of developments both in and around Melbourne. In her analysis she examines socio-economic aspects ranging from household form, size and layout of houses, lot design both in regard to other dwellings and neighbourhoods, in the location of form of retailing and employment, and in the connection of the suburb to the city centre. There is no doubt that urban planning and land use and development are complex, and with such convolution, there comes the need for greater understanding and knowledge by all actors in the process on matters that impact upon planning: geography, economics, public policy, public health, law, cultural heritage and so on. As it is not possible for PLDM to have absolute knowledge in all of these areas, some assistance may come from an expert who can 'translate' particular knowledge into a form which is comprehensible and admissible for trial.

### **Stepping into the Knowledge footprint**

Law has become an arena where people either seek the truth or comment on the truth-seeking endeavours of others. Lawyers, and legal actors, from municipal planning officers to judges, make explicit and implicit assumptions and claims about truth. In fact, in many respects, law operates in a taken-for-granted universe. Studies of the workings of law in the everyday context of minor lawsuits, traffic tickets, and petty crime (cited in Valverde 2003 pp. 4-5) suggest that while truth seeking is an important aspect of law, this is not always or even most of the time the motivation of law. Minor crimes, more common than thrilling high profile matters, are often plea-bargained and often people in small matters do not turn up to court. The rules of evidence operate so that the final determination of the 'truth' may in fact pan out so that legal decisions including those such as imprisoning and deportation – are taken without full knowledge.

In regard to the production and consumption of knowledge required by PLDM in determinations for significant land use and development, these may be understood as 'social facts'. Smart (1989) reminds us that in law, non-legal knowledge is seen to be suspect and/or secondary. There is an assumption that scientific evidence is better placed in the search for the truth. Social facts in decision making is a curious and uncertain endeavour in Australian courts with little research on this area to date (Mullane, 1998; Burns, 2004). Interestingly, research by Jasanoff (1995), a leading US scholar of scientific knowledges in law, points out that even in 'toxic' tort lawsuits, in which science is unusually influential, courts tend to favour the evidence of general practitioners who have seen the plaintiff to the more causally relevant evidence of epidemiologists.

Actor-network scholars such as Latour (1987, 1993) remind us that when Pasteur discovered penicillin, the knowledge that the scientist considered as fresh was in fact one link in a lengthy chain of 'actors' and such actors (human and non-human) included machinery, theories, concepts, charts, other scientists and so on. In applying sociology-of-knowledge to law and planning theory itself, the parties or actors in a planning matter, from plan conception to legal review and appeal, work to constitute knowledge in the very process of making use of it. Zizek (1994, p. 11) reminds us in regard to the catchcry 'the facts speak for themselves' that rather, 'facts *never* speak for themselves but are always *made to speak* by a network of discursive devices' (original emphasis). Wittgenstein urged that meaning does not inhere in words but rather slips into existence within the particular social context in which words are used. Seeking the 'truth' in law is, of course, further complicated by the strict rules of evidence. Notwithstanding this, given the dearth in the use of social let alone cultural evidence in Australian trials, and particularly in regard to significant land use and development for city proposals, it is interesting to consider what value such evidence can play in the planning process from proposal to appeal. Of further significance, is *how* planning law decision makers gain such knowledge to make 'informed' decisions. If city planning is about the future, perhaps an understanding of the *how* in such decision making, could contribute to more just and equitable planning.

### **Social and cultural impacts upon planning law**

A desire to create the perfect city or at best, a 'better' city is part of planning history. A quest for knowledge of social concerns is also not new to city planning and building. In particular, the social 'health' and 'ills' of cities has been studied for centuries with planning being conceptualized as a practice of social guidance (Gunder & Hillier, 2007; Bridge and Watson, 2000). Moral vice features widely in these discussions on the 'health' of the city (Hunt 1999, cites studies undertaken by 'city scholars' such as Daniel Defoe 1698, Thomas Bray 1709, William Acton 1862, Charles Booth 1889 and others). Modernism in architecture and urban planning itself was a powerful movement centered in both aesthetic and social roots. The cities proposed by Howard, Lloyd Wright and Le Corbusier were all utopian solutions to cure the spatial and social ills of the early 20<sup>th</sup> century industrial city.

A number of municipalities in the State of Victoria, such as Maribyrnong and Frankston, have introduced policy and guideline frameworks for proposed significant developments to address social impacts. The City of Frankston views social impact assessment as:

'a mechanism for identifying and assessing the impact on communities of proposed projects and a means for better informing Council's planning and decision-making. Social impact assessment utilises measurable social variables plus community consultation processes to assess the potential social impacts of change, and includes plans for managing negative impacts and enhancing positive impacts.'

(City of Frankston, Social Impact Assessment Policy, 2006)

Internationally, a sound body of knowledge on social impact assessment has built up (Freudenburg 1986; Becker and Vanclay 2003). The field of SIA emerged during the 1970s as a response to new US environmental legislation. For Freudenburg (1986) SIA is a hybrid of social science and a component of policy-making process. SIA are viewed as anticipatory, being an effort to project likely impacts before they occur. As understood today, SIA derived from large scale US energy development projects in rural areas.

In Australia 2007, SIA may be at the cusp of where environment impact assessment were some twenty years ago. A SIA of a high academic level, prepared by a suitably qualified expert who can present objective social data reliant upon sound qualitative and quantitative methods, may be an

instrument/actor which could inform PLDM on social and cultural impacts in regard to a proposal. Such knowledge constitutes 'social facts'. Important too, in this framework, is that such a report being a 'witness statement' when at the litigious stage, must be able to withstand rigorous testing in trial cross-examination.

In 2004, in Victoria, amendments to section 60, *Planning and Environment Act 1987*, saw the introduction of a discretionary power for PLDM to consider social and economic impacts. Significant environmental impacts continue to be a mandatory consideration for PLDM.

There is a recent trend in Victorian planning case law to use SIA in planning scheme amendments and gambling machine matters. I would argue that there is a need to make use of SIA whenever there is a proposal involving 'significant' land use and development. 'Significant' is unfortunately another one of those slippery terms like amenity. Certainly for the proposed development of say, a skyscraper, factory or substantial works to a mixed use apartment building, the social, economic, environmental and cultural impacts must be considered (based on a 'plus one triple bottom line approach' (author's proposed model)). Although a number of Victorian metropolitan municipalities may agree with this reasoning, as mentioned, only a handful have introduced guidelines and policy documentation requiring developers to provide a social impact assessment with a permit application. From a legal technical or black-letter law perspective, there are fundamental administrative law concerns which intersect with this approach. That is, it is usually the developer who finances a social impact assessment. This may raise issues in regard to bias and conflict of interest. This area has not been adequately explored from critical academic legal or planning perspectives (the author has begun to consider this gap in knowledge).

Cultural impacts are a further important consideration in city land use and development. If social impact assessment, are the young child of planning in Victoria, cultural impact assessment are mere babes. In ancient cities like Athens and Jerusalem, important archaeological sites are often discovered accidentally when deep holes are dug for electrical lines or building foundations. In 1991, workers excavating the foundation for the Ted Weiss federal building at 290 Broadway in Manhattan, New York City, an area very close to the Greco-Roman courthouse in Downtown Manhattan made familiar by the television show 'Law and Order', uncovered what was eventually a total of 419 human remains being young African slaves. On-site building was halted for many years as a consequence of the find and a memorial has now been established on-site. This expensive piece of prime real estate taught NYC an important lesson in considering all of the potential impacts that may arise from a proposal for significant land use and development.

The City of Port Phillip may be the only Australian municipality which has extended its 'triple bottom line approach' from social, economic and environmental to also appreciate impacts upon cultural heritage (see clauses 21.04, 22.04, City of Port Phillip Planning Scheme).

Victoria's development industry now faces new obligations in regard to the management and protection of Aboriginal cultural heritage consequent to the *Aboriginal Heritage Act 2006*. The Act replaces an existing Victorian framework with a process which is meant to provide more protection and better management for Aboriginal cultural heritage during the development of a site. Pursuant to the Act and the 2007 Regulations, a Cultural Heritage Management Plan may be necessary.

*Drewgood Pty Ltd v Knox City Council* [2007] VCAT 933, is an interesting recent Victorian planning case which was an attempt to challenge the expert evidence to be provided by a social planner in a matter involving a proposed boarding house. It was alleged by the Responsible Authority that the expert lacked the independence required to perform her duties as an expert witness, and so would not bring an impartial and unprejudiced mind to the matter. It is important that issues like these are raised in the planning tribunal, and particularly in regard to social evidence, as it raises the profile of matters involving such evidence.

Though the Victorian planning tribunal is not bound strictly by the rules of evidence (section 98(1)(b) *Victorian Civil and Administrative Tribunal Act 1998*), it is only when SIA are prepared to a high academic standard which can withstand rigorous cross examination, that they will be taken more seriously by the law. The power of a well developed impact assessment report should not be underestimated as was seen, for instance, in the well known New York City Westway matter. This was a \$1.7 billion proposal on Manhattan's West Side for a six-lane highway, to be built mostly underground on 220 acres of new landfill in the Hudson River with 98 acres of parkland

and about 100 acres of development. In 1982, a comprehensive environment impact assessment convinced Judge Thomas Griesa of the U.S. District Court to refuse construction to commence.

### **Planning law decision makers as knowledge bearers**

Grosz (2001 p.19) reminds us that even though there are no utopian spaces anywhere except in our imaginations, this absence does not necessarily have to be restrictive. She discusses this in relation to architecture, but perhaps this is also relevant to planning theory and more particularly planning law. At stake is how to keep all open to its outside, how to force it to *think?* (italics Grosz, 2001 p. 63). Certainly these considerations are important to planning law decision makers worldwide who strive to contribute to achieving more equitable and just cities. Bloch hauntingly hails that 'hope is in the darkness itself' viewing hope as a creative possibility based on bodily needs for security, home and community (Gunder and Hillier, 2007). Forester (1989) also reminds us that planning praxis concerns the organisation of hope.

Hope is important for city planning and so too is truth, yet truth is troubled, as there can be no truth nor any 'real'. Valverde (2003) suggests we should speak of 'truths'. In relation to planning theory itself, Gunder and Hillier urge that we are better served 'to resist the 'musts' and 'oughts' and to remain with 'could' as a verb' (2007: 482). How then *could* PLDM become informed about knowledge and matters which are important in their decision making? Certainly, in asking these questions there is a need to consider at which point of the planning law decision making continuum we are placed. Unfortunately, there is only room here to discuss this in a general sense.

Environment impact assessment are now entrenched into planning and environment law and praxis in numerous international jurisdictions (Bates 2006) including Victoria which in 2006 saw its Environment Effects Statement guidelines updated.

Whilst EIA to date have purported to provide PLDM with a comprehensive picture of information for PLDM to make more informed decision making, EIA are not always able to comprehensively cover the field. As raised earlier, there can be no complete truth about a matter at hand. Lacan reminds us that language and the human subject constituted in culture by language are incomplete. There is always a void, an incompleteness, and even if we try to complete and make whole we will fail (Gunder and Hillier, 2007). Having said this, in Victoria as in other Australian States, the time is ripe for PLDM to feel comfortable with the notion that there are tools beyond an EIA which could provide them with knowledge about further impacts.

### **The truth of knowing or knowing the 'truths'**

The well known legal theorist, Oliver Wendell Holmes Jr wrote in 1881:

The truth is, that the law is always approaching, and never reaching, consistency. It is forever adopting new principles from life at one end, and it always retains old ones from history at the other, which have not yet been absorbed or sloughed off. It will become entirely consistent only when it ceases to grow (*The Common Law*, p. 1).

Planning theory and praxis attracts its critics. One side comes from those who speak of its 'dark' side (Yiftachel 1995, Allmendinger & Gunder 2005) with it being viewed as a control instrument promoting repression via subtle and more overt mechanisms. These include limited opportunities for objections and exclusionary pricing (including legal fees required for expert witness involvement). Zoning can be exclusionary – governing people through space (Valverde 2005, Frug 1999) and oft, there is a lack of adequate community consultation. Yiftachel (2000) stereotype good image of planning reminding us that it can act as an 'agent of regressive social change'.

The discretionary aspect of planning may add to this complexity providing uncertainty in the discovery of 'truth' and the 'good' for cities. However, as argued earlier, as there may be no universal 'truth', perhaps discretion in planning law decision making paths the way for more flexibility and space for difficult and challenging matters. It may also permit novel determinations particularly when it comes to social, economic and cultural issues which at times may be challenging to identify and define. In fact, this may allow for the exploration of the many 'truths' (Valverde, 2003) or, in Yiftachel's terminology, 'sides' to a matter. Consequently, planning conflict may be a productive enterprise, honing citizen's skills and capacities in discursive and participatory democracy (Sandercock, 2003; Forester, 1989).

PLDM like all of us are complex people, being a product of the numerous aspects of their identity – gender, spiritual, ethnic, professional, hobby-interests, political etc (Gunder & Hillier 2004). We are all creatures of our social capital, values and norms. Studies of knowledge production have regarded the acquisition of knowledge as creating some kind of ‘capital’ (Bourdieu 1987). At some point, there is bound to be conflicting intersections which place PLDM in ethical dilemmas as to what is ‘good action’ in planning practice. Discretion can, however, still complicate this matter. Important in all could be for PLDM to be provided with professional or continuing education which not only keeps them abreast of changes in planning law, but also reminds them of the role their social capital plays in relation to their professional practice.

Ultimately, regardless of what knowledge is provided to PLDM, and whether they are mandated to consider particular planning impacts, perhaps their normative values and ethics and their desire to conform to their belief of what expected from a PLDM works to shape their ultimate decision (Gunder & Hillier, 2004).

### **Use of social facts in litigation – suggestions from the United States**

Important in my research is how PLDM deal with ‘social facts’. These facts may derive from an EIA. More specifically, it may come from a more comprehensive knowledge instrument dealing with such facts being, an academically sound SIA. This later document will have been prepared by an expert such as a social scientist, sociologist or that somewhat more recent occupation – a ‘social planner’. This expert witness is another ‘actor’ in the planning process.

Facts concerning human behaviour and society are often relevant to the courts. Evidence of social science research could be used to prove social facts. United States courts, making use of the disciplines of history, psychology, sociology, anthropology, political science and related fields, have relied heavily upon social science research for this objective. Not so in Australian courts, with little research in Australia examining the position of the use of such evidence on how decision makers gain knowledge on social facts (Burns 2006, Mullane 1998). I have not been able to locate any Australian research in the use of social facts by PLDM. In a modest manner, I hope my on-going PhD research will be able to contribute to the gap in this body of knowledge.

Louis D Brandeis, a well known United States advocate, made use of social science materials in his submissions to courts and achieved judicial approval for doing so by judges often adopting those materials in their reasons. The ‘Brandeis brief’, a written submission referring to social science material, which included research, became a common tool in later cases. After his appointment to the United States Supreme Court, Justice Brandeis often relied upon social science research in his opinions. In the famous 1954 decision of *Brown v Board of Education* (8 347 US 483 (1954)), the United States Supreme Court cited articles of published research in its reasoning for finding that racial segregation in schools violated the 14<sup>th</sup> amendment to the United States Constitution by denying equal opportunity in that it generated a sense of inferiority in children of the minority (coloured) group.

To extend and improve on the use of social science research, a number of proposals have been put forward. I briefly mention them here in order to spur the debate about the possible use of such models in Australian planning law matters.

#### **The amicus curiae brief**

The United States Supreme Court has on occasions invited or permitted a professional association to submit an ‘amicus curiae brief’ to provide expert evidence as to the state of research on a particular issue and conclusions to be drawn. There is, however, no absolute acceptance by the courts that the amicus briefs will provide reliable results and the US Supreme Court does not always accept the advice provided. The amicus curiae process has not been used in Australia to provide expert advice/evidence.

#### **Research by the court**

Since about 1907, judges of the United States Supreme Court and judges of other United States appeal courts and trial courts sometimes have had staff search for published research on social issues and relied upon such research in making findings of social fact. Davis (1986) published a paper advocating the establishment of a research service for the Supreme Court for the purpose of carrying out first hand research or surveying existing published research on issues of legislative fact. This was never taken up.

### **Monahan and Walker proposals**

Monahan and Walker(1986) have put forward a number of suggestions for the use of social science research in law. These include:

- That the normal rules of evidence would not apply to social science research accepted in the field and used in superior courts for the purpose of determining issues of social fact in deciding law or policy (findings of legislative fact);
- That the items of social science research be relevant to such issues should be treated as a source of 'authority' rather than a source of 'facts' and;
- That as with findings of law there should be a system of precedent in relation to findings of social facts where a court is bound by findings of social fact by another court in much the same circumstances as it would be bound by decisions of law by that other court.

The authors point out (pp. 508-512) that even though the [United States] courts have increasingly looked for relevant research themselves, the courts use of such research and its interaction with researchers is often surrounded by confusion and mired in controversy. They note that lawyers can be biased in selecting the research they rely upon and at times, researchers have their research ignored or misconstrued by the courts. Even so, they take the view that many of these problems may be dealt by a new paradigm which incorporates empirical data into the legal decision-making process, a paradigm that treats some aspects of social science research as more akin to 'law' than to 'fact'. They justify these proposals by arguing that social science research has a 'conceptual similarity' with fact and also a clear bond with law, it is possible to classify it as either fact or law. The decision to treat it as a form of authority is justifiable for such an approach is more useful than a legal process. The authors submit that research should not be provided by evidence, but referred to in submission, in the way in which legal authorities are referred.

At present, one of the shortcomings with case law deriving from the Victorian Planning Tribunal is that it is not precedent. From a strict administrative law perspective, no decision from a Tribunal can be as such (Ireland 2006). The 'red dot decisions' emanating from the Planning List in the Victorian planning tribunal can only act as mere guidance for PLDM. A better approach for Victoria may be a Land and Environment Court with planning matters being decided in such a forum.

### **Discussion and Conclusions**

Glazer (2007 p. 258) laments that the image of the planner today is 'rather dim', and they are no longer viewed as reformers with much greater attention provided to the plans of developers. Perhaps this explains in part why consideration of social and cultural impacts have become a poor cousin. Part of the problem is that planning has become a complex web of technical policy which is difficult for even planners and planning law actors to navigate through. At times, placing a discretionary onus upon PLDM may cause uncertainty. A further troubling aspect is that meetings and planning tribunal hearings are over-run with maps, photographs of buildings and streets, architectural drawings, shadow diagrams and other visual aids (further planning 'non-human actors', Teubner, 2006) which work to privilege space and matter rather than people (Valverde, 2005). Modernism commenced with strong social aims as anchored as its aesthetic aims in architecture and planning. This important perspective is still a pertinent point for planning policy and law reform. The social agenda of leading architects last century, regardless of our views now on them, were at times incorporated into designs for whole cities, such as Frank Lloyd Wright and Le Corbusier, and in Le Corbusier, one of them – Chandigarh in India – was actually built. Design utopia and social vision is no longer on the mind of busy architects and planners. Lewis Mumford called for architecture in which urban form omitted extraneous ornament and historical reference or symbolism providing rather for light and air and greenery for city-dwellers. Having said this, we must not forget that major modernist architects at the time designed housing projects which have not in the end lived up to be the social utopia (for instance, the *projects* of NYC and *banlieu* of Paris).

By urging PLDM to draw on as many impact variables as possible, whether it be in an environment impact assessment, or in what I believe to be a better approach, a sound social impact assessment, in order to broaden their knowledge base, I believe that PLDM could make more informed decisions. This may contribute to a more just society. Such a model draws on

hybrid knowledge formats (Valverde 2003) and the position of the in-between. This in-between space may undo identities (Grosz p. 92) but it could also create the new, the fresh the utopian urge to strive for the more complete. To assist in the provision of such knowledge to PLDM a social impact assessment prepared by an expert may be required. Such an expert should have the knowledge base to prepare a report which is of high academic quality able to withstand testing via cross-examination.

PlaNYC, the new strategic city plan for New York City, unveiled by The City of New York Mayor, Michael R. Bloomberg in May 2007, strives for numerous NYC planning agencies to work together. From this collaboration, it is anticipated uniform knowledge will emerge. This could assist in determinations and should provide a more positive and comprehensive impact upon decision making. This reasoning sits well with the confluence of environmental factors and socio-economic factors noted from researchers like Reidpath et al (2002) which links the social and environmental determinants of obesity.

The time is ripe for PLDM to remind themselves to challenge 'taken-for-granted assumptions'. There is space for other knowledge tools and legal actors. More consideration could be given to the role of the expert witness who can provide knowledge on social and cultural impacts. Whether social impact assessment should be mandated and prescriptive instruments is still an unresolved issue. So too, is the place for a cultural impact assessment. The various alternative models noted in this paper to incorporate social and cultural evidence into planning matters, may strive for more prudent planning decision making. It could also push closer to Pinder's (2002) 'new potentialities' and for 'possibilities and desires of alternative future scenarios and of developing an impulse for change' (Gunder & Hillier, 2007, p. 480). Part and parcel of this approach could be for more of Victoria's seventy-nine Municipalities to incorporate social impact assessment into their planning process for significant land use and development.

*The author would like to thank her PhD supervisor, Dr Carolyn Whitzman, Urban Planning & Development, The University of Melbourne, who notwithstanding her busy schedule, always generously answers the author's endless queries on planning matters. Thanks Carolyn for also reading this paper and making some very valuable suggestions!*

## References

- Allmendinger, P & Gunder, M. (2005), 'Applying Lacanian Insight And A Dash of Derridean Deconstruction To Planning's 'Dark Side'', *Planning Theory*, 4(1), pp. 87-112.
- Bates, G. (2006), *Environmental Law in Australia*, (Sydney:LexisNexis).
- Bloch, E. (2000) [1923], *The Spirit of Utopia*, (Stanford: Stanford University Press).
- Becker, H.A. and Becker and Vanclay, F. (2003) *The International Handbook of Social Impact Assessment*, (Cheltenham: Edward Elgar Publishing Limited).
- Bourdieu, P. (1987), *Distinction: A Social Critique of the Judgement of Taste* (Cambridge:Harvard University Press).
- Burns, K. (2004) The way the world is: Social facts in High Court negligence cases, *Torts Law Journal* 12 pp.215-238.
- City of Port Phillip Planning Scheme.
- Davis, K.C., (1986) Judicial, Legislative and Administrative Lawmaking: a Proposed Research Service for the Supreme Court, *Minnesota Law Review*, 71, pp. 1-18.
- Forester, J. (1989) *Planning in The Face of Power*, (Berkeley: University of California Press).
- Glazer, N. (2007) *From A Cause To A Style* (Princeton: Princeton University Press).
- Grosz, E. (2001) *Architecture from the Outside* (Cambridge, MIT Press).
- Gunder, M. and Hillier, J., (2004) Conforming to the Expectations of the Profession: A Lacanian Perspective on Planning Practice, Norms and Values, *Planning Theory & Practice*, 5(2), pp.217-235.
- Gunder, M. and Hillier, J. (2007) Planning as urban therapeutic, *Environment and Planning A*, 39, pp. 467-486.
- Holmes, O.W., (1881) *The Common Law*, (Boston: Little,Brown & Co).
- Hunt, A., (1999) *Governing Morals: A Social History of Moral Regulation*, (Cambridge: Cambridge University Press).
- IBCM (Institute of Body Corporate Managers Victoria), website: <http://www.bodycorp.org/>, visited 25 June, 2007.

- Ireland, C. (2006) Planning merits review and the doctrine of precedent, *Australian Bar Review*, 27(2) pp.231-241.
- Johnson, L. (1997) The oracles of Delfin: women and suburban developments. *Urban Policy and Research* 15(2), pp. 103-114.
- Latour, B. (1987) *Science in action* (Cambridge: Harvard University Press).
- Latour, B. (1993) *We have never been modern* (Cambridge: Harvard University Press).
- Jasanoff, S. (1995), *Science at the Bar: Law, Science, and Technology in America*, (Cambridge: Harvard University Press).
- Johnson, L.C., (2006) Style Wars: revolution in the suburbs? *Australian Geographer*, 37(2) pp. 259-277.
- Melbourne 2030, <http://www.dse.vic.gov.au/melbourne2030online/> site visited 30 June, 2007.
- Monahan, J. and Walker, L., (1986) Social Authority: Obtaining, Evaluating and Establishing Social Science in Law' 134(3) *Univ of Penn LR* pp.477-517.
- Mullane, G.R., (1998) Evidence of Social Science Research: Law, Practice, and Options in The Family Court of Australia, *The Australian Law Journal*, 72, pp. 434-465.
- PlaNYC (2007) – A Greener, Greater New York, The City of New York.
- Pinder, D., (2002) In Defence Of Utopian Urbanism: Imagining Cities After The 'End of Utopia', *Geografiska Annaler*, 84B (3-4), pp. 229-241.
- Reidpath, D.D. et al, (2002) An ecological study of the relationship between social and environmental determinants of obesity, *Health & Place*, 8, pp. 141-145.
- Sandercock, L. (2003) Out of the Closet: The Importance of Stories and Storytelling in Planning Practice, *Planning Theory & Practice*, 4(1), pp. 11-28.
- Smart, C., (1989) *Feminism and the Power of Law*, (London:Routledge).
- Teubner, G. (2006) Rights of Non-humans? Electronic Agents and Animals as New Actors in Politics and Law, *Journal of Law and Society*, 33(4), pp. 497-521.
- Valverde, M., (1996) Social Facticity And The Law: A Social Expert's Eyewitness Account of Law, *Social & Legal Studies*, 5(2), pp. 201-217.
- Valverde, M., (2003) *Law's Dream of a Common Knowledge*, (Princeton: Princeton University Press).
- Valverde, M., (2005) Taking 'land use' seriously: toward an ontology of municipal law, *Law Text Culture*, 9, pp. 34-59.
- Wolfe, T. (1983) *From Bauhaus To Our House* (London: Abacus).
- Yiftachel, O. (1995) Planning as Control: Policy and Resistance in a Deeply Divided Society, *Progress in Planning* 44(2), pp. 115-84.
- Yiftachel, O. (2000) Social Control, Urban Planning and Ethno-Class Relations: Mizrahi Jews in Israel's 'Development Towns', *International Journal of Urban and Regional Research*, 24.2, pp. 418-438.
- Zizek, S. (1994) 'Introduction: The Spectre of Ideology', in S. Zizek (ed) *Mapping Ideology*, pp. 1-33 (London: Verso).
- [http://www.frankston.vic.gov.au/Services\\_A-Z/Community\\_Projects/Social\\_Impact\\_Assessment\\_Toolkit\\_2006/index.aspx](http://www.frankston.vic.gov.au/Services_A-Z/Community_Projects/Social_Impact_Assessment_Toolkit_2006/index.aspx), Social Impact Assessment Policy. Site visited 23 June, 2007.