

**ANALYSIS OF THE SOCIAL IMPACT ASSESSMENT
UNDER THE TOWN AND COUNTRY PLANNING ACT
AND PROPOSALS FOR REFORM**

BY

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ABSTRACT

Various issues regarding the implementation of Social Impact Assessment (SIA) and its legal framework in Malaysia have resulted in confusion amongst governmental agencies, project proponents and the public. Even though Malaysia has introduced a basic legal framework on SIA, ineffective management of the impact of projects has weakened the public's confidence in the effectiveness of SIA implementation and thus has hindered the country's aim towards achieving sustainable development goals. Therefore, alternatives must be formulated to ensure that these issues which lead to the confusion are managed and resolved constructively. It is among this research's objectives to propose recommendations that could enhance the SIA framework in Malaysia. To achieve this objective, a content analysis of the legal framework was carried out by examining the provisions under the Town and Country Planning Act 1976 (Act 172), the Manual for Social Impact Assessment for Project Development (Second Edition), 2018 (Manual) and decided cases. Act 172 lacks comprehensive legal provisions to control and administer the SIA implementation by the Town and Country Planning Department (PLANMalaysia). Many issues and gaps related to the preparation process, the evaluator's expertise, the report's evaluation and post-monitoring under the implementation of SIA are identified based on a questionnaire survey among the respondents from PLANMalaysia Federal as well as PLANMalaysia State. It is further found through focused group discussions (FGD) that the existing Manual is insufficient in explaining and providing details on the preparation, submission, evaluation, monitoring, and auditing processes of the SIA. Consequently, these issues have affected the efficiency of the SIA implementation process for development projects. Referring to the best practices of Australia and India, amongst others, recommendations as to the requirement of SIA, the approval process as well as details of the SIA preparation process are proposed at the end of this research to improve the current regulatory framework. It is believed that the recommendations presented in this research could strengthen and improve the SIA implementation framework in Malaysia as well as significantly contribute to the government, industry, academia and society.

خلاصة البحث

أدت مشكلات متعددة حول تطبيق تقييم الأثر الاجتماعي (SIA) وإطاره القانوني إلى الارتباك بين الإدارات الحكومية ومقدمي المشروعات والعوام. رغم وجود توطئة إطار أساسي لتقييم الأثر الاجتماعي بماليزيا إلا أن تدبير آثار المشروعات بغير فعال يضعف ثقة العوام في فعالية تطبيق SIA ويمنع هدف الوطن عن التوصل إلى غايات التنمية المستدامة. إذن، لا بد من إنشاء البدليات في ضمان أن هذه المشكلات المؤدية إلى الارتباك تم تعاملها وحلها بصورة بناء. فمن أهداف هذا البحث تقديم الاقتراحات التي يتقوى بها إطار تقييم الأثر الاجتماعي في ماليزيا. من أجل تحقيق هذا الهدف، تم تحليل المضمون للإطار القانوني من خلال فحص المواد الموضوعية تحت قانون تخطيط المدينة والريف 1976 (قانون 172)، والدليل لتقييم الأثر الاجتماعي لتنمية المشروع (طبعة ثانية)، 2018 (دليل) والقضايا المقررة. قد ظهر نقص في التشريع عند القانون 172 لتحكم تطبيق SIA وتديره من قبيل إدارة تخطيط المدينة والريف (PLANMalaysia). تم تعيين كثير من المشكلات والفجوات من نواحي عملية الاستعداد، وخبرة المقيم، وتقييم التقرير، وما بعد الإشراف في ظل تنفيذ SIA بناء على الاستقصاء بالاستبانة من قبل المستجيبين من PLANMalaysia فدرالية وولاية. وجد مزيدا عبر مناقشات المجموع المركز أن الدليل المتوفر لم يكن كافيا في تبين وتوفير التفاصيل في استعداد SIA وعملية تسليمه وتقييمه وإشرافه ومراجعته. وبالتالي تؤثر هذه المشكلات في كفاءة عملية تنفيذ SIA لمشروعات التنمية. بالرجوع إلى أفضل الممارسات منها أستراليا والهند، تم تقديم الاقتراحات في نهاية هذا البحث من حيث شروط SIA وعملية قبوله من أجل تحسين الإطار القانوني الحاضر. ومن المعتقد أن الاقتراحات المقدمة في هذا البحث سيفيد إطار تطبيق SIA بماليزيا وكذلك يساهم مساهمة بارزة إلى الحكومة والصناعة والأكاديمية والمجتمع.

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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TABLE OF CONTENTS

ABSTRACT.....	iii
ABSTRACT IN ARABIC.....	iii
APPROVAL PAGE	iv
DECLARATION.....	v
ACKNOWLEDGEMENTS	vii
LIST OF TABLES	xii
LIST OF FIGURES	xiv
LIST OF CASES	xv
LIST OF STATUTES	xvi
LIST OF ABBREVIATIONS	xviii
CHAPTER ONE: INTRODUCTION TO THE RESEARCH.....	20
1.1 INTRODUCTION	20
1.2 RESEARCH	
BACKGROUND	Erro
r! Bookmark not defined.	
1.2.1 Sustainable Development Goals	23
1.2.2 New Urban Agenda.....	27
1.2.3 Environmental, Social and Governance.....	29
1.2.4 National Social Policy & National Community Policy.....	31
1.2.5 National Five-Year Development Plan	33
1.2.6 National Physical Plan	36
1.3 PROBLEM STATEMENT AND LITERATURE REVIEW	44
1.3.1 Identification of Issues and Lacunae	44
1.4 RESEARCH OBJECTIVES	55
1.5 RESEARCH QUESTIONS	55
1.6 HYPOTHESIS	57
1.7 SCOPE AND LIMITATIONS OF RESEARCH	57
1.8 SIGNIFICANCE.....	58
1.9 RESEARCH METHODOLOGY	58
1.10 ORGANISATION OF RESEARCH	62
1.11 CONCLUSION.....	64
CHAPTER 2: CONCEPTUAL FRAMEWORK OF SOCIAL IMPACT	
ASSESSMENT	65
2.1 INTRODUCTION	65
2.2 SOCIAL IMPACT ASSESSMENT	66
2.2.1 Impact Assessment.....	66
2.2.2 Social Impact.....	69
2.2.3 Definitions and Scope of SIA	74
2.2.4 Principles and Benefits of SIA.....	79
2.2.5 Disadvantage of SIA	83
2.3 SHARIAH PERSPECTIVE OF SOCIAL WELLBEING.....	86
2.4 CONCLUSION.....	89

CHAPTER 3: THE PRACTICE OF SOCIAL IMPACT ASSESSMENT IN AUSTRALIA AND INDIA	91
3.1 INTRODUCTION	91
3.2 THE PRACTICE OF THE LEGAL FRAMEWORK OF SOCIAL IMPACT ASSESSMENT IN AUSTRALIA.....	92
3.2.1 Background	92
3.2.2 Legal Framework for Social Impact Assessment.....	101
3.2.3 Activities Requiring Preparation of Social Impact Assessment ..	109
3.2.4 Procedure and Process of Consideration or Evaluation for Social Impact Assessment	113
3.2.5 Public Participation	125
3.2.6 Overall Analysis.....	130
3.3 THE PRACTICE OF LEGAL FRAMEWORK OF SOCIAL IMPACT ASSESSMENT IN INDIA.....	135
3.3.1 Background	135
3.3.2 Legal Framework for Social Impact Assessment.....	136
3.3.3 Activities Requiring Preparation of Social Impact Assessment ..	141
3.3.4 Procedure and Process of Consideration or Evaluation for Social Impact Assessment	142
3.3.5 Public Participation	150
3.3.6 Overall Analysis.....	150
3.4 CONCLUSION.....	152
 CHAPTER 4: SOCIAL IMPACT ASSESSMENT IN MALAYSIAN LAW AND PRACTICE	 154
4.1 INTRODUCTION	154
4.2 DEVELOPMENT AND PLANNING LEGISLATION	155
4.3 THE LEGAL FRAMEWORK OF SOCIAL IMPACT ASSESSMENT IN WEST MALAYSIA	161
4.3.1 Background	161
4.3.2 Malaysian Planning System	163
4.3.3 Town and Country Planning Act 1976 (Act 172)	171
4.3.4 Guidelines for SIA	182
4.4 THE PRACTICE OF LEGAL FRAMEWORK OF SOCIAL IMPACT ASSESSMENT IN EAST MALAYSIA	188
4.4.1 Background	188
4.4.2 Practice in Sabah	188
4.4.3 Practice in Sarawak	192
4.4.4 Overall Analysis.....	196
4.5 CATEGORIES OF SIA.....	197
4.5.1 Introduction.....	197
4.5.2 Category 1	197
4.5.3 Category 2	200
4.5.4 Category 3	201
4.6 PROCESS OF SOCIAL IMPACT ASSESSMENT.....	202
4.6.1 Preparation of SIA report	202
4.6.2 Public Participation	210
4.7 JUDICIAL AND PLANNING APPEAL DECISIONS ON SIA	214
4.7.1 Summary of Analysed Cases	226

4.8 ANALYSIS OF EIA FRAMEWORK UNDER ENVIRONMENTAL QUALITY ACT 1974 (ACT 127)	229
4.9 CONCLUSION.....	233
CHAPTER 5: ANALYSIS OF SIA IMPLEMENTATION BY GOVERNMENTAL AGENCIES AND PROJECT PROPONENTS	235
5.1 INTRODUCTION	235
5.2 EXECUTION OF SIA IS NOT COMPREHENSIVE IN THE STATES IN MALAYSIA	236
5.2.1 Analysis of SIA Implementation by the States in Peninsular Malaysia.....	237
5.3 REQUIREMENT OF SIA PREPARATION IS NOT SPECIFIED UNDER ACT 172	243
5.3.1 No Specification of SIA Requirement for Category 2 under Act 172	244
5.3.2 SIA Category 3 is Subjective	246
5.4 THE APPROVAL PROCESS FOR SIA IS NOT STATED UNDER ACT 172	249
5.4.1 Requirement of Material Consideration.....	253
5.4.2 Requirement of Public Participation Element.....	254
5.5 NO PROVISION RELATING TO THE ENFORCEMENT OF SIA	256
5.5.1 Public Objection Using SIA Report	259
5.5.2 Monitoring and Auditing Post- SIA	262
5.6 CRITERIA OF A QUALIFIED PERSON TO PREPARE THE SIA	264
5.7 QUESTIONNAIRE SURVEY ANALYSIS	267
5.7.1 Respondent Profile	267
5.7.2 Analysis of Knowledge, Skill and Capacities for SIA Implementation	269
5.8 FOCUS GROUP DISCUSSION	276
5.8.1 Introduction	276
5.8.2 Findings of FGD	277
5.9 CONCLUSION.....	299
CHAPTER 6: RECOMMENDATIONS AND CONCLUSION	301
6.1 INTRODUCTION	301
6.2 PROPOSED RECOMMENDATIONS	302
6.3 AMENDMENT OF PROVISIONS UNDER ACT 172.....	303
6.3.1 Interpretation of SIA	303
6.3.2 Requirement of SIA	304
6.3.3 Approval of SIA	305
6.4 PROPOSAL OF NEW PROVISIONS UNDER ACT 172	308
6.4.1 Qualified Person.....	309
6.4.2 Assessment Evaluation	310
6.4.3 Overall Analysis.....	313
6.5 AMENDMENT OF MANUAL PREPARATION FOR SOCIAL IMPACT ASSESSMENT FOR PROJECT DEVELOPMENT EDITION 2; 2018.....	314

6.5.1 Process of SIA.....	314
6.5.2 Qualified Person.....	315
6.6 THESIS CONCLUSION	317
6.7 FINDINGS.....	319
6.7.1 Examination of Current Law and Practice in the Implementation of SIA in Malaysia, Australia and India.....	319
6.7.2 Examination of Legal Issues and Gaps Related to the Implementation, Enforcement and Monitoring of SIA under the Town and Country Planning Act 1976 (Act 172).....	321
6.7.3 Examination of Recommendations for Improvement of the Town and Country Planning Act 1976 (Act 172) and Manual for Social Impact Assessment for Project Development Regarding Implementation, Enforcement and Monitoring of SIA.....	322
6.8 DIRECTION OF FUTURE RESEARCH	323
6.9 CONCLUSION.....	324
REFERENCE.....	347
APPENDIX I: SPECIFIC NUMBER OF LOCAL GOVERNMENTS FOR STATES APPLYING AND NOT APPLYING ACT A1522.....	335
APPENDIX II: QUESTIONNAIRE	347
APPENDIX III: LIST OF FGD SESSIONS.....	351
GLOSARRY.....	351

LIST OF TABLES

Table 1.1	Three Main Stages for the National Development Framework	38
Table 1.2	Research Objectives and Corresponding Research Questions	57
Table 2.1	Characteristics of Social Impacts	72
Table 2.2	Fundamental Principles of SIA	80
Table 2.3	Specific Principles of SIA	81
Table 2.4	Principles and Guidelines for Social Impact Assessment in the USA	83
Table 3.1	Type of States Significant Projects in New South Wales	111
Table 3.2	Assessment Level	118
Table 3.3	Recommended Structure for an SIA Report	120
Table 3.4	Technique of Engagement in SIA Implementation	128
Table 3.5	Overall Analysis of SIA Implementation between States of Australia	132
Table 3.6	Provisions related to Part Two of RFCTLARR	138
Table 3.7	Lists the Types of Development Projects related to the SIA Requirement	143
Table 3.8	Overall Analysis of SIA Implementation in India	152
Table 4.1	Lists under Federal Constitution	157
Table 4.2	Application and Gazettement of State Manual	186
Table 4.3	List of Development Projects for SIA Category 1	199
Table 4.4	List of Development Projects for SIA Category 2	201
Table 4.5	List of Development Projects for SIA Category 2	202
Table 4.6	Summary of Cases on SIA and EIA	227
Table 4.7	Overall Analysis of EIA Implementation in Malaysia	234
Table 5.1	Application and Gazettement of Act A1522 and State Manual	238

Table 5.2	Overall Number of LPA that Require SIA under Planning Permission Conditions for States that Apply Act A152	240
Table 5.3	Overall Number of LPAs that Require SIA under Planning Permission Conditions for States that Do Not Apply Act A1522	242
Table 5.4	Comparison of SIA Requirement, Type of Development and Evaluation Panel between SIA Category 1,2 and 3 based on the Provision of Act 172	246
Table 5.5	Comparison of Type of Developments under SIA Category 3 between the Manual (Federal), Selangor and Negeri Sembilan Manuals	249
Table 5.6	List of the Required Documents by PLAN Malaysia for Planning Permission at Manjung Municipal Council	251
Table 5.7	Comparison of the List of Required Documents by State Authority of Melaka for Coastal Reclamation and Layout Plan	252
Table 5.8	Respondent Profile based on States and Agencies	269
Table 5.9	Level of Understanding regarding the Stages of the SIA Preparation Process	271
Table 5.10	Level of Agreement on the Challenge of the Current SIA Preparation Process	273
Table 5.11	Level of Agreement on the Challenge of the Current Evaluation Process	274
Table 5.12	Level of Agreement on the Challenge of the Current Monitoring Process	276
Table 5.13	Focus Group Discussion Session	278
Table 5.14	Attendance List of Project Proponent in the Sixth Session	293
Table 5.15	Overall Finding of FGD Overall Finding of FGD	299
Table 6.1	Proposal of Amendments	308
Table 6.2	Proposal of Provision	312
Table 6.3	Advantages of Specific Provisions in Act 172	314
Table 6.4	Chapters that Address the Corresponding Research Objectives and Research	319

LIST OF FIGURES

Figure 1.1	Sustainable Development Goals (SDG)	25
Figure 1.2	National SDG Governance Structure	26
Figure 2.1	The Process of Impact Assessment	69
Figure 2.2	Variables of Social Impact	75
Figure 2.3	SIA Conceptual Framework in Malaysia	87
Figure 3.1	SIA Process in Queensland	115
Figure 3.2	SIA Process in New South Wales, Australia	121
Figure 4.1	Related Law relating to Land Development in Malaysia	162
Figure 4.2	Definition of 'Development' under Act 172 and Act 828	167
Figure 4.3	Malaysia Planning System	171
Figure 4.6	Amendments of Act 172	178
Figure 4.7	Manual of SIA	187
Figure 5.1	The Respondents' Feedback on Their Level of Understanding regarding the Stages of the SIA Preparation Process	270

LIST OF CASES

Blumenthal Realty Sdn Bhd & Ors v Majlis Perbandaran Ampang Jaya (MPAJ) & Malaysian Assurance Alliance Bhd (MAA) Appeal No: Sel. (83-85) MPAJ (07-09)/08(1)

BU Developments Sdn Bhd v Selangor Appeal Board & Ors [2014] 8 MLJ 539

Kajing Tubek & 2 Ors v Ekran Bhd & 4 Ors [1996] 3 CLJ 96 (High Court)

Lee Wan Nam v Majlis Perbandaran Subang Jaya & Tetuan TM Facilities Sdn Bhd. (Pencelah) & Tetuan Pujangga Budiman Appeal No: LR.SEL. (109) MPSJ/03/2009

Mohamad Yusof bin A Bakar & Anor v Datuk Bandar Kuala Lumpur [2019] MLJU 1098

Pengarah Tanah Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn. Bhd. [1979] 1 MLJ 135

Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and Another Appeal [2023] 3 MLRA 44

Shahrizal bin Sabri & Ors v Majlis Perbandaran Seberang Perai [2010] MLJU 2164

LIST OF STATUTES

Environmental Assessment Act 1982 (Northern Territory, Australia)
Environmental Planning and Assessment Act 1979 (New South Wales, Australia)
Environmental Protection Act 1986 (Western Australia, Australia)
Environmental Protection Act 1994 (Queensland, Australia)
Environmental Protection Act 2019 (Northern Territory, Australia)
Environment Protection and Biodiversity Conservation Act 1999 (Northern Territory, Australia)
Environment Protection Enactment 2002 (Sabah)
Environmental Planning and Assessment Regulation 2000 (New South Wales, Australia)
Environmental Quality Act 1974 (Act 127)
Environmental Quality (Amendment) Act 2012 (Act A1441)
Federal Constitution
Forest Enactment 1969
Housing Development Act (Control and Licensing) (Act 118)
Interpretation Acts 1948 and 1967 (Act 388)
Johor Development Charge Rules
Land Ordinance (Sabah Cap. 68)
Local Government Act 1976 (Act 171)
National Heritage Act 2005 (Act 645)
National Land Code (Act 828)
Natural Resources and Environment (Audit) Rules 2008
Natural Resources and Environment (Prescribed Activities) Order 1994
Planning Control Rules General State of Johor 2008
Qualification Preparation and Submit Plan and Document for Planning Permission Rules (Amendment) 2014
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules
Sarawak Land Code (Cap. 81)
Sarawak Natural Resources and Environment Ordinance
Sewerage Servicest Act 1993 (Act 508)
Solid Waste and Public Cleansing Management Act 2007 (Act 672)
State Cultural Heritage (Conversation) Enactment 1997
Strata Management Act 2013 (Act 757)
Strata Title Act 1985 (Act 318)
Street, Drainage and Building Act 1974 (Act 133)
State Development and Public Works Organisation Act 1971 (Queensland, Australia)
Strong and Sustainable Resource Communities Act 2017 (Queensland, Australia)
The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (India)
Town and Country Planning Act 1976 (Act 172)
Town and Country Planning (Amendment) Act 1993 (Act A866)
Town and Country Planning (Amendment) Act 1995 (Act A933)

Town and Country Planning (Amendment) Act 2001 (Act A1129)
Town and Country Planning (Amendment) Act 2007 (Act A1313)
Town and Country Planning (Amendment) Act 2017 (Act A1522)
Town and Country Planning Ordinance 1950 (Sabah Cap. 141)
Town and Country Planning Ordinance 1952 (Sarawak Cap. 87)
Water Services Industry Act 2006 (Act 655)



LIST OF ABBREVIATIONS

AI	Appointed Individual
ASI	Analysis of Social Impact
BAM	Board of Architect Malaysia
BEM	Board of Engineers Malaysia
BMTLP	Baleh-Mapai 500 kV Transmission Line Project
BTPM	Board of Town Planners Malaysia
CAMP	Conversation Area Management Plan
CARGs	Cross-Agency Reference Groups
CPP	Community Participation Plan
CSES	Comprehensive Spatial Ecosystem
CSSI	Critical State-Significant Infrastructure
DBKL	Datuk Bandar Kuala Lumpur
DOE	Department of Environment
DPE	Department of Planning and Environment
DPR	Development Proposal Report
DG	Director-General
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EMP	Environmental Management Plan
EPA	Environmental Protection Authority
EPU	Economic Planning Unit
ESG	Environmental, Social and Governance
ESIA	Environmental and Social Impact Assessment
EXCO	State Executive Council
FC	Federal Constitution
FGD	Focus Group Discussion
FSC	Forest Stewardship Council
FIFO	Fly-In-Fly-Out
GMM	Grievance Management Mechanism
HIA	Heritage Impact Assessment
IAIA	International Association of Impact Assessment
IAP2	International Association for Public Participation
ICU	Implementation Coordination Unit
KPI	Key Performance Indicators
LA21	Local Agenda 21
LPA	Local Planning Authority
MIP	Malaysian Institute of Planners
MSIA	Malaysian Association of Social Impact Assessment
MSPO	Malaysian Sustainable Palm Oil
NGOs	Non-Governmental Organisations
NSC	National Steering Committee
NSP	National Social Policy
NSW	New South Wales

NPP	National Physical Plan
NPP4	National Physical Plan 4
NVR 2017	Malaysian National Volunteer Review 2017
NVR 2021	Malaysian National Volunteer Review 2021
NUA	New Urban Agenda
NTEPA	Northern Territory Environment Protection Authority
OLG	Office of Local Government
OSC	One Stop Centre
PETRONAS	Petroleum Nasional Berhad
PPA	Guideline of Application for Development Proposal under Act 172
QR	Quick Response
RAP	Resettlement Action Plan
RGC	Rural Growth Centres
RSPO	Roundtable on Sustainable Palm Oil
SDGs	Sustainable Development Goals
SDO	State Development Office
SEARs	Secretary's Environmental Assessment Requirements
SEPU	State Economic Planning Unit
SIA	Social Impact Assessment
SIMP	Social Impact Management Plan
SIU	Social Impact Unit
SME	Subject Matter Expert
SMP	Social Management Plan
SOP	Standard of Procedure
SPC	State Planning Committee
SSD	State-Significant Development
SSI	State-Significant Infrastructure
SSPS	Statistical Package for Social Science
TIA	Traffic Impact Assessment
TOR	Term of Reference
US Principle	Principles and Guidelines for Social Impact Assessment in the USA
YDPA	Yang di-Pertuan Agong
12MP	Twelfth Malaysia Plan

CHAPTER ONE:

INTRODUCTION TO THE RESEARCH

1.1 INTRODUCTION

This chapter introduces the research background on social impact assessment (hereafter referred to as ‘SIA’) and the current legal framework of this assessment under the Town and Country Planning Act 1976 (hereafter referred to as ‘Act 172’) and the Manual for Social Impact Assessment for Project Development (Second Edition), 2018 (hereafter referred to as ‘Manual’). This is followed by the problem statement, study's objectives, research questions, hypothesis, scope and limitations, the significance of the research, research methodology and organisation of research. The objectives are significant in showing the direction of this study and the researcher's tasks. In the fourth part of the chapter, the research questions identify the scope, posing the central question guiding this study. The methodology explains how the research is carried out to answer the research questions. It focuses on the research design and the approach to take in the necessary direction of the study. Finally, the outline of this research in 7 chapters will be summarised in the organisation of research.

1.2 RESEARCH BACKGROUND

The idea of sustainable development has become more widely recognised since 1996. In essence, sustainable development is a pattern of structural and socio-economic changes in development that maximises the current social advantages without jeopardising their potential in the future. Growing concern over the frequently

detrimental effects of large-scale, inappropriate development initiatives on the environment, human health, society, and the economy has led to support for sustainable development, particularly in developing nations.¹

The Brundtland Report asserted that 'environment' and 'development' were inseparable.² It emphasised the need for a balance in the global community to ensure that everyone's needs could be met. The report provided a general definition of sustainable development: 'meeting the needs of the present without compromising the ability of future generations to meet their own needs'.³ Sustainable development is of utmost importance due to its potential to address fundamental challenges for humanity. It focuses on fostering sustainable livelihoods, well-being, and long-term environmental preservation.⁴ It extends beyond environmental concerns, necessitating the integration of social principles of justice and inclusiveness into public policies.⁵

Sustainable development holds significant value within decision-making frameworks aimed at achieving human well-being.⁶ This idea has been supported by Rasyidah et al., who state that the promotion of good governance in sustainable development seeks to help communities establish an efficient public administration system within a democratic framework. This involves implementing sustainable

¹ R. Hashim S. Yusoff, "A Case Study on An Environmental Impact Assessment in Malaysia", *Transactions on Ecology and the Environment*, vol. 11 (1996): 160–169.

² Brundtland, G.H. (1987) *Our Common Future: Report of the World Commission on Environment and Development*. United Nations General Assembly Document A/42/427.

³ Surina Suhaimi, "The Quest for Sustainability: A Case of Differential Treatment for Post-Colonial Malaysia [2013] 2 MLJ cxc", *Malayan Law Journal Articles*, no. November (2013): 0–23.

⁴ Mary Mellor and Geoff O'Brien Bill Hopwood, "Sustainable Development: Mapping Different Approaches", *Wiley InterScience*, no. 13 (2005): 38–52.

⁵ Sanjay Sharma and Audun Ruud, "On the Path to Sustainability: Integrating Social Dimensions into the Research and Practice of Environmental Management", *Business Strategy and the Environment*, vol. 12, no. 4 (2003): 205–214.

⁶ John C. Dernbach and Federico Cheever, "Sustainable Development and Its Discontents", *Transnational Environmental Law*, vol. 4, no. 2 (2015): 247–287.

development principles by exercising political, economic, and administrative practices at various levels.⁷

An international blueprint for environmental protection was established during the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil (Rio Declaration) from June 3-14, 1992.⁸ Malaysia was no exception in participating in this declaration. The primary emphasis of this declaration was on sustainable development as a crucial aspect of environmental preservation and conservation. It comprises 27 fundamental principles designed to strike a balance between development and environmental considerations. Principle 10 of the Rio Declaration asserts the public's right to access information, participate in decision-making processes, and ensure their voices are heard.⁹

Another instance of a government initiative to guarantee sustainable development and adequate living conditions in urban areas is the National Urbanisation Policy. This is governmental guidance for coordinating urban planning so that, by 2020, urban development will be systematic and equipped to accommodate growing populations.¹⁰ Aligning with the planning system discussed in Chapter 4,¹¹ the researcher includes both policies from international and national levels within this

⁷ Rasyikah Md Khalid and Ainul Jaria Maidin, *Good Governance and the Sustainable Development Goals in Southeast Asia* (London: Routledge, 2022).

⁸ United Nations, "Conferences Environment and Sustainable Development", <<https://www.un.org/en/conferences/environment/rio1992>> (accessed 5 November, 2023).

⁹ Loh Ing Hoe and et al, "Public Participation in Environmental Impact Assessment (EIA) Law in Malaysia: A Critical Analysis", *Planning Malaysia*, vol. 21, no. 1 (2023): 101–115.

¹⁰ Rasyikah Md Khalid, Suhaimi Ab Rahman, and Mazlin bin Mokhtar, "Legal Perspective on Development Policies for Sustainability of Water in Malaysia", *Sustainable Development*, vol. 21, no. 3 (2013): 144–151.

¹¹ Refer to the discussion of Malaysian Planning System at Heading 4.3.2.

chapter, such as the Sustainable Development Goals (hereafter referred to as ‘SDGs’), New Urban Agenda (hereafter referred to as ‘NUA’), Environmental, Social and Governance (hereafter referred to as ‘ESG’), Twelfth Malaysia Plan (hereafter referred to as ‘12MP’), NSP, National Community Policy (hereafter referred to as ‘NCP’), National Physical Plan 4 (hereafter referred to as ‘NPP4’), as well as development plans in the state, district and local levels. The aspiration of these policies reflects the multi-dimensional and holistic working framework of social aspects in Malaysia.

1.2.1 Sustainable Development Goals

Malaysia, with 192 countries, has committed to executing the SDGs since September 2015.¹² The Malaysian government began incorporating SDGs into the national planning framework in three phases between 2016 and 2030. The Cabinet also established a body of governance, the National SDG Council, to monitor, evaluate and report on the SDG implementation.¹³ The formation of the SDGs has encouraged the visionary action plans suited to its objective, ‘Leave No One Behind.’ The SDGs dimensions of sustainable and inclusive economic growth, social inclusiveness, and environmental protection are all interrelated in achieving sustainable development.¹⁴ Prior to this, Malaysia implemented the United Nation Local Agenda 21 (hereafter

¹² Nur Atheefa Sufeena M Suaree and et al, "The Development of Policy and Legal Framework for Social Impact Assessment in Malaysia", *Planning Malaysia Journal*, vol.20, no.3 (2022): 298.

¹³ Economic Planning Unit Prime Minister’s Department, Malaysian Voluntary National Review (VNR) 2021, (2021),11-12.

¹⁴ *Economic Planning Unit, Prime Minister’s Department*, “Sustainable Development Goals”, < <https://www.epu.gov.my/en/sustainable-development-goals> > (accessed 20 January, 2022).

referred to as ‘LA21’) in 2005. The agenda was carried out to strengthen community, private, and public partnerships that promote a better vision for the city.¹⁵



Figure 1.1 Sustainable Development Goals (SDG)
Sources: (Website SDG Tracker, 2018)

17 Goals have been addressed through the SDGs, as illustrated in Figure 1.1. The implementation of these goals will be monitored through the fixed indicators comprehensively from policy, plan, programmes and development level.¹⁶ The working committees under the National SDG Council, such as the committee on inclusivity, well-being, human capital, environment and natural resources, economic growth and finance for sustainable development, will support these indicators. The committees are

¹⁵ Ansari, Abdul Haseeb and Ismawi Hj Zen, "Towards A Sustainable Land Use Planning: An Appraisal With Special Reference To Malaysian", *The Malayan Law Journal*, vol.6, no. 3 (2006): 107.

¹⁶ Jabatan Perancangan Bandar dan Desa, Manual Penyediaan Laporan Penilaian Impak Sosial (SIA) bagi Projek Pembangunan, 1-9.

chaired by the National Steering Committee (hereafter referred to as ‘NSC’) that will present the sustainable report to United Nations. The first presentation was on July 2017 through Malaysian National Volunteer Review 2017 (hereafter referred to as ‘NVR 2017’).¹⁷ Figure 1.2 shows the structure of National SDG governance in Malaysia.

This research focuses on the dimensions of resilient development based on the



Figure 1.2 National SDG Governance Structure

Source: (Malaysia National Volunteer Review, 2021)

social component to achieve the SDGs objectives. For instance, SDG 11 is about building inclusive, sustainable, safe cities and communities. By 2030, it will be able to enhance inclusive and sustainable urbanisation and capacity for integrated and sustainable human settlement planning and management worldwide.¹⁸ Hence, any proposed development close to the community area will be protected.

¹⁷ Prime Minister’s Department, Malaysia Voluntary National Review (VNR) 2021,12-13.

¹⁸ *United Nations Malaysia, Singapore and Brunei Darussalam, “Goals 11 Target”,* < <https://malaysia.un.org/en/sdgs/11> > (accessed 10 December, 2022).

Furthermore, the other related goal to the social dimension is SDG 9, which aims to build resilient infrastructure, promote inclusive and sustainable industrialisation as well as foster innovation.¹⁹ This goal seeks the government to develop high-calibre, dependable, long-lasting infrastructure, including regional and transnational infrastructure, to promote economic growth and social well-being and ensure it is accessible to the public.²⁰ These aspects also relate to the first strategy of the safe cities programme, which focuses on environmental design initiatives²¹ that are compatible and effective in growing safe cities.

Unfortunately, in late 2019, the entire nation, including Malaysia, was tested by the COVID-19 pandemic,²² which digressed the progress of economic, social and environmental development. However, a new strategy has been put in place to accommodate the new environment and continue with the objectives of achieving the SDGs. Data collected through the Malaysia National Volunteer Review 2021 (hereafter referred to as ‘NVR 2021’) shows evidence of the government's implementation of the economic recovery package for vulnerable protection.²³

¹⁹ Department of Economic and Social Affairs, “Goals 19”, < <https://sdgs.un.org/goals/goal9> > (accessed 28 February, 2023).

²⁰ United Nations Malaysia, Singapore and Brunei Darussalam, “Sustainable Development Goal 9”, < <https://malaysia.un.org/en/sdgs/11> > (accessed 28 February, 2023).

²¹ Federal Department of Town and Country Planning, *Safe City*, (Unit Khas NKRA Bandar Selamat, 2010),4.

²² Joint WHO-China Study, *WHO-convened Global Study of Origins of SARS-CoV-2*, (Joint WHO-China Study Team report, 2021).

²³ Prime Minister's Department, Malaysia Voluntary National Review (VNR) 2021,10.

1.2.2 New Urban Agenda

NUA is an international formal document with five main pillars of implementation: national urban policies, urban legislation and regulations, urban planning and design, local economy and municipal finance and local implementation. It was established on 23 December 2016 by United Nations General Assembly. This agenda outlines guidelines and standards for creating, developing, managing, and improving urban areas. It becomes the resource for all governmental levels, from the federal to the municipal, as well as for civil society organisations, the commercial sector and interest groups.²⁴

A new perspective on the connection between successful urbanisation and development is included in the NUA. It emphasises the relationships between successful urbanisation and the establishment of jobs, opportunities for a better quality of life and enhanced livelihood that should be incorporated into every urban regeneration policy and strategy. The NUA will also address how cities and human settlements are planned, designed, financed, developed, governed and managed.²⁵ Consequently, it is aligned with the SDGs, particularly SDG 11, on sustainable cities and communities.²⁶

In addition, Article 51 of the NUA clearly states that this policy supports the development of urban spatial frameworks, including urban planning and design tools that support sustainable management as well as the use of natural resources and land.

²⁴ United Nations, *New Urban Agenda*, (United Nations General Assembly, 2017),8.

²⁵ Ibid.,15.

²⁶ Ibid.,8.

The planned urban extension strategies stimulate economies of scale and agglomeration, strengthen food system planning, and improve resource efficiency, urban resilience as well as environmental sustainability.²⁷ Applying this agenda in Malaysia is crucial, as 77% of the population is in the cities and metropolitan areas.²⁸

The government of Malaysia has critically implemented long-term policies such as SDG, ESG, 12MP and others to drive the sustainability goal. A report, namely, Malaysia National Report New Urban Agenda, was published in 2022 to examine the progress of NUA implementation in this country.²⁹ The report indicates that Selangor and Penang exceed 90% urbanisation while the Federal Territory of Kuala Lumpur and Putrajaya are fully urbanised.³⁰

Urbanisation has its challenges if not managed appropriately. It will result in higher transport costs and negative environmental and social impacts. Thus, maintaining the role of cities, such as fostering economic growth, ensuring environmental sustainability, strengthening the town and adopting social inclusion, is necessary to enhance the development of Malaysia.

²⁷ Ibid.,27.

²⁸ MHLG_Malaysia, *Malaysia National Report New Urban Agenda 2022*, (2022),3.

²⁹ Ibid.,19.

³⁰ Ibid.,22.

1.2.3 Environmental, Social and Governance

ESG comprises explicitly three essential elements: environmental, social and governance. It is a standard mechanism for investors concerned about the environment and society to assess potential investments. Environmental criteria considers a company's environmental protection efforts, such as corporate climate change policies. The management of relationships with customers, suppliers, employees and the communities in which it operates is examined under the social criteria. Leadership, executive compensation, audits, internal controls, and shareholder rights are all topics covered by governance.³¹

It is a central pillar that businesses rely on to gauge their sustainability efforts. Even though Malaysia is still in the early phase of ESG compliance and integration, this country already has a strategic plan through a theme, 'advancing sustainability' under the 12MP. The insertion of this plan under the 12MP boosts the necessity of ESG in business evaluation and investment in the long-term.³²

Furthermore, ESG plays an essential role in altering the balance of power between management and institutional investors. Consequently, it changes the paradigm of shareholder activism after being compelled to adjust long-established

³¹ *Investopedia*, "What is Environmental, Social and Governance (ESG) investing?", <<https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp> > (accessed 7 March, 2023).

³² *The Sun Daily*, "Are business in Malaysia ready for ESG due diligence", <<https://www.thesundaily.my/business/are-businesses-in-malaysia-ready-for-esg-due-diligence-KI10098983> > (accessed 28 February, 2023).

habits.³³ Brokerage companies, Robo-advisors and mutual funds increasingly provide investment products that adopt ESG principles. Portfolios employing ESG investment can also assist in holding corporations that participate in risky or unethical practices accountable. Due to the recent tremendous expansion of ESG investment funds, there have been claims that some businesses have overstated or misrepresented their ESG achievements.³⁴

In Malaysia, Petroleum Nasional Berhad (hereafter referred to as ‘PETRONAS’) is one of the examples of a government-linked company that practises ESG in investing and operating its business. This company's strategy to incorporate ESG can be a role model for effective governance in achieving sustainable development by 2030 in this country.³⁵ Based on a United States SIF Foundation industry analysis, the investors had \$17.1 trillion in assets chosen by ESG principles in 2020, up from \$12 trillion two years earlier.³⁶ ESG-specific mutual funds also hit a record \$400 billion in 2021, up 33% from the previous year. This growth is anticipated to be accelerated in the years to come.³⁷

Sustainability and ESG are closely related. ESG investment evaluates businesses based on standards for strong corporate governance, environmental

³³ Alexander T. Kraik, "Environmental, Social, and Governance Issues: An Altered Shareholder Activist Paradigm," *Vermont Law Review*, vol. 44, no. 3 (Spring, 2020): 493-552.

³⁴ *Investopedia*, "What is Environmental, Social and Governance (ESG) investing?", <<https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp> > (accessed 7 March, 2023).

³⁵ Prime Minister's Department, Malaysia Voluntary National Review (VNR) 2021, 124.

³⁶ *US SIF*, "The US SIF Foundation's Biennial "Trends Report" Finds that Sustainable Investing Assets Reach \$17.1 Trillion?", < https://www.ussif.org/blog_home.asp?Display=155 > (accessed 7 March, 2023).

³⁷ *Barron's*, "ESG Fund Assets Soared in 2021. They Still Have Room to Run", <<https://www.barrons.com/articles/esg-fund-assets-soared-in-2021-they-still-have-room-to-run-51648590122> > (accessed 7 March, 2023).

responsibility and pro-social behaviour. Properly integrated, these qualities can promote sustainability. ESG then examines how a company's management and stakeholders make decisions, while sustainability considers how those decisions affect the global environment.³⁸ The impact assessment that has been carried out, including SIA, also addresses issues related to the ESG structure. L. Corvo et al. state that the SIA mechanism shares a common discourse with the ESG score as a sustainability indicator, yet further research is needed to fully understand the relationship between these structures.³⁹ For example, the implementation of EIA and SIA in Canada was informally initiated earlier through a case involving a gas pipeline in the Mackenzie River Valley. It involved the process of public participation in EIA, where Mr. Justice Thomas Berger was asked by the government to engage official government officers, industry experts, scientists, as well as the affected public. During this engagement, he listened to concerns and feedback from various parties regarding the potential environmental, social, and economic impacts of the proposed project. This scenario illustrates the relationship between society and government affairs, as well as the coverage of ESG considerations.⁴⁰

1.2.4 National Social Policy & National Community Policy

National Social Policy is a social development policy based on integrity and stimulates the human ability to achieve unity, social stability, national security and well-being of

³⁸ *Investopedia*, "What is Environmental, Social and Governance (ESG) investing?", <<https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp>> (accessed 7 March, 2023).

³⁹ Luigi Corvo and et al, "Mapping Social Impact Assessment Models: A Literature Overview for A Future Research Agenda", *Sustainability*, vol. 13, no. 9 (Switzerland, 2021): 1–16.

⁴⁰ W. J. Couch, J. F. Herity, and R. E. Munn, "Environmental Impact Assessment in Canada.", *Environmental Impact Assessment*, no. 2 (1983): 41–59.

the community.⁴¹ Malaysia has taken the approach towards economic growth and sustainability through this policy⁴² that has been approved by the Cabinet on 19 February 2003.⁴³

Four main objectives have been outlined and the third objective is related to SIA, which is strengthening and developing social support systems and social services. Every effort should be taken to improve the existing social support system, such as the family system, community, ethnic group, religion, education and social organisation, to help every member of society develop and function optimally as a social control system. Besides, a new support system needs to be created for that purpose. All sectors involved in the social service delivery system must mutually support and complement each other to determine which members of society require them to get quality service options.⁴⁴

Amongst the strategies to achieve the third objective is a requirement for SIA to be used in planning all public and private development programs and activities. Besides SIA, a Social Annual Report must also be prepared, containing guidelines for a complete social system to objectively and accurately monitor social development progress.⁴⁵ These initiatives are within the strategies that individuals can use and improve resources and self-ability optimally to achieve personal and community goals at each life cycle stage. Continuous effort should ensure that everyone gives and receives warmth and lifelong love.

⁴¹ Bahagian Pengembangan dan Pembangunan PINTAS, *Dasar Sosial Negara*, (2003),1.

⁴² Zainudin and Mohamad Zahir, "Social Policy Implementation in Malaysia and Its Impact on the Community" in *Social Policy in the Islamic World*, edited by Ali Akbar Tajmazinani (Switzerland: Palgrave Macmillan Cham, 2021), 263-278.

⁴³ PINTAS, *Dasar Sosial Negara*,1.

⁴⁴ *Ibid.*,3.

⁴⁵ *Ibid.*,4.

In addition, the National Community Policy is another important policy that is close to the community. It was approved by the Cabinet on 23 November 2018 and aimed to empower the society in residential areas to be actively involved in managing and maintaining public property. NCP is also consistent with the current government's mission to develop the country for urban areas. It focuses on the value, quality of life and social behaviours adopted by the community.⁴⁶

Several clusters are involved in implementing NCP, such as infrastructure and maintenance, health, environment, cleanliness and safety.⁴⁷ One of the essential elements in lowering the danger of accidents and injuries in the People's Housing Programme is safety. Accidents frequently occur in the high-rise apartment buildings and it is pretty challenging to assist in that scenario. Besides that, social problems, including theft, drug use and addiction, vandalism, nuisance behaviour and other crimes, can also make residents feel insecure. The strength of social ties among community members might cause social phenomena.⁴⁸ This policy's fulfilment of standard requirements will promote a harmonious relationship between the community and the proposed development.

1.2.5 National Five-Year Development Plan

Generally, Malaysia Plan is a policy with a duration of five years produced by the government. It provides the structure of policies and strategies to face challenges in

⁴⁶ KPKT, *National Community Policy*, (Ministry of Housing and Local Government Malaysia, 2019),3-13.

⁴⁷ *Ibid.*,14.

⁴⁸ *Ibid.*,18.

various aspects. The latest plan is the Twelfth Malaysia Plan, starting from 2021 until 2025.⁴⁹ This medium-term plan aims to generate a sustainable economic recovery as well as provide better social protection for vulnerable groups.

The 12 MP encourages the entire '*Keluarga Malaysia*' to move forward by restructuring the national economy as the basis for the people's well-being. The development plan, with its objective to create a 'Prosperous, Inclusive, Sustainable Malaysia,' covers the first half of the implementation of the Shared Prosperity Vision 2030. This plan brings a new approach based on three (3) themes, four (4) catalytic policies, and fourteen (14) game-changers toward the formation of essential governance of the country in the future. Resetting the economy, enhancing security, well-being and inclusion and advancing sustainability are the three themes of the 12MP.⁵⁰

From a social perspective, the 12MP indicates social impact management through the first theme, 'resetting the economy' and game-changer II, which catalyses high-impact industries to boost economic growth.⁵¹ It states the need for industry contribution and strategic activities that significantly impact the economy and benefits technology, digitalisation and specific expertise. It will also boost the private investment sector, especially those prioritising environmental, social and sustainable development.

⁴⁹ MyGovernment, "Twelfth Malaysia Plan", < <https://www.malaysia.gov.my/portal/content/31186>> (accessed 19 June, 2022).

⁵⁰ Prime Minister's Department, Executive Summary Twelfth Malaysia Plan 2021-2025, (2021),1-10.

⁵¹ Ibid.,15.

While for the second theme of 12MP, ‘strengthening security, well-being and inclusivity,’ aims to create a harmonious and safe environment for the people. It has been emphasised through the four game-changers as follows:⁵²

- i) Game-changer IV, enhancing national security and unity for nation-building.
- ii) Game-changer V, revitalising the healthcare system to ensure a healthy and productive nation.
- iii) Game-changer VI, transforming the approach to eradicating hardcore poverty.
- iv) Game-changer VII, multiplying the growth of less developed states, especially Sabah and Sarawak, to reduce the development gap.

The strategic initiatives that will transform Malaysia are the principal target of 12MP. It represents Malaysia's essential compass in the face of the unprecedented COVID-19 outbreak and the current state of the world's economy. Considering this, 12MP aims to improve social protection for society's most vulnerable groups while fostering a sustained economic recovery. The key themes of resetting the economy, enhancing security, well-being, inclusivity and improving sustainability will be the focus during the next five years in keeping with the 2030 Agenda.⁵³

⁵² Ibid.,16.

⁵³ Ibid.,19.

1.2.6 National Physical Plan

NPP is a written statement that formulates the strategy policies to determine the direction of physical development and conservation for the entire Peninsular Malaysia. NPP is the apex reference document of the hierarchy of the land use planning system. The establishment of NPP is based on section 6B of Act 172, which explicitly states the plan's requirements and essential procedure.⁵⁴ The approval of this plan shows that it has to be a reference for any physical development and must be implemented throughout all levels in Peninsular Malaysia.

The policies of the NPP need to be coordinated with other related sectoral policies, and its proposals need to be detailed at the State Structure Plan and Local Plan levels. This will become the basis for the development of all states. The functions of this plan⁵⁵ are:

1. Draft the spatial planning framework at the local, state, territory and national levels.
2. Developing the development in a balanced and holistic way between the urban and rural territories.
3. Economic development work aligned with the five-year Malaysian Plan.
4. National central commitment at the global or international level, such as NUA⁵⁶ and SDGs.

⁵⁴ Town and Country Planning Act 1976, (Act 172), s6B(2)(a), (b), (c).

⁵⁵ PLANMalaysia, "Fourth National Physical Plan (RFN4), Executive Summary", (2021),1.

⁵⁶ Refer to the NUA at Heading 4.3.2.2.

5. Development planning coordination instrument is essential between federal and state governments.

The Fourth National Physical Plan interprets the formation of strategy and action plans that comprises the development of land use, economic growth, resources management, unity, improvement of national infrastructure and quality of life, as well as the well-being of the country. It can be classified into three main phases: national planning, regional and state planning, as well as local planning. Each stage has specific planning documents as the main output and reference in its implementation.

Table 1.1 Three Main Stages for the National Development Framework

National Planning		
Five-Year Malaysia Plan	National Physical Planning	Sectoral related policies
It includes the country's aspirations toward achieving the goal of sustainable development based on economic, political, social, environmental, spiritual, psychological, and cultural principles.	A planning document containing a written statement that formulates strategic policies determining the country's physical development direction.	The Cabinet of Ministers has approved policies such as the National Urbanisation Policy, the National Rural Physical Planning Policy and the National Coastal Zone Physical Plan.
Regional planning		
Economic corridor plan	Territory planning	State structure plan

Specific planning for each economic corridor addresses the development gap and encourages balanced national economic development.	A planning document containing a spatial development strategy to achieve balanced growth and development as well as to achieve an integrated and efficient infrastructure framework.	A planning document with a written statement summarising general policies and recommendations by State Authority regarding the development and use of land in a state.
Local planning		
Local Plan	Special Area Plan	
A written statement regarding the recommendations from the local planning authority for land use development by detailing the strategic policies of the structure plan.	A development plan is prepared for a particular interest area to the local planning authority in a short time for either developing, redeveloping, beautifying, preservation, or management purposes.	

Sources: (Act 172, Structure Manual Plan 2021 version, Local Manual Plan 2020 and NPP4 2020)

NPP4 has suggested three implementation phases: short-term implementation (2021-2025), medium-term implementation (2026-2030), and long-term performance (2031-2040). The differences between the phases are the duration of the period for the action plan, such as five years, ten years and more than ten years. The main objective of NPP4 is to achieve prosperity, resilience and well-being in Malaysia.⁵⁷

⁵⁷ PLANMalaysia, Fourth National Physical Plan (RFN4), Executive Summary, 1-36.

To guarantee that land use development, economic, social growth and environmental sustainability are balanced, a strategic concept of the planning of the NPP4, namely Comprehensive Spatial Ecosystem (hereafter referred to as ‘CSES’), has been introduced. It is a strategic vision based on four aspects namely, such as optimal use of land, focus on economic development in key growth areas, increased connectivity between regions through an integrated communication network and conservation of ecological and agricultural assets.⁵⁸ From the four main aspects above, three aspects emphasise social and community.

The first aspect is the optimal use of land. The social and community emphasis is given through optimal land use policy to ensure that every piece of land is used efficiently according to its suitability. This includes using land space that is in line with the population's needs so as to avoid waste in the use of resources. While through the next aspect, the importance of social aspects is applied with the implementation of the balance of economic growth through development methods based on polycentric and monocentric concepts as recommended by NUA (Article 51),⁵⁹ which encourages the use of this method to strengthen planning and increase resource efficiency success, urban resilience and environmental sustainability.

Furthermore, the third aspect takes into account the social aspect of improving the mobility of people, goods and services through the upgrading of infrastructure,

⁵⁸ Fourth National Physical Plan (2020).

⁵⁹ Refer to the Article 51 of NUA at Heading 4.3.2.2.

which follows from good mobility; investment can be increased through a strategic economic plan and subsequently create new job opportunities for improving the economy of the population. In addition, the problem of congestion and density in an area can be reduced, ultimately creating a better-quality living environment.

Generally, SIA analyses, monitors and manages the intended and unintended social consequences, both positive and negative,⁶⁰ for each development project. Intended social consequences are the project's social impact that can be foreseen and measured due to the intervention in developing the proposed project. It has a transparent and direct impact on the affected community around the development area. In contrast, unintended social consequences are vice versa to the intended social consequences, as they cannot be expected due to that development. Therefore, SIA is significant in project impact management and is a tool to protect the affected community.

Developed countries like the United States, Australia and others have implemented SIA. For instance, the social assessment procedure has been a part of deciding any development project under the National Environmental Policy Act of 1969⁶¹ in the United States. At the same time, Australia also implements SIA as one of the conditions for development projects under the State Development and Public Works Organisation Act 1971⁶² and the Environment Protection Act 1994.⁶³

SIA is crucial to achieving sustainable development by balancing economic, social, and environmental considerations. According to the Shared Prosperity Vision

⁶⁰ The International Principles for Social Impact Assessment, (2015).

⁶¹ National Environmental Policy Act of 1969 (NEPA).

⁶² State Development and Public Works Organisation Act 1971 (Revised 1 July 2019).

⁶³ Environmental Protection Act 1994 (Revised 9 September 2021).

2030 (hereafter referred to as ‘SPV2030’), which advocates the prosperity and citizen harmony agenda, Malaysia must emphasise the social dimension in any development project.⁶⁴ Through the social development project, the government's initiative is to make sure the purpose of the country’s growth aligns with the necessity to protect or reduce negative impacts on society. Thus, implementation of SIA is a practical approach to ensure the country’s social aspirations and inclusive development.

In the researcher’s opinion, the SIA report is one of the decision-making tools for approval of development projects like the other required reports such as the Environmental Impact Assessment (hereafter referred to as ‘EIA’), Traffic Impact Assessment (hereafter referred to as ‘TIA’), and others. Two primary bodies are involved in the SIA process: the government agencies and project proponents. The project proponents engage a consultant to prepare the SIA report, including developers, engineers, planners, consultants, lawyers, contractors, accountants, and others. At the same time, governmental agencies consist of government bodies from the federal and state levels, expert panels, courts, licensing authorities, and others. Government agencies are involved in the evaluation process. Both bodies play crucial roles in ensuring the development projects comply with the policy and law related to town and country planning matters. They also have to ensure that the benefits from the projects are higher than the cost itself and that the proposed project has a low negative impact on society. It is a measurement to guarantee that all the social impact and changing social expectations from the determined project developments are considered. The

⁶⁴ Shared Prosperity Vision 2030, Ministry of Economic Affairs (Released 5 October 2019) (Reprint 8 November 2019).

project proponent will take the mitigation actions and draft the social impact management plan to avoid or mitigate the negative impacts and maximise the positive effects from the social perspective.

Besides that, the researcher emphasises the legal framework relating to this research context which is Act 172 and the Manual. Act 172 was legislated through Article 76(4) to ensure uniformity of law and policy⁶⁵ for the proper control and regulation of town and country planning in Peninsular Malaysia. It has undergone five series of amendments beginning from 1993, vide the Town and Country Planning Act (Amendment) Act 1993 (hereafter referred to as ‘Act A866’),⁶⁶ Town and Country Planning (Amendment) Act 1995 (hereafter referred to as ‘Act A933’)⁶⁷, Town and Country Planning (Amendment) Act 2001 (hereafter referred to as ‘Act A1129’),⁶⁸ Town and Country Planning (Amendment) Act 2007 (hereafter referred to as ‘Act A1313’)⁶⁹ and lastly was the amendment in 2017 through Town and Country Planning (Amendment) Act 2017 (hereafter referred to as ‘Act A1522’).⁷⁰

The federal government gazetted Act A1522 on 16 January 2017. The amendment introduced a new section 20B into Act 172. The new subsection 20B (2) seeks to require the federal and state government departments or agencies to submit to the National Physical Planning Council (hereafter referred to as ‘Council’),⁷¹ the

⁶⁵ Federal Constitution, Article 76(4).

⁶⁶ Town and Country Planning Act (Amendment) Act 1993 (Act A866).

⁶⁷ Town and Country Planning (Amendment) Act 1995 (Act A933).

⁶⁸ Town and Country Planning (Amendment) Act 2001 (A1129).

⁶⁹ Town and Country Planning (Amendment) Act 2007 (Act A1313).

⁷⁰ Town and Country Planning (Amendment) Act 2017, (Act A1522).

⁷¹ Town and Country Planning Act 1976, (Act 172), s 2A.

development proposal together with an SIA report and other reports as determined by the Council.

The Federal Town and Country Planning Department (hereafter referred to as ‘PLANMalaysia’) is the department that plays a role through its functions at three levels of the government, federal, state, and local, in ensuring the ideal use, development, and conservation of land.⁷² It is responsible for formulating and implementing planning regulations, policies, plans, and guidelines and ensuring effective adoption by all agencies at the implementation stage.⁷³ PLANMalaysia (Federal) provided the second edition Manual in 2018. In current practice, the project proponents refer to that Manual in preparing the SIA report. The states need to adopt the Manual first for SIA implementation. For example, the state of Selangor already gazetted the Manual in 2018 for its SIA implementation.⁷⁴ However, the existing SIA framework is insufficient to conduct SIA in Malaysia. Therefore, improving the SIA implementation process through the legal framework is essential for resilient development and fulfilling the country’s SDG obligations.

⁷² *Official Portal Department of Town and Country Planning (PLANMalaysia)*, “Functions of Department”, <<https://www.planmalaysia.gov.my/index.php/en/about-us/planmalaysia/fungsi-jabatan>>, (accessed 29 December, 2021).

⁷³ *Official Portal Department of Town and Country Planning (PLANMalaysia)*, “Vission, Mission, Quality Policy and Objectives”, <<https://www.planmalaysia.gov.my/index.php/en/about-us/plan-malaysia/visi-misi-kualiti-dan-objektif>>, (accessed 29 December, 2021)

⁷⁴ PLANMalaysia Selangor, "Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Peringkat Negeri Selangor", no. November (2020).

1.3 PROBLEM STATEMENT AND LITERATURE REVIEW

The problem statement and literature review briefly scrutinise previous research work. It identifies some legal issues and lacunae relating to SIA implementation under Act 172.

1.3.1 Identification of Issues and Lacunae

Vanclay states that SIA mainly involves analysing, monitoring and managing each development project's intended and unintended social consequences, both positive and negative.⁷⁵ It aims to identify planned interventions' intended and unintended effects on developing sustainable management plans.⁷⁶ The Manual is crucial for evaluation implementation to achieve comprehensive development based on economic, social and natural development stability.

SIA is not a new evaluation model in this world, having been enforced in the United States and Australia. For example, social evaluation procedures are part of deciding any proposed development in the United States. While in Australia, SIA is one condition for development projects that impact and are related to the State Development and Public Works Organisation Act 1971 and Environment Protection Act 1994.

⁷⁵ The International Principles for Social Impact Assessment, (2015).

⁷⁶ Nur Shafawaty Abd Rahman, "Social Impact Assessment in Urban Development in Malaysia," (Ph.D. thesis, Universiti Malaysia Pahang, 2009), 18.

The Government of Malaysia initiates this implementation by preparing reports on massive-scale projects and those having national interest. This preparation is prescribed under Act 172,⁷⁷ primarily through the latest amendment in 2017, vide Act A1522.

There were a few amendments to Act 172 before this and the fifth amendment involved two modifications that inserted SIA requirements for any projects requiring submission of a development proposal and SIA report⁷⁸ from the federal government and state government departments or agencies to the Council. YB Noh, the then Minister of Urban Wellbeing, Housing and Local Government, when tabling the Amendment Bill, stressed the essential SIA requirement to be included under Act 172.⁷⁹ A case study in Sabak Bernam⁸⁰ has been referred to indicate the difficulty of social problem management. A major flood involved coastal areas in Peninsular Malaysia and the Selangor area, including Sabak Bernam. Several educational institutions in Sabak Bernam have been closed due to that incident which affects the education process of the students. The leading cause at that time was inefficient city planning and Malaysian Public Works Department that made no comprehensive measurement. If SIA is implemented, the stakeholder will get advice on specific management for development there.⁸¹

⁷⁷ Town and Country Planning Act 1976, Act 172.

⁷⁸ Town and Country Planning (Amendment) Act 2017, (Act A1522), s 20B (2).

⁷⁹ YB Tan Sri Haji Noh bin Omar was a Minister of Urban Wellbeing, Housing and Local Government from June 2016 till May 2018. YB Noh proposed the bill of Town and Country Planning (Amendment) 2016.

⁸⁰ The case study has been explained by Dato' Haji Mohd Fasih bin Mohd. Fakeh, Member of Parliament for Sabak Bernam.

⁸¹ Parliament Hansard, Session 20 October 2016, Bill of Town and Country Planning (Amendment) 2016,36.

Mujaheed also states that the amendment aims to strengthen inclusive development⁸² toward the stability of the people's way of life. SIA within the project plan is one of the mechanisms based on social considerations that leads to social well-being. Burdge states that SIA plays an essential role in evaluating issues from a development proposal with a development alternative and providing the best choice to avoid any negative impact on society.⁸³

PLANMalaysia (Federal) has established the current reference Manual.⁸⁴ However, it requires improvement after considering some issues that have arisen during the implementation of SIA while referring to this source. William states that social changes continuously happen, and it seeks the government to guide new policies to accommodate the changes.⁸⁵ Among the problems is that there is no explicit provision under the law regarding the preparation, approval, monitoring and auditing of SIA reports in Malaysia. Five (5) main issues have been identified while analysing the current SIA implementation, as briefly explained below.

⁸² Mohammad Mujaheed Hassan, "Social Impact Assessment (SIA): A Review of SIA Procedure in Malaysia", *The International Journal of Social Sciences and Humanities Invention*, vol. 5, no. 4 (2018): 4551.

⁸³ Rabel J Burdge and C Nicholas Taylor, "When and Where is Social Impact Assessment Required?" in the *International Association for Impact Assessment Annual Conference organised by International Association for Impact Assessment* (Portugal: May, 2012), 1.

⁸⁴ Manual Preparation for Social Impact Assessment for Project Development, (Putrajaya: PLANMalaysia, 2nd edn., 2018).

⁸⁵ William Alomoto, Angels Niñerola, and Laia Pié, "Social Impact Assessment: A Systematic Review of Literature", *Social Indicators Research*, vol. 161, no. 1 (2022): 226.

1.3.1.1 Execution of SIA is not comprehensive in the States in Malaysia

M Suaree et al., in their paper, state that inexplicit provisions on SIA in Act 172 have inevitably led to the non-uniformity of SIA implementation by the states.⁸⁶ Mujaheed also states that Act A1522⁸⁷ applies to Peninsular Malaysia and the Federal Territory of Labuan by the state adoption of such amendment through a state gazette.⁸⁸ However, the states have the right to execute or not execute this matter. If the states implement SIA, its procedures can differ because they refer to the states' guidelines or manuals. The state's guidelines or manuals are the references produced by the state government according to the Manual from PLANMalaysia (Federal). Eight states have gazetted Act A1522, including Terengganu, Selangor, Negeri Sembilan, Perak, Kedah, Pahang, Melaka and Penang. Nonetheless, not all these states have guidelines or manuals at their level except for Selangor, Negeri Sembilan, Kedah, Melaka and Terengganu.⁸⁹

1.3.1.2 Requirement of SIA preparation is not specified under Act 172 (Categories 2 & 3)

Madlome states that the analysis and prevention of negative impact during the assessment process can be categorised as a measurement to enhance sustainable

⁸⁶ Nur Atheefa Sufeena, 303.

⁸⁷ Town and Country Planning Act (Amendment) 2017, Act A1522

⁸⁸ Mohammad Mujaheed Hassan, "Social Impact Assessment (SIA): A Review of SIA Procedure in Malaysia", *The International Journal of Social Science and Humanities Invention*, vol.5, no.4, (April 2018): 4550-4557.

⁸⁹ State Manuals.

development.⁹⁰ Thus, SIA is a relevant tool for social impact in the intended development project. The projects under SIA Category 2 are quite a considerable scale and have a high impact. So, it requires the project proponents to prepare the SIA report. They must submit a development proposal with the SIA report for any project related to the development of a new township, the construction of any significant infrastructure or utility, and development affecting hilltops or hill slopes in an area designated as environmentally sensitive in a development plan.⁹¹

For SIA Category 3, State Authorities or LPA will determine the type of development projects as its criteria are different and are not fixed compared to other categories. The mere submission of a development proposal report is insufficient for these projects. The SIA report is required in order to manage the relevant impact and strategy to mitigate any dire consequences.⁹²

The required preparation of the SIA report is allocated under SIA Category 1. However, Act 172 is silent on the required preparation of the SIA report for SIA Category 2. Developments under this category encompasses the development of a new township, the construction of any significant infrastructure or utility, and development affecting hilltops or hill slopes in an area designated as environmentally sensitive in a development plan.⁹³

⁹⁰ Shonisani Felix Madlome, "Evaluation of the effectiveness of Environmental Impact Assessment in promoting sustainable development in the energy sector of South Africa," (Master thesis, University of the Witwatersrand, 2016),6.

⁹¹ Town and Country Planning Act 1976, (Act 172), s 22 (2A) (a), (b), (c).

⁹² Guideline Processing SIA Report Selangor State Level, (Selangor: PLANMalaysia Selangor, 2nd edn, 2020):10.

⁹³ Town and Country Planning Act 1976, (Act 172), s 22(2A) (a), (b), (c).

Other than that, issues relating to SIA Category 3 arise where the State Authority will determine the implementation condition of SIA for the development projects. It is subjective as it depends on the understanding and approach of the State Authority and local planning authority (hereafter referred to as 'LPA'). Act 172 also does not provide the specific requirement of the SIA report under this category. Mujaheed states that Section 21A (1) (ea) relates to Category 3.⁹⁴ While, during the debate session in the parliament, Azmin stated that section 21A(1A) could not be repealed because it clearly explains on importance of SIA for guaranteeing the interest of the public.⁹⁵ Still, it is not the intention of that provision as it focuses on analysing social implication, which differs from the SIA report.

1.3.1.3 The approval process on SIA is not stated under Act 172

According to Rosmizawati, the assessment of the SIA report and the application for planning permission are two different things.⁹⁶ SIA approval does not automatically contribute to the approval for planning permission, but it is one of the requirements in a planning permission application. Application for planning permission is related to the project's approval, and SIA approval involves social assessment. Therefore, there can

⁹⁴ Mohammad Mujaheed Hassan "Social Impact Assessment (SIA): A Review of SIA Procedure in Malaysia", *The International Journal of Social Science and Humanities Invention*, vol. 5, no.4 (April 2018): 4550-4557.

⁹⁵ Parliament Hansard, Session 20 October 2016, Bill of Town and Country Planning (Amendment) 2016,64.

⁹⁶ Rosmizawati Salleh, "interview by Nur Atheefa Sufeena M Suaree." Putrajaya, 9 June 2021.

be a situation where the SIA has been approved, but the application for planning permission for the said development project is not approved.

There is no explicit provision relating to the SIA approval process in Act 172, the Manual or PLANMalaysia's Client Charter. These are also silent on the stages of approval, either at the federal or state levels. Section 20B (2) provides for the requirement of submission of the development proposal and the SIA report. According to the Guideline of Application for Development Proposal under Section 20B (Act 172 Implementation Guidelines),⁹⁷ item 3 in the application checklist shows that the submission requirement is the SIA report and review of SIA from PLANMalaysia (Federal). It indicates the importance of SIA approval as a condition for application to the Council.

1.3.1.4 No Provision relating to the Enforcement of SIA (Monitoring and auditing post-SIA)

During the Parliament session on 18 December 2019, YB Tuan Adrian Ranie Lasimbang asked the Minister of Water, Land, and Natural Resources about enforcement action for a massive development project that did not prepare the SIA

⁹⁷ PLANMalaysia (Jabatan Perancangan Bandar dan Desa), Panduan Pelaksanaan Akta 172 (PPA 14), "Permohonan Cadangan Pemajuan di bawah seksyen 20B", (November, 2017), 19.

study. The minister said that Act 172 does not provide a specific provision regarding the enforcement of that project without an SIA study.⁹⁸

Section 28 of Act 172 allocates power to the local planning authority to consider the conditions for applying for planning permission but differs from the SIA consideration. It has its condition under planning conditions. The power to consider applications for planning permission does not involve SIA as one of the conditions for approval.

If there is SIA approval before planning permission, the local planning authority or consultants can consider the inclusivity of the elements from the SIA evaluation in the development proposal. The planning authority may also use this inclusivity as a condition for planning permission approval. However, the issue arises whether the SIA consideration under the planning conditions can be enforceable or not for the validity of SIA.

Furthermore, Act 172 does not provide explicit provisions regarding monitoring and auditing the Social Impact Monitoring Plan (hereafter referred to as 'SIMP'). SIMP is crucial as one of the methods to monitor the mitigation strategy and impact management. Madlome states that the current impact assessment practice always neglects the monitoring system. Kruger also agrees with that theory by saying that scenario also happens in South Africa.⁹⁹ However, it is a crucial part that needs to be

⁹⁸ Parliament Hansard, Session 18 December 2019, Category of Water, Question 54.

⁹⁹ L. Kruger and L. A. Sandham, "Social Impact Assessment: Practitioner Perspectives of the Neglected Status in South African SIA", *South African Geographical Journal*, vol. 100, no. 3 (2018): 394.

focussed on to promote the resilience of the proposed development.¹⁰⁰ PLANMalaysia (Federal) is one of the agencies responsible for ensuring that the SIMP provided is comprehensive and practical. Unfortunately, it has some challenges, especially regarding the capacity of its staff. The local planning authority lacks experienced and qualified officers in the divisions/ Evaluation Departments. Consequently, Wafiah states that it will lead to management's difficulty in executing evaluation works.¹⁰¹

LPA face growing challenges due to population growth because of continuing urbanisation. The rise in living standards has put a tremendous demand on LPA to provide more and better urban infrastructure and amenities. Some argued that since its existence, local authorities in Malaysia have been given pressing roles but limited power. Ariffin et al., state that this phenomenon hampers its capability to provide efficient services.¹⁰²

Ngah et al., mention that the local authority needs to focus on developing knowledge workers to manage current issues that are getting more and more complex. Measures will be undertaken to enhance the capacity of local authorities and management capabilities through capacity-building efforts and reviewing systems and procedures. In this regard, efforts will continue to improve human capital development and increase the awareness of employees on their roles and responsibilities in serving

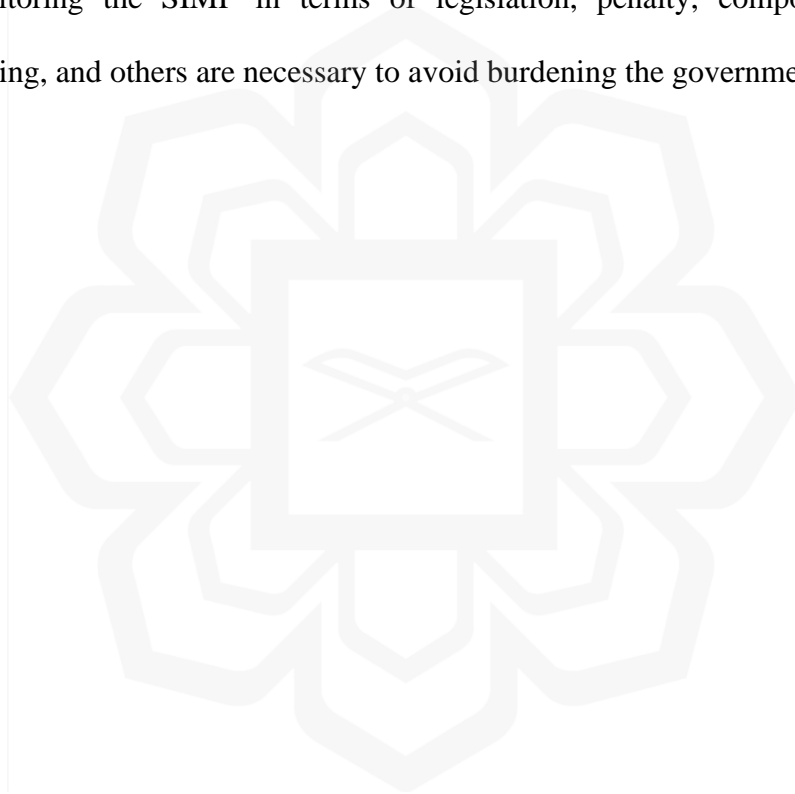
¹⁰⁰ Shonisani Felix Madlome, "Evaluation of the Effectiveness of Environmental Impact Assessment in Promoting Sustainable Development in the Energy Sector of South Africa," (Master thesis, University of the Witwatersrand, 2016), 22.

¹⁰¹ Raja Nor Wafiah binti Raja Abdullah "Penambahbaikan Pengurusan Penyemakan Semula Senarai Nilai Pihak Berkuasa Tempatan," (Master thesis, Universiti Teknologi Malaysia, 2009).

¹⁰² Raja Ariffin and et al, "Local Government in Malaysia: Issues and Challenges" in *Readings in Malaysian Urban and Regional Planning*, edited by Mariana Mohamed Osman, Mansor Ibrahim and Syahriah Bachok (Kuala Lumpur: IIUM, 2011), 90-99.

the public.¹⁰³ Madlome also states that most scholars agree that comprehensive training should be organised to improve the capacity of related officers.¹⁰⁴ Based on the opinion of Izlizam et al., the capacity issue is one of the main issues impacting the local authority in Malaysia.¹⁰⁵

Process and rules of monitoring and auditing are also not specified under the Manual and will affect the efficiency of this management plan. Therefore, improvement in monitoring the SIMP in terms of legislation, penalty, compound, period of monitoring, and others are necessary to avoid burdening the governmental agencies.



¹⁰³ Ngah Kamaruddin and et al, "The Challenges of Local Authorities: A Case Study in Malaysia". *Cross-Cultural Communication*, vol.7, no.3 (2011): 145-149.

¹⁰⁴ Shonisani Felix Madlome, "Evaluation of the effectiveness of Environmental Impact Assessment in promoting sustainable development in the energy sector of South Africa," (Master degree thesis, University of the Witwatersrand, 2016), 23.

¹⁰⁵ Tun Mohd Izlizam Bahardin, Zuraini Alias and Mokhtar Abdullah, "A Systematic Review of the Issues Affecting Local Government in Malaysia" *Journal of Advanced Research in Business and Management Studies*, vol. 15, no.1 (2019): 33-40.

1.3.1.5 Criteria of a qualified person to prepare SIA

Madlome states that lack of skill and confusion of the qualified person criteria is a common problem in the impact assessment process and must be fixed efficiently.¹⁰⁶ This matter also happens in Malaysian practice, where there is no explicit provision regarding the profession and qualified person for the SIA report preparation under Act 172. Section 20 of the Town Planners Act 1995 states that individual persons that are qualified to prepare layout and development proposals are those who are registered Town Planners.¹⁰⁷ However, this is not reflected in the SIA.

Based on the letter dated 13th March 2020 from the Director-General of PLANMalaysia (Federal), the result from the internal discussion (dated 20 February 2020) relating to the qualification of a submitting person is a registered town planner with the Board of Town Planners Malaysia (BTPM) or registered member with the Malaysian Association of Social Impact Assessment (MSIA) or registered member with the Malaysian Institute of Planners (MIP). Hence, specific and fixed criteria must be prescribed by PLANMalaysia (Federal) in regards to the individual preparing the SIA report. However, the criteria of qualified person for preparing SIA are still not specified under Act 172.

¹⁰⁶ Shonisani Felix Madlome, 23-24.

¹⁰⁷ Town Planners Act 1995, (Act 538), s 20.

1.4 RESEARCH OBJECTIVES

This research seeks to achieve the following objectives;

1. To identify the current law and practice on the implementation of Social Impact Assessment in Malaysia, Australia and India.
2. To analyse the legal issues and gaps related to the implementation, enforcement, and monitoring of SIA under the Town and Country Planning Act 1976 (Act 172).
3. To recommend improvement under the Town and Country Planning Act 1976 (Act 172) and Manual for Social Impact Assessment for Project Development regarding implementation, enforcement, and monitoring of SIA.

1.5 RESEARCH QUESTIONS

For this research, three questions should be addressed;

1. What is the position of the current law and practice regarding SIA implementation by related governmental bodies and project proponents in Malaysia, Australia and India?
2. What are the legal issues and gaps regarding implementation, enforcement, and monitoring of SIA under the Town and Country Planning Act 1976 (Act 172)?
3. What are the most suitable recommendations for improvement under the Town and Country Planning Act 1976 (Act 172) and Manual for Social Impact Assessment for Project Development regarding implementation, enforcement, and monitoring of SIA?

Table 1.2 shows the research questions that address the research objectives of this thesis.

Table 1.2 Research Objectives and Corresponding Research Questions

Research Objectives	Research Questions
To identify the current law and practice on the implementation of Social Impact Assessment in Malaysia, Australia and India.	What is the position of the current law and practice regarding SIA implementation by related governmental bodies and project proponents in Malaysia and other selected countries (Australia and India)?
To analyse the legal issues and gaps related to the implementation, enforcement and monitoring of SIA under the Town and Country Planning Act 1976 (Act 172).	What are the legal issues and gaps regarding implementation, enforcement and monitoring of SIA under the Town and Country Planning Act 1976 (Act 172)?
To recommend improvement under the Town and Country Planning Act 1976 (Act 172) and Manual for Social Impact Assessment for Project Development regarding implementation, enforcement and monitoring of SIA.	What are the most suitable recommendations for improvement under the Town and Country Planning Act 1976 (Act 172) and Manual for Social Impact Assessment for Project Development regarding implementation, enforcement and monitoring of SIA?

1.6 HYPOTHESIS

The existing provisions in Act 172 and the Manual are inadequate in laying down requirements and implementation of SIA for development projects and need improvement.

1.7 SCOPE AND LIMITATIONS OF RESEARCH

The scope of this study is limited to identifying the challenges and issues faced by the related governmental bodies and project proponents in relation to the implementation, enforcement, and monitoring of SIA. Thus, this research identifies the legal issues and lacunae under Act 172 related to these aspects. This study then makes suitable and viable recommendations to improve the provisions under Act 172 and the Manual.

It should be noted that the researcher gives particular preferences to the implementation of SIA in Australia and India as benchmark to be suggested as a framework for the proposed amendments under Act 172. Nonetheless, this limitation on comparative jurisdiction will not necessarily hinder the effort to refer to best practices from other jurisdictions that may develop during this research, if any. The researcher believes that referring to these models in the discussion, it would facilitate the effort to identify the areas needing improvement and consequently strengthening of the legal framework in Malaysia.

Furthermore, the scope of the study is only limited to the general or academic survey of models of the said framework above. The researcher does not touch on the detailed technical implementation of SIA in this research.

1.8 SIGNIFICANCE

Malaysia's primary SIA implementation framework is Act 172 and the Manual. However, the relevant governmental agencies and project proponents still have difficulty in implementing and monitoring SIA under their development projects due to the lack of a formidable legal framework under the law. Since the formal implementation of SIA was in 2017,¹⁰⁸ not much literature yet covers the updated input of SIA practice in Malaysia. This research will contribute to the body of knowledge and the literature on the legislation relating to SIA, namely, Act 172 in Malaysia.

1.9 RESEARCH METHODOLOGY

To address the research questions and fulfil the research objectives, the researcher adopts a non-doctrinal research approach involving mixed-method, quantitative, and qualitative.

¹⁰⁸ The amendment of Act 172 in 2017 through the Town and Country Planning (Amendment) Act 2017, (Act A1522).

Non-doctrinal research, known as socio-legal research, employs methods from other disciplines to generate empirical data to answer research questions. Mixed method is one example of non-doctrinal research. It is a procedure for collecting, analysing, and mixing or integrating quantitative and qualitative data at some stage of the research process within a single study to understand the research problem better.¹⁰⁹

This method consists of two distinct phases: quantitative and qualitative. The researcher first collects and analyses this design's quantitative (numeric) data. The qualitative (text) data are collected and analysed second in the sequence and help explain or elaborate on the quantitative results obtained in the first phase. The second qualitative phase builds on the first quantitative phase, and the two steps are connected in the intermediate stage of the study. The rationale of this approach is that the quantitative data and their subsequent analysis provide a general understanding of the research problem through survey questions or structured questionnaires towards the relevant target groups.¹¹⁰

Then, the qualitative data and their analysis refine and explain those statistical results by exploring participants' views more deeply.¹¹¹ Among the target respondents of the questionnaires are governmental agencies like PLANMalaysia (Federal), State Authorities, the department of environment, and others. The results from the questionnaires was processed using the software Statistical Package for the Social

¹⁰⁹Nataliya V. Ivankova, John W. Creswell and Sheldon L. Stick, "Using Mixed-Methods Sequential Explanatory Design: From Theory to Practice", *Field Methods*, vol. 18, no.1 (February 2006):3.

¹¹⁰ *Ibid.*, 3–20.

¹¹¹ Nataliya V.,5.

Sciences (hereafter referred to as 'SPSS') through the relative importance index (hereafter referred to as 'RII') to determine the findings. Mukhtar, in his paper, states that RII is one of the statistical techniques used to rank the numerous factors.¹¹² Applying to this research, several factors have been measured through the respondents' feedback to determine the actual practise of SIA in Malaysia, such as the capacity of the staff, the report preparation process and the challenges to implementing SIA. These questions are asked to address the second research question regarding the legal issues and gaps of the implementation, enforcement and monitoring SIA under Act 172. According to Ain and others, this methodology does not merely determine the different factors, but assists in resulting the important factor arising within this research.¹¹³ Thus, the researcher can ascertain the most crucial cause of difficulties in the current SIA implementation.

Furthermore, the researcher applies content analysis and comparative research methodology under the qualitative method to address the first research question regarding the position of the current law and practice of SIA implementation by related governmental bodies and project proponents in Malaysia, Australia and India. Content analysis has been described as an analysis of documents and texts that seek to quantify content in terms of predetermined categories and a systematic and replicable manner. The description of this approach was initially used in connection with quantitative research, but there is a qualitative approach to this methodology that lawyers more

¹¹² Mukhtar A Kassem, Muhamad Azry Khoiry, and Noraini Hamzah, "Using Relative Importance Index Method for Developing Risk Map in Oil and Gas Construction Projects", *Jurnal Kejuruteraan*, vol. 32, no. 3 (2020): 441–453.

¹¹³ Duratul Ain Tholibon and et al, "Relative Importance Index (RII) In Ranking the Factors of Employer Satisfaction Towards Industrial Training Students", *International Journal of Asian Education*, vol. 2, no. 4 (2021): 493–503.

frequently use. Qualitative content analysis, like doctrinal analysis, emphasises the role of the investigator in the construction of the meaning of texts. There is an emphasis on allowing categories to emerge out of data and on recognising the significance of understanding the meaning and importance context in which an item being analysed (and the classes derived from it) appeared.¹¹⁴

Content analysis includes reading judgments, legislation and policy documents as text rather than reading for the substance of the law and legal reasoning. This approach identifies patterns in text and the themes in bodies of documents. Critical legal scholars use the technique to determine the meaning behind the words of judicial and legislative text. It is a way of deconstructing text rather than reading and synthesising meaning from the text.¹¹⁵ The researcher refers to relevant documents and Acts to analyse the legal issues of SIA implementation. Examples are Act 172, the Manual, and others.

The researcher also attended the focus group discussions (hereafter referred to as 'FGD'), participants¹¹⁶ of which consisted of the related bodies for SIA to obtain views and feedback regarding the SIA implementation in Malaysia. Furthermore, the researcher employed a comparative legal analysis by comparing the law and policies of SIA in Australia and India. Australia, India, and Malaysia are among 54 commonwealth

¹¹⁴ Shriram Tiwary, "Doctrinal and Non-Doctrinal Methods of Legal Research", (Research paper, Amity University, 2019), 1-25.

¹¹⁵ Terry Hutchinson; Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review*, vol.17, no. 1 (October 2012): 83-120.

¹¹⁶ Participants of FGD are comprised of the Legal and Regulatory Planning Division and National Physical Planning Division (PLANMalaysia), PLANMalaysia@Selangor, Assessment Division of Department of Environment, PLANMalaysia@Penang, Malaysian Association of Social Impact Assessment, project proponents, governmental agencies and Malaysia Institute of Planners.

countries¹¹⁷ with unique partnerships through five principles: democracy, freedom, peace, the rule of law, and opportunity for all. These countries will meet once every two years to develop collective policies and initiatives for realistic collaboration on several social issues.¹¹⁸ Australia and India implemented SIA in the late 1990s and have kept improving the comprehensive framework until nowadays.

1.10 ORGANISATION OF RESEARCH

This research consists of seven chapters as follows:

Chapter One introduces the structure of the thesis, beginning with the research background, problem statement, research objectives and questions, hypothesis, study limitation and methodology used throughout this research.

Chapter Two discusses the theoretical concept of SIA. The idea of impact assessment and social impact have been explained to indicate the necessity of SIA prior to the proposed development. This chapter also includes all the related principles, benefits and constraints from international perspectives as well as the shariah perspective of social well-being.

¹¹⁷ *The Commonwealth*, “Member countries”, < <https://thecommonwealth.org/member-countries>> (accessed 2 January, 2022)

¹¹⁸ Madhan Balasubramanian, Stephanie Short, “The Commonwealth as A Custodian of Dental Migratory Ethics: Views of Senior Oral Health Leaders from India and Australia”, *International Dental Journal*, vol. 65, (October, 2011): 281.

Chapter Three examines the legal framework of SIA in Australia and India through legislation and guidelines provided by their governments. Several aspects, such as the statutory requirement of SIA, the implementation process and the qualified person to prepare the report, have been considered within this chapter.

Chapter Four analyses the legal framework and practice of SIA in Malaysia through several pieces of legislation, including Act 172 and the Manual. It begins with the introduction of Malaysia's planning system and policies. Then, this chapter elaborates on SIA's categorisation and implementation process in detail. Law cases and reports related to this assessment have also been summarised to determine the current practice of SIA.

Chapter Five determines the finding of legal issues and gaps in the SIA implementation based on analysis under Act 172 and the Manual. The main problems related are the standardisation of SIA implementation, the statutory requirements of SIA Categories 2 and 3, approval of the report, enforcement and criteria of a qualified person to prepare the report.

Chapter Six addresses the recommendations to improve Act 172 and the Manual based on the issues analysed in the previous chapter. The recommendations are proposed as amendments to Act 172 and the Manual.

Chapter Seven concludes this thesis with brief findings based on examining the legal framework in Australia, India and Malaysia, an analysis of legal issues as well as

recommendations for these issues. This chapter also highlighted the potential direction for future research.

1.11 CONCLUSION

To conclude, there are several gaps identified in the discussion above. The researcher has found that there is no comprehensive execution of SIA among the states in Malaysia, the requirement of SIA preparation is not specified under Act 172 (Categories 2 and 3), the approval process is not transparent under Act 172, there is no provision relating to the enforcement of SIA (monitoring and auditing post- SIA) and no provision relating to the criteria of a qualified person to prepare the SIA. Hence, this thesis is intended to fill these gaps.

Therefore, before engaging in legal issues on SIA, which justifies the need for improvement of Act 172 and the Manual, the next chapter deliberates on the theoretical concepts of SIA.

CHAPTER 2:
CONCEPTUAL FRAMEWORK OF SOCIAL IMPACT
ASSESSMENT

2.1 INTRODUCTION

There are many issues in terms of preparation, expertise, evaluation, and monitoring under the enforcement of SIA. However, the leading cause of this issue is the lack of legislation to control and administer this matter. The research therefore embarks on an analysis of legal issues of SIA under Act 172.

This chapter aims to achieve the second objective, which is to analyse the legal issues and gaps related to the implementation, enforcement and monitoring of SIA under the Act 172. Prior to that, it would be important to relook at the concept of impact assessment and social impact. There are a number of essential assessments like SIA, EIA, TIA and others. This chapter provides the definitions and scope of SIA as well as explores its importance in development projects. Without a comprehensive understanding of SIA, such an assessment would be underappreciated and undervalued by stakeholders and the public.

Apart from discussing theoretical concepts and the origin of SIA in this chapter, the researcher discusses the principle, benefits and constraints of this assessment. It will provide a clearer view of the background for implementing SIA throughout this thesis. Finally, the chapter concludes with an observation of whether there are legal issues and gaps in the implementation, enforcement, and monitoring of SIA under the Act 172.

2.2 SOCIAL IMPACT ASSESSMENT

2.2.1 Impact Assessment

Generally, impact assessment is defined as a fact-finding effort that aims to determine and address the main factors that influence a business' strategic aspects before they occur.¹ It is a structured mechanism for considering how a proposed development would affect people and their environment while there is still the opportunity to change the proposals. It is used at all decision-making levels, from general policy to particular projects.² That is how impact analysis works. There are various assessments for planned interventions,³ such as EIA, TIA, SIA, heritage impact assessment (hereafter referred to as 'HIA'), economic impact assessment, health impact assessment and others.⁴

Madlome states that EIA is a process that examines the potential impact of the environment of a significant development project.⁵ TIA is an assessment to identify the potential development impact on the traffic and transportation systems. This analysis assists in achieving the objectives of TIA to assess the existing road network around the

¹ *Simfoni*, "Impact Assessment", <<https://simfoni.com/impact-assessment-101/>> (accessed 9 February, 2023).

² IAIA, "Impact Assessment", <<https://www.iaia.org/>> (accessed 8 October, 2022).

³ Planned interventions here include policies, programs, plans and projects.

⁴ *Simfoni*, "Impact Assessment", <<https://simfoni.com/impact-assessment-101/>> (accessed 9 February, 2023).

⁵ Shonisani Felix Madlome, "Evaluation of the Effectiveness of Environmental Impact Assessment in Promoting Sustainable Development in the Energy Sector of South Africa," (Master thesis, University of the Witwatersrand, 2016), 12.

proposed development.⁶ HIA is a tool for conservation and management in a wide range of cultural and development contexts, including World Heritage sites, historic towns, specific structures and cultural landscapes.⁷ SIA also includes the processes of analysing, monitoring and managing potential social impact due to proposed development.⁸

From various assessments defined above, the researcher finds a common trait. The process of these assessments is similar as the objective and purpose are to minimise the adverse effects of development on the people in terms of the physical environment, as well as social and economic impacts. The only difference is the nature of assessment, which focuses on either the environment, society, traffic, heritage, health and others.

Furthermore, disputes between economic development and natural resources are a major factor behind social problems. Environmental deterioration frequently results in monetary losses and societal costs after the economic advantages of development have been realised. Development projects frequently benefit the local population economically and improve their quality of life, but they also have negative impacts. Social impact studies are useful in understanding these impacts.

The processes used by government departments and agencies conducting impact assessments in the field of social development assist their understanding on socio-

⁶ *IPM Professional Service*, "Traffic Impact Assessment (TIA)- A Pre-Requisite for Project Approval", < <https://ipm.my/traffic-impact-assessment-tia-a-pre-requisite-for-project-approval> > (accessed 9 February, 2023).

⁷ Ayesha Pamela Rogers, "Built Heritage and Development: Heritage Impact Assessment of Change in Asia", *Built Heritage*, vol. 1, no. 2 (2017): 17.

⁸ Frank Vanclay, "SIA principles", vol. 21, no. 1 (2003): 6.

cultural, institutional, historical and political contexts. It is one of the medium to enhance equity, strengthen social inclusion and cohesion, promote transparency and empower the poor and the vulnerable in the design and implementation of the project.⁹

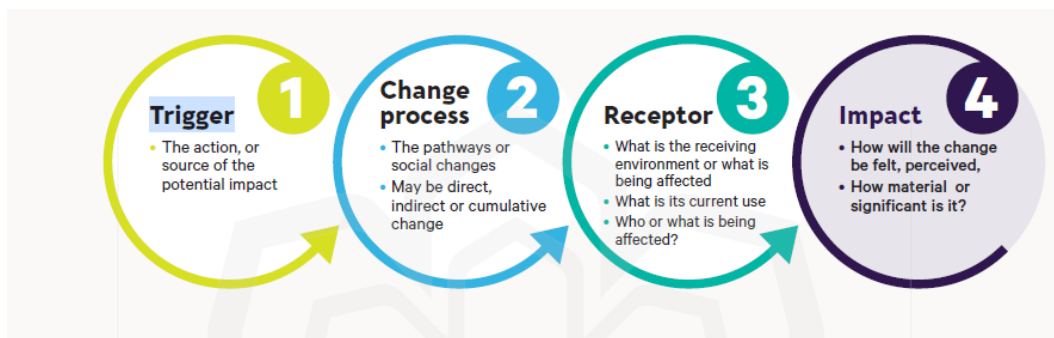


Figure 2.1 The Process of Impact Assessment
Source: (SIA Guide Northern Territory, Australia,2020)

Figure 2.1 shows the traditional process of impact assessment in the Northern Territory, Australia. It begins with the ‘trigger’ aspect, determining the potential impact for development. Then, it analyses the changes that arise either directly or indirectly. The receptor stage indicates the actual effect on the environment and people around the area. The evaluation will be made to ensure that significant development will be measured and guarantee the strategic plan that can be arranged. Impact assessment is frequently criticised as a regulatory barrier to approval or a tool for assessing project

⁹ Frank Vanclay, Ana Maria Esteves, Community Insights Group, Ilse Aucamp, Consulting Services, and Daniel M Franks, "International Association for Impact Assessment Principal Author: Contributing Authors ":, no. April (2015),96.

risk. However, it is more advantageous to think of it as lowering ambiguity, assisting in smart planning and boosting public trust in legal frameworks.¹⁰

2.2.2 Social Impact

Basically, social impact is a consequence that people experience.¹¹ The impact within this research context refers to the effect of development projects near the community. Kusuma and Sivasankar support this idea by saying it is a development intervention in the individual environment.¹² Usually, the effect will be determined in the early phase of development. Due to that, it is significant to understand the theory of social impact to ensure the accountability of the SIA procedure for the new proposed development.

The draft of New South Wales Guideline 2020¹³ in Australia introduces the concept of social impact, including how people experience changes. It divides the impacts into eight categories: the way of life, community, accessibility, culture, health and well-being, surroundings, livelihoods, and decision-making systems. These are still in use in the latest guidelines of July 2021.¹⁴

¹⁰ Jane Munday, "Guide to Social Impact Assessment October 2020 | ©", no. October (2020).

¹¹ Department of Planning and Environment State of New South Wales, *Social Impact Assessment Guideline For State Significant Mining, Petroleum Production and Extractive Industry Development*, (2017),5.

¹² P.R. Dr. Kusuma, A. and Prof.Sivasankar, "Application of Social Impact Assessment in India: A Comprehensive Overview", *International Journal of Current Research*, vol. 10, no. 02 (2018): 65889.

¹³ *New South Wales Government*, "Draft Social Impact Assessment Guideline 2020 Public Briefing Session", < <https://vimeo.com/475734400> > (accessed 8 October, 2022).

¹⁴ Department of Planning and Environment State of New South Wales, "Social Impact Assessment Guideline", no. July (2021): 19.

Even though EIA involves social, environmental and economic elements, it does not suffice to manage social impact solely within this assessment. SIA must be addressed according to its nature. The EIA must synthesise and balance a variety of expert inputs, including the SIA. For instance, pertinent environmental studies may capture how a project affects flora, fauna and surface water. The economic assessment may quantify and include the cost of any ensuing profits or losses. The SIA would consider how such gains or losses are regarded, felt by and distributed among various individuals.¹⁵

Svensson, in his thesis, also supports the idea that even though SIA originates from EIA, the complexity of the social aspect does not yield the same measurements as the social dimensions discovered through EIA. For example, the European Council has introduced EIA legislation. Although SIA has not been specifically incorporated into the law, they have indicated the necessity and differences in SIA procedures needed to ensure social sustainability.¹⁶ Vanclay states that the SIA procedure is crucial for differentiating between social impact and the process of social change. Failure to do so will affect the outcomes of the proposed development.¹⁷ In China, due to a lack of resources and inappropriate SIA methods, there is insufficient implementation.¹⁸

¹⁵ Department of Planning and Environment State of New South Wales, Social Impact Assessment Guideline For State Significant Mining, Petroleum Production and Extractive Industry Development, 6-7.

¹⁶ Jonas Svensson, "Social Impact Assessment in Finland, Norway and Sweden: A Descriptive and Comparative Study (Master thesis, KTH Royal Institute of Technology, 2011), i.

¹⁷ Frank Vanclay, "Conceptualising Social Impacts", *Environmental Impact Assessment Review*, vol. 22, no. 3 (2002): 183–211.

¹⁸ Yanhai Zhao and Ye Yao, "Lagging Social Impact Assessment for Public Project Management in China: Inappropriate Method or Lack of Interest", in *Proceedings - 2011 4th International Conference on Business Intelligence and Financial Engineering, BIFE 2011*, (2011): 508–511.

Various specific projects may have particular impacts in all these categories. Some implications can be directly measured, while others are effectively evaluated using qualitative approaches or by considering the potentially varying experiences of various groups. Table 2.1 lists the characteristics of social impacts. New South Wales, Australia produced this guideline to indicate the nature example of social impact there. However, it can differ from the other place and scenarios.¹⁹

Amongst the characteristics of social impact considered are the measurement of potential impact, type of impact (positive-negative), the tangibility of impact, impact combination and the methodology used and experienced by the community. The table below gives examples of each characteristic to illustrate the scenario that might arise.

Table 2.1 Characteristics of Social Impacts

A social impact may be physically observable or it may manifest as rational or justified fears (of negative impacts in the future) or aspirations (of positive impacts in the future).	<p>Physically observable impacts</p> <p>More paths and cycleways</p> <p>Acquisition of residential properties</p>
	<p>Rational or justified fears</p> <p>Psychological stress regarding the future personal and community impacts of compulsory property acquisition</p>
A social impact may be experienced positively by some people, and negatively by others	<p>Positive</p> <p>Improved livelihoods owing to more work opportunities</p>
	<p>Negative</p> <p>Increased prevalence of adverse health conditions</p>

¹⁹ Department of Planning and Environment, "Technical Supplement Social Impact Assessment Guideline for State Significant Projects", no. November (2021),5.

A social impact may be tangible or intangible	Tangible Availability of affordable housing
	Intangible Community cohesion
Social impacts may be direct or indirect. They may also combine with other impacts from a single project or be cumulative with impacts from other projects.	Direct Sleep disturbance caused by construction noise
	Indirect Strain on family relations and health from sleep disturbance caused by construction noise
	Combined incremental Sleep disturbance due to increased noise and restricted access because of significantly reduced street parking caused by a single project
	Cumulative Sleep disturbance due to increased noise and restricted access because of significantly reduced street parking from one project. In addition, poor air quality creating health conditions and strained family relations from another project
A social impact may be best assessed using quantitative methods or qualitative methods.	Directly quantitative Changes in population demographics
	Partially/indirectly quantitative Incidence of voluntary work among a community as a proxy indicator of community cohesion
	Qualitative (measurable through perception surveys or oral storytelling, for example) Cultural values Sense of place Connection to Country
	Different experiences within a community

A social impact may be experienced differently within a community, by different communities, and at different times/stages of the project.	An increase in the value/cost of housing may be positive for homeowners wanting to rent out or sell their properties, but negative for individuals and families wanting to buy or rent
	<p>Different experiences for different communities</p> <p>People living near a project may experience most of the noise and dust impacts, while people in the region's nearest town may benefit from most of the job opportunities</p>
	<p>Different experiences over time</p> <p>People's experiences of impacts during project construction may be quite negative, whereas experiences during operation may be more positive</p>

Source: (NSW Technical Supplement, Australia,2021)

Furthermore, a fixed list of social impact variables is not viable because every development project is different and subject to the local social context, which also varies as mentioned above. Therefore, social impact is context-dependent and difficult to expect in advance precisely. However, a general social impact list is helpful as a guide during the scoping stage in order to prepare effective SIA reports.²⁰

The list of variables must be seen from either negative or positive aspects. It also describes the impact that affects humans naturally or perceptually. Those impacts can be experienced at various levels, namely, individual, family or community. These alternatives of social development can contribute to forming an inclusive community

²⁰ Jabatan Perancangan Bandar dan Desa, "Manual Penyediaan Laporan Penilaian Impak Sosial (SIA) bagi Projek Pembangunan", vol. 2 (2018),4-3.

that can build and strengthen community capacity and institutions. Figure 2.2 shows the critical elements and variables in social development. According to these variables, a development project or policy change will inevitably lead to measurable changes in human populations, communities, and social interactions.



Figure 2.2 Variables of Social Impact
Source: (Manual SIA ,2018)

2.2.3 Definitions and Scope of SIA

Vanclay is one of the international SIA experts and has contributed much literature on SIA.²¹ Vanclay defined SIA as a process that identifies and assesses the effects of projects that impacted change on people’s assets, rights and systems of social

²¹ *SIAhub for Social Impact Assessment Practitioners*, “Practitioners”, <https://www.socialimpactassessment.com/practitioners/?_search_training=vanclay> (accessed 14 April, 2023).

organisation, including quality of life, culture, health, social interactions and livelihoods.

The International Association of Impact Assessment (hereafter referred to as 'IAIA') is an international association of professionals involved with impact assessment, including SIA and EIA.²² IAIA is also the leading global authority on the best practice in using impact assessment for informed decision-making regarding policies, programs, plans and projects.²³ It promotes the application of integrated and participatory approaches to impact assessment, conducted to the highest professional standards. IAIA interpret that SIA involves analysing, monitoring and managing both positive and negative intended and unintended social consequences.²⁴

Vancla et al., in a Guidance Note,²⁵ say that SIA is a management process, not a product.²⁶ Effective SIA management is required to guarantee that benefits of project are maximised, and adverse effects are continuously prevented or reduced during the period of development project.²⁷ Vanclay states that the SIA community of practitioners considers all issues that affect people, directly or indirectly, pertinent to SIA. In addition, Taylor supports that theory by saying that SIA typically incorporates social research, public involvement, planning, and managing social change. The purpose of

²² *International Association for Impact Assessment*, "About IAIA", < <https://www.iaia.org/about.php>> (accessed 17 January, 2022).

²³ Frank Vanclay, "International Principles for Social Impact Assessment", *Impact Assessment and Project Appraisal*, vol. 21, no. 1 (2003): 8.

²⁴ Vanclay, Esteves, Group, Aucamp, Services, and Franks, *International Association for Impact Assessment*, 1.

²⁵ Guidance Note here refer to a guideline, *Social Impact Assessment: Guidance for Accessing and Managing the Social Impacts of Projects* (Footnote 83).

²⁶ *Ibid.*, 10.

²⁷ *Ibid.*, 9.

these efforts is to focus on assisting affected communities. Taylor observes those experiences during practising SIA in several projects, such as infrastructure projects, including hydroelectricity and harbour development. It also applied to the rural land-use changes, design of outer islands development, and others.²⁸

SIA can additionally be prescribed as the overarching framework that embodies the evaluation of all impacts on humans and on how people and communities interact with their socio-cultural, economic and biophysical surroundings.²⁹ Vanclay emphasises that this assessment assists the management of the project's social issues and is practised by the primary groups like developers, financiers, affected communities, and other relevant agencies.³⁰

The World Bank has supported the implementation of SIA and the agency defines SIA as identifying, accessing and managing the potential social risks and impacts in a project's life cycle.³¹ As the community is more prioritised compared to the government agency, it is necessary to identify the communities that are positively or negatively affected by the projects. However, Barrow et al., argue that SIA has no precise definition and it depends on the interpretation and approach of people. Craig states that a single definition is not adequate to describe SIA.³² Some researchers

²⁸ Nicholas Taylor, "Development in Social Impact Assessment (SIA)- An International Perspective" in *Social Impact Assessment in Malaysia*, edited by Asmah Ahmad, Dahlia Rosly, Kamalruddin Shamsudin and Susheel Kaur. (Selangor: Malaysian Association of Social Impact Assessment (MSIA),2009),1.

²⁹ Vanclay, 3.

³⁰ Frank Vanclay, "Reflections on Social Impact Assessment in the 21st Century", *Impact Assessment and Project Appraisal*, vol. 38, no. 2 (2020): 126–131.

³¹ Mary Racelis, "Communities as Stakeholders in Social Impact Assessment, the Experience in the Philippines", in *International Symposium on Social Impact Assessment in East Asia and the Pacific organized by The World Bank and Philippine Learning Center for Environment and Social Sustainability (PHILCESS)*, University of the Philippines, (Virtual: The World Bank,2).

³² Donna Craig, *Social Impact Assessment: Politically Oriented Approaches and Applications*, (1990).

identify SIA as a political means for decision-making, while other researcher see it as a socio-political process that assists negotiation among interest groups.³³

Wolf states that SIA studies the potential effects of natural physical phenomena, government and business activities, or any succession of events on specific groups of people.³⁴ Burdge et al., interpret SIA as a process of assessing or estimating the social consequences that are likely to follow specific policy actions or project development.³⁵ While Aisyah et al., state that the nature of SIA is to ensure that the development will not adversely affect society by forecasting and mitigating the anticipated consequences.³⁶ Thus, in the researcher's opinion, even though various people have different definitions, the core of SIA is still the same, which is to protect the affected community from adverse social impact of the planned intervention.

The core values, principle and guidelines relating to SIA³⁷ are crucial to protect society's rights from the adverse effect of development near their area. SIA practitioners believe society has fundamental rights and SIA should be used as the decision-making tool before approving any new development.

³³ C.J.Barrow, *Environmental and Social Impact Assessment An Introduction*, (Great Britain: Arnold,1997),226.

³⁴ Wolf, C. P., "Social Impact Assessment: The State of the Art", *Environmental Impact Assessment*, (1983):391–401.

³⁵ R.J.Burdge, Frank Vanclay, "Social Impact Assessment: A Contribution to the State of the Art Series", *Impact Assessment*, vol 14(1), (1996):59.

³⁶ Aisyah Abu Bakar and et al, "Social Impact Assessment: How do the Public Help and Why Do They Matter?", *Procedia - Social and Behavioral Sciences*, vol. 170 (2015): 70–77.

³⁷ Vanclay, 5.

Initially, SIA was a part of environmental impact assessment (hereafter referred to as 'EIA'),³⁸ which used EIA regulations and processes that accompanied legislation, such as the National Environmental Policy Act (hereafter referred to as 'NEPA 1970')³⁹ in the United States. The NEPA 1970 required the project proponents to consider environmental and social impacts on local communities in planning and decision-making processes. In 1994, the United States Interorganizational Committee on Principles and Guidelines for Social Impact Assessment developed a set of guidelines and principles for SIA, clearly showing the distinction between SIA and EIA. These guidelines were adopted by contemporary professional organisations, such as IAIA.

In addition, other essential guidance, like the International Principles for Social Impact Assessment prepared by the IAIA, constitutes the most recognised international benchmark for effective SIA as it acts as a basis for developing sector and national guidelines.⁴⁰ The document laid out broad consensus about SIA's characteristics, principles and performance standards and there are other notable frameworks and policies, such as Social Impact Assessment: Guidance for Assessing and Managing the Social Impacts of Projects.⁴¹ SIA practice is an iterative, community-focused, and participatory process that uses diverse data and information to produce values-based assessments and strategies to address the opportunities, risks, and uncertainties associated with significant development projects and operations.

³⁸ Ibid.,11.

³⁹ National Environmental Policy Act of 1970 (NEPA) (Revised 1982).

⁴⁰ Social Impact Assessment (SIA).

⁴¹ Ibid.,15.

2.2.4 Principles and Benefits of SIA

In 2003, IAIA outlined International Principles for Social Impact Assessment, the international principle of SIA that other countries could adopt globally.⁴² The primary purpose of this principle is to assist the practitioners in SIA practice and consider the social element in environmental development.⁴³ The SIA principles are necessary as it increases the appeal of SIA to a broader range of audiences by increasing its legitimacy and standing, initiates minimum standards for SIA practice, provides an articulation of best practice in SIA as a model to aspire to, removes confusion over terminology by establishing a definitive glossary, selects the appropriate scope of the social component of impact assessments and promote the integration of SIA in all impact assessments.⁴⁴

All principles in preparing the SIA report are crucial as a fundamental tool and component for the development process. The principles prepared by IAIA is divided into fundamental and specific principles. The SIA practitioners may consider the fundamental principles in their practice.

Table 2.2 shows the fundamental principles while Table 2.3 indicates the specific principles of SIA.

Table 2.2 Fundamental Principles of SIA

Number	Principles
1.	Respect for human rights should underpin all actions.

⁴² Ibid.,4.

⁴³ Ibid.,5.

⁴⁴ Ibid.,5.

2.	Promoting equity and democratisation should be the major driver of development planning, and impacts on the worst-off members of society should be a major consideration in all assessment.
3.	The existence of diversity between cultures, within cultures, and the diversity of stakeholder interests need to be recognised and valued.
4.	Decision making should be just, fair and transparent, and decision makers should be accountable for their decisions.
5.	Development projects should be broadly acceptable to the members of those communities likely to benefit from, or be affected by, the planned intervention.
6.	The opinions and views of experts should not be the sole consideration in decisions about planned interventions.
7.	The primary focus of all development should be positive outcomes, such as capacity building, empowerment, and the realisation of human and social potential.
8.	The term, 'the environment', should be defined broadly to include social and human dimensions, and in such inclusion, care must be taken to ensure that adequate attention is given to the realm of the social.

Source: (International Principles for SIA,2003)

Table 2.3 Specific Principles of SIA

Number	Principles
1.	Equity considerations should be a fundamental element of impact assessment and of development planning.
2.	Many of the social impacts of planned interventions can be predicted.
3.	Planned interventions can be modified to reduce their negative social impacts and enhance their positive impacts.
4.	SIA should be an integral part of the development process, involved in all stages from inception to follow-up audit.

5.	There should be a focus on socially sustainable development, with SIA contributing to the determination of best development alternatives – SIA (and EIA) have more to offer than just being an arbiter between economic benefit and social cost.
6.	In all planned interventions and their assessments, avenues should be developed to build the social and human capital of local communities and to strengthen democratic processes.
7.	In all planned interventions, but especially where there are unavoidable impacts, ways to turn impacted peoples into beneficiaries should be investigated.
8.	The SIA must give due consideration to the alternatives of any planned intervention, but especially in cases when there are likely to be unavoidable impacts.
9.	Full consideration should be given to the potential mitigation measures of social and environmental impacts, even where impacted communities may approve the planned intervention and where they may be regarded as beneficiaries.
10.	Local knowledge and experience and acknowledgment of different local cultural values should be incorporated in any assessment.
11.	There should be no use of violence, harassment, intimidation or undue force in connection with the assessment or implementation of a planned intervention.
12.	Developmental processes that infringe the human rights of any section of society should not be accepted.

Source: (International Principles for SIA,2003)

Furthermore, the USA has produced the SIA principles in the context of NEPA. The principles through a document, namely, Principles and Guidelines for Social Impact Assessment in the USA (hereafter referred to as ‘US Principles’).⁴⁵ Vanclay, in a paper, has compared both principles, between International Principles for Social Impact

⁴⁵ Frank Vanclay, "Principles for Social Impact Assessment: A Critical Comparison between the International and US Documents", *Environmental Impact Assessment Review*, vol. 26, no. 1 (2006): 3.

Assessment and US Principles. From an international perspective, the main criticism was that the US Principles are country-based and do not indicate the need for an international version compared to International Principles.⁴⁶ US Principles have different views of SIA in terms of its approach, such as splitting the planning stage into two stages: preliminary planning and detail planning.⁴⁷

US Principles have six (6) principles with a total of sixteen (16) guidelines, while International Principles have eight (8) fundamental principles and twelve (12) specific principles in implementing SIA. Based on both documents, the nature of positivism and technocratic is determined by the US Principles, compared to the International Principles, which are more democratic, participative and constructivist.⁴⁸ Even though both have different approaches, the spirit of SIA is still under the auspices of IAIA. Table 2.4 shows the principles of the US.

Table 2.4 Principles and Guidelines for Social Impact Assessment in the USA

Number	Principles
1.	Achieve extensive understanding of local and regional populations and settings to be affected by the proposed action, program or policy.
2.	Focus on the key elements of the human environment related to the proposed action, program or policy.
3.	The SIA is based upon sound and replicable scientific research concepts and methods.
4.	Provide quality information for use in decision-making.
5.	Ensure that any environmental justice issues are fully described and analysed.

⁴⁶ Ibid.,6.

⁴⁷ Ibid.,7.

⁴⁸ Ibid.,12.

6.	Undertake project, program or policy monitoring and evaluation and propose mitigation measures if needed.
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Source: (US Principles,2003)

SIA implementation has contributed many advantages and benefits to the government, community and private sectors. The main benefits are equitable and social, community acceptance towards development projects, maximises socio-economic returns and minimum cost-benefit creating project effectiveness through knowledge and local experience, developing community capacity and protecting vulnerable groups.⁴⁹ Vanclay states that the main feature of SIA focuses on better development and can build on local knowledge and use participatory processes to analyse the concerns of affected parties. It involves stakeholders in assessing social impacts, exploring alternatives and monitoring the planned intervention.⁵⁰ Determining the impacts in the early stage through the SIA process can contribute to a better decision toward the continuity of the intended development. If the development proceeds, the mitigation action will be made accordingly.⁵¹

2.2.5 Disadvantage of SIA

There is a particular view that SIA has its disadvantage in terms of process, timing and others. Since 1990, Beckwith criticised SIA requirements as causing a bureaucratic

⁴⁹ Jabatan Perancangan Bandar dan Desa, Manual Penyediaan Laporan Penilaian Impak Sosial (SIA) bagi Projek Pembangunan.

⁵⁰ Ibid.,6.

⁵¹ Vanclay, 7.

hurdle, a source of delay in project approvals and a threat to the economic viability of the proposals. Consequently, implementing SIA has led to the fear of industry in certain regions.⁵² C. Macombe et al., state that SIA processes are lengthy and require a minimum period of six months, as well as significant energy consumption. For example, the process of collecting data through participant and stakeholder interactions is time-consuming. The community's response to the proposed development is subjective, and in certain situations, they are very sensitive, which can lead to feedback delays.⁵³ In Malaysia's Parliament, Dato' Noraini⁵⁴ supports this argument by stating that the SIA process will take a long time because it involves prolonged evaluation through federal and state levels.⁵⁵

According to Sherren, inefficient methodology for data collection through public participation can be challenging in SIA implementation.⁵⁶ The conventional tools for assessment comprise local surveys, secondary data analysis, interviews with key informants and a range of methods for anticipating social impacts. Although SIA is an established assessment, the approaches used are not advanced and aligned with the recent situation. The participation from the young generation has also been under-represented during the engagement. Even though a sophisticated mechanism will be used, challenges related to the source datasets will still arise. The convenience of image

⁵² Jo Ann Beckwith, "Social Impact Assessment in Western Australia at A Crossroads", *Impact Assessment*, vol. 12, no. 2 (1994): 201.

⁵³ Catherine Macombe and Denis Loeillet, "Instruments to Assess the Social Impacts of Value Chains Catherine", *Sustainable Development and Tropical Agri-chains*, (2017): 1–353.

⁵⁴ YB Dato' Noraini binti Ahmad is the Member of Parliament for Parit Sulong since 2008.

⁵⁵ Parliament Hansard, Session 20 October 2016, Bill of Town and Country Planning (Amendment) 2016,58.

⁵⁶ Kate Sherren and et al , "Digital Archives, Big Data and Image-Based Culturomics For Social Impact Assessment: Opportunities and Challenges", *Environmental Impact Assessment Review*, vol. 67, no. August (2017): 23–30.

production raises issues of intention and authenticity. This consequently creates the bias data for a study.⁵⁷

Lacking a legal framework is also a main challenge in implementing SIA.⁵⁸ For example, it can be seen through the SIA framework and practice in Malaysia. It will affect the comprehensiveness of the execution of intended projects as the law in Malaysia is inadequate in regards to the requirement of SIA, its approval, enforcement and criteria of a qualified person to prepare the report. If these matters are not considered seriously, the potential for negative impact will arise in the development. Although, it is very challenging to develop the guidelines and principles of SIA due to various factors such as regulatory, cultural, religious, social, economic and others,⁵⁹ the basic principles mentioned above are crucial in assisting the development of SIA and implementation worldwide. Figure 2.3 shows the conceptual framework for SIA implementation in Malaysia.

⁵⁷ Ibid.,24-25.

⁵⁸ Refer to the analysis of SIA implementation by governmental agencies and project proponents at Chapter 5.

⁵⁹ Ibid.,7.

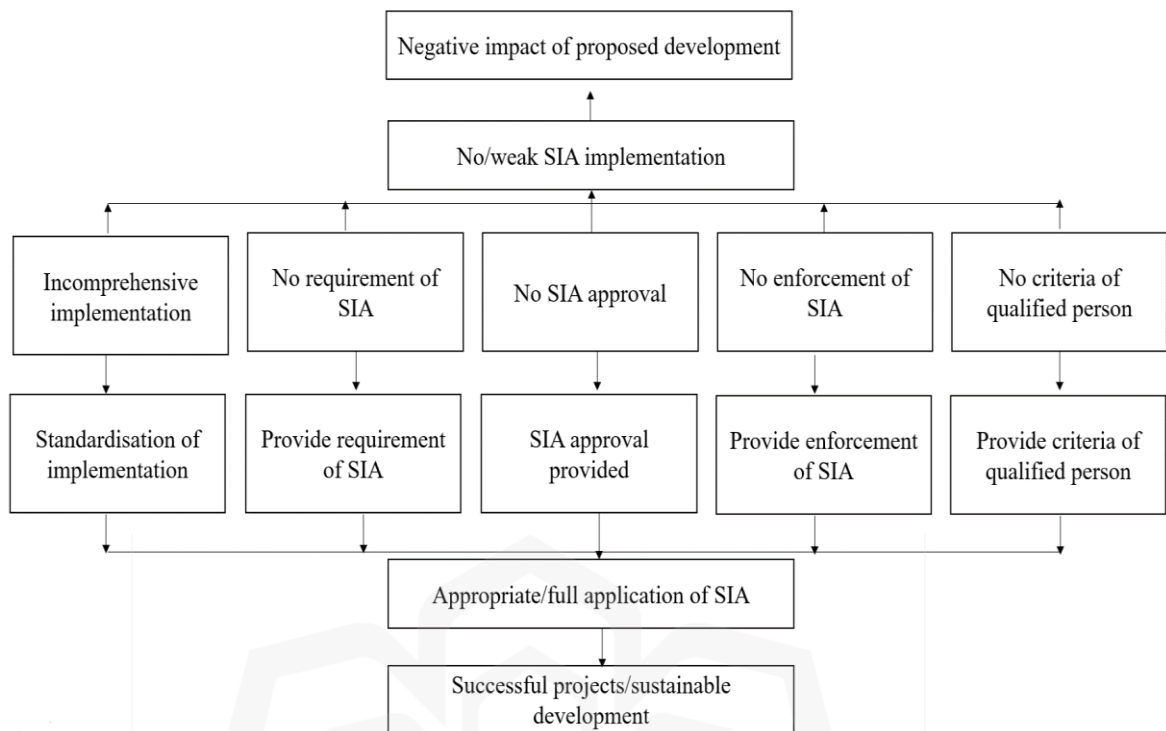


Figure 2.3 SIA Conceptual Framework in Malaysia

Source: Researcher's own (2023)

2.3 SHARIAH PERSPECTIVE OF SOCIAL WELLBEING

Generally, the concept of well-being represents the condition of a nation's household, living community and people. There are a variety of interpretations of well-being adopted nowadays. It is a significant household concern since it indicates the standard of living of humanity. An individual's or family's quality of life includes access to food, clothing, housing and safety.⁶⁰ Besides that, three prominent aspects have been

⁶⁰ Mohamed Saladin Abdul Rasool, Mohamed Azmil Mohd Yusof, and Siti Mariam Ali, "Wellbeing of the Society: A Maqāṣid Al-sharī'ah approach", *Afkar*, vol. 2020, no. Special Issue 1 (2020): 26.

highlighted under the well-being concept: the management of social problems, the fulfilment of basic needs and social opportunities in society.⁶¹

Recently, improving sustainability and living conditions have been top priorities of policymakers and well-being is one of them.⁶² This scenario includes the implementation of SIA to sustain resilient development for the public. SIA is not merely discussed from the development perspective, but the element of social well-being has also been derived from an Islamic perspective. Even though in the context of modern civilisation, social well-being is described more prominently, it does not leave the need for religious and spiritual aspects and there is no conflict between these aspects.⁶³

The *Maqasid al-Shariah* has been integrated into the practice of well-being. The scholars give various definitions of *Maqasid al-Shariah*. Ibn Ashur states that *Maqasid al-Shariah* is a core and fundamental wisdom in ruling Islamic law. Other scholars explain that *Maqasid al-Shariah* is to achieve the goal of every Islamic ruling, which amongst the target is to preserve the social and living systems.⁶⁴ This element of interpretation is aligned with the spirit of SIA implementation. The principles of SIA encourage people to achieve ecological balance by protecting the environment and communities⁶⁵

⁶¹ Norizan Abdul Ghani and et al, "Social Deprivation and its Threats to Social Well-Being According to the Perspective of Maqasid", *International Journal of Academic Research in Business and Social Sciences*, vol. 12, no. 1 (2022): 1944.

⁶² J. Schleicher and et al, "Poorer Without It? The Neglected Role of the Natural Environment in Poverty and Wellbeing," *Sustainable Development* Vol. 26(1) (2018), 83-98.

⁶³ Norizan Abdul Ghani and et al, 1953.

⁶⁴ Rasool, Yusof, and Ali, Wellbeing of the society: A Maqāṣid Al-sharī'ah Approach,27.

⁶⁵ Ibid.,6.

There are five principles under *Maqasid al-Shariah*: the preservation of religion, life, lineage, intellect and property.⁶⁶ The preservation term describes each principle's continuous evolution and development for a better future.⁶⁷ These objectives also aim to benefit all humankind, including the affected communities within the development area. Religious preservation relates to protecting a way of life that comprises one's belief system, acts of worship, moral and ethical standards of the individual.⁶⁸

To preserve the development of human life, basic physical, spiritual, moral and social necessities must be fulfilled both personally and collectively. It must be protected against both human and non-human threats. Preserving intellect is also essential to differentiate right and wrongdoing and knowing the best methodology to safeguard the environment. In addition, the preservation of posterity is close to the stability of family institutions in the continuing survival of the development of future generation.⁶⁹

Preserving wealth signifies that all resources belong to God and man as a delegatee must be responsible for utilising the resources well. Shariah guides Muslims to build the finest cities through good amenities and to create a structured society.⁷⁰ This is aligned with the proposition of Islam, which requires developing an organised social

⁶⁶ Usman Safiyanu Duguri and et al, "The Application of Maqasid Al-Shari'ah in the Foreign Policy of Islamic States", *International Journal of Academic Research in Business and Social Sciences*, vol. 11, no. 3 (2021): 88–96.

⁶⁷ Selamah Abdullah Yusof and et al, "Holistic Development and Wellbeing based on Maqasid Al-Shari'ah: The Case of South Kalimantan, Indonesia", *Journal of Economic Cooperation and Development*, vol. 40, no. 4 (2019):2.

⁶⁸ Ibid.,2-3.

⁶⁹ Ibid.,3.

⁷⁰ Ainul Jaria Maidin, *Malaysian Town and Country Planning, Law and Procedure*, (Selangor: Malaysian Current Law Journal,2012), 648.

structure. For example, Prophet Muhammad established the city of Madinah, which provides sustainable community living.

Furthermore, *Al Quran* addresses the protection of the environment and the prohibition of destroying the earth's resources.⁷¹ Shariah also requires the man to live according to teachings of the *Al Quran* and *Sunnah* that assist the way of development made by them. The consistency of their planning with the guidance from those resources will contribute to a good impact on society.⁷²

2.4 CONCLUSION

In the previous chapter, it was briefly pointed out that the main weakness of SIA implementation is the lack of provisions under Act 172. Based on the preceding discussion, it is well established that SIA is not merely an approach but rather a planning tool, a process, and a form of public involvement that can provide guidance and input in decision-making processes.

The SIA is essential for all people, including project proponents, the community, and the government. They should follow the process provided to reflect an exemplary implementation of SIA in order to maintain stable development planning. However,

⁷¹Umar Oseni and Maidin, AJ, "Islamic Principles on Sustainable Land Use Planning and Development", *Journal of Islamic Law Review*, (2011),57.

⁷² Ainul Jaria Maidin, *Malaysian and Town and Country Planning, Law and Procedure*, (Kuala Lumpur: Malaysian Current Law Journal,2012),650.

given this basic implementation structure in Malaysia, it still needs enhancement. It still needs to be comprehensively bound by a legal or regulatory context, unlike EIA, which has been put into practice since late 1980 and has become a legal requirement under section 34A of the Environmental Quality Act.⁷³

This chapter explains the entire scope of SIA and serves as the foundation for establishing the second objective: analysing the legal issues and gaps related to the implementation, enforcement, and monitoring of SIA under Act 172. Other countries, such as Australia and India, have good governance to regulate SIA. Thus, in the next chapter, the researcher examines SIA implementation in Australia and India, specifically focusing on the processes and existing framework legislation that regulate this matter.

⁷³ Environmental Quality Act 1974, (Act 127), s 34A.

CHAPTER 3:

THE PRACTICE OF SOCIAL IMPACT ASSESSMENT IN AUSTRALIA AND INDIA

3.1 INTRODUCTION

The discussion in Chapter Two describes and explains the theoretical concept of SIA. It indicates the significance of incorporating social measurement to reduce the negative impact prior to the development project. Strong governance through the legal framework needs to be developed for the sake of society and the country. Many developing countries have already started to adopt SIA in their decision-making process such as Australia, United States, India, Canada, New Zealand, South Africa, Japan and others.¹ These countries have implementation structures for SIA and have implemented it for quite a long time.

The researcher gives preferences to the study of SIA in Australia and India in evaluating the suitable models suggested as a framework for the proposed amendments under Act 172. Therefore, the main aim of this chapter is to address the first research objective, which is to identify the current law and practise on the implementation of SIA within these countries. The researcher divides the discussion into two parts

¹ Salim Momtaz and Zobaidul Kabir, *Evaluating Environmental and Social Impact Assessment in Developing Countries*, (Australia: Elsevier, 2018): 229.

concerning the practice of legal framework beginning with Australia and then India. Then, the researcher analyses the background, activities requiring the SIA report, and the implementation process. The researcher believes that referring to these models in the discussion would facilitate the effort to identify the areas that would strengthen the legal framework of SIA in Malaysia. Finally, the researcher ends the discussion of this chapter with her analysis through an overall analysis of each country and observation of the legal framework in the conclusion.

3.2 THE PRACTICE OF THE LEGAL FRAMEWORK OF SOCIAL IMPACT ASSESSMENT IN AUSTRALIA

3.2.1 Background

Australia is proliferating in resource development² which can affect environmental, economic and community changes. These three elements are interrelated in an ecosystem. Australian state governments have used various strategies to develop the assessment and management of social impacts.³

² *Parliament of Australia*, "The Australian Resources Sector its contribution to the nation, and a brief review of issues and impacts", <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/1011/AustResources_> (accessed 30 October, 2022).

³ Daniel Franks, "Social Impact Assessment of Resource Projects International Mining for Development Centre Mining for Development: Guide to Australian Practice", (2012): 16.

Parsons, one of the SIA specialists in Australia,⁴ elaborates on the five benefits of SIA. Among them are achieving better outcomes, integrating indigenous knowledge and local voices, spreading SIA effort across the lifecycles, considering distributive equity, and assessing positive social impacts. Any SIA guideline must require the proponents to refine the project design in response to the identified social impacts. They have to propose the actions in response to residual social impacts and ensure that proposals are tangible, durably practical, and deliverable by the proponents. They also have to keep on monitoring and adaptively managing the social effects.⁵

The evolution of social impact assessment in Australia demonstrates both convergence and divergence, thereby yielding mutual benefits through synergistic, intermittent, and iterative development of relevant policies and procedures.⁶ The social impacts are usually divided into positive and negative effects. Among the negative consequences are reduced amenities during construction that will affect professions and business opportunities, an increase in dust or noise impacts affecting community health, surroundings and well-being, alterations to traffic routes and management, reducing a community's ability to walk or cycle, in turn affecting community health and wellbeing, land-use changes that affect community character and people's sense of place as well as inducing a sense of cultural loss for aboriginal people. While the positive changes include improved livelihoods from increased jobs and business opportunities or less

⁴ *The University of Queensland Australia*, "Dr Richard Parsons", <<https://smi.uq.edu.au/profile/2926/richard-parsons>> (accessed 23 June, 2022).

⁵ S I A Specialist, "Integrating SIA in regulatory processes for major development projects", no. June (2022).

⁶ Kate Williams and Jonathan Grant, "A Comparative Review of How the Policy and Procedures to Assess Research Impact Evolved in Australia and the UK", *Research Evaluation*, vol. 27, no. 2 (2018): 93–105.

commuting, improved public/community health, environment, and well-being, social development or a stronger sense of place and community cohesion through community investment or shared infrastructure, community development initiatives, capacity building, and more vital community institutions.

Different states in Australia reflect various approaches to SIA implementation due to the large size of each state. This can be seen through the SIA practises in Queensland, New South Wales, Western Australia and Northern Territory.

3.2.1.1 Queensland

In the beginning, the implementation of SIA was only as prediction research in EIA. Queensland's government is dedicated to enhancing SIA within the existing Environmental Impact Statement (hereafter referred to as 'EIS') processes in collaboration with industry and LPA. The establishment of the Sustainable Resource Communities Policy in 2008 has exposed the SIMP process in Queensland. That policy ascertains that all the project proponents relating to mining and petroleum should prepare SIMP, determine the potential of social impact, and recommend mitigation measures.⁷ It also assists the government through the linkage information of the SIA study to respond to any application for mining and petroleum tenure in a coordinated

⁷ Richard Parsons, Jo Anne Everingham, and Deanna Kemp, "Developing Social Impact Assessment Guidelines in A Pre-Existing Policy Context", *Impact Assessment and Project Appraisal*, vol. 37, no. 2 (2019): 114–123.

manner, improving decision-making and arrangement of the government's strategy for upcoming mining and petroleum development.⁸

Queensland was the first government to publish the SIA guidelines in Australia, followed by the Northern Territory.⁹ They published economy and SIA guidelines, including the necessity of SIMP as part of EIA. Daniel Franks, through International Mining for Development Centre, prepared the guidelines of SIA for mining development in 2012, named Social Impact Assessment of Resource Projects. This guideline does not aim to give a detailed analysis of Australian SIA policy, nor is it intended to serve as a reference for determining jurisdictional requirements. However, it emphasises the leading practise alternatives that has enhanced project outcomes for the affected communities and socioeconomic groups.¹⁰

In October 2016, the Queensland government replaced the previous guidelines with the Draft Social Impact Assessment Guidelines through the Department of State Development, Infrastructure, Local Government and Planning.¹¹ This department is responsible for enabling well-planned, inclusive, resilient local communities¹² and directing the development to the public interest. The latest guideline is the Social Impact Assessment Guidelines in March 2018.¹³ This guideline is more extensive as it covers

⁸ Queensland Government, "Sustainable Resource Communities Policy: Social Impact Assessment in the Mining and Petroleum Industries", no. September (2008),3.

⁹ Richard Parsons, "interview by Nur Atheefa Sufeena M Suaree," Kuala Lumpur, 27 June 2022.

¹⁰ Franks, Social Impact Assessment of Resource Projects International Mining for Development Centre Mining for Development: Guide to Australian Practice,3.

¹¹ Department of State Development, *Draft Social Impact Assessment Guideline*, (2016).

¹² *Queensland Government*, "About Us, Our Department",

< <https://www.statedevelopment.qld.gov.au/about-us/our-department> > (accessed 10 September, 2022).

¹³ Infrastructure and Planning The Department of State Development, Manufacturing, Social Impact Assessment Guideline, (2018).

the details of SIA implementation according to the provisions under the Strong and Sustainable Resource Communities Act 2017 (hereafter referred to as the ‘SSRC Act’). The guideline outlines the structured arrangement starting from the introduction, the SIA process and the core elements of SIA.

3.2.1.2 New South Wales

New South Wales (hereafter referred to as ‘NSW’) has Australia's highest population of citizens. Since 30 March 2022, the overall population in Australia was 25,890,773, and NSW recorded around 8,130,115 number of people.¹⁴ These numbers will consequently lead to many developments arising due to the public's political wills and demands of the public. The established frameworks should evolve to monitor resilient social development. NSW government, through the Office of Local Government (hereafter referred to as ‘OLG’), which is part of the Department of Planning and Environment (hereafter referred to as ‘DPE’), is one of the agencies that responded to strengthen the community’s sustainability. It has relevant policies to regulate 128 local state councils there.¹⁵ DPE is also responsible for managing and administering policy

¹⁴ *Australian Bureau of Statistics*, “National, State and Territory Population”, <<https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release> > (accessed 6 October, 2022).

¹⁵ *New South Wales Government*, “The Office of Local Government”, <<https://www.olg.nsw.gov.au/#:~:text=The%20Office%20of%20Local%20Government%20is%20the%20NSW%20Government%20agency,the%20State's%20128%20local%20councils> > (accessed 6 October, 2022).

and legislation relating to SIA in NSW.¹⁶ It has the authority to assess the merits of significant state projects.¹⁷

Initially, DPE developed the Social Impact Assessment Guideline for State Significant Mining, Petroleum Production and Extractive Industry Development in September 2017.¹⁸ However, it was expanded through the latest guideline edition in July 2021. The guideline is named as Social Impact Assessment Guideline for State Significant Projects (hereafter referred to as ‘NSW Guideline’). The coverage of developments in the NSW Guideline is more comprehensive and contributes better outcomes for the local community. It assists in guiding the project proponents to prepare SIA reports.¹⁹

Another important document relating to SIA in that state is the Technical Supplement SIA Guideline for State Significant Projects (hereafter referred to as ‘Technical Supplement’) which provides additional guidance for proponents and practitioners using the NSW Guideline.²⁰ Even though this Technical Supplement is not mandatory for all the project proponents, the high resources and scenario within the document will guide and benefit them in preparing the SIA report. The DPE has

¹⁶ *IBISWorld*, “What does NSW Department of Planning, Industry and Environment Do?”, <<https://www.ibisworld.com/au/company/nsw-department-of-planning-industry-and-environment/462447/>> (accessed 6 October, 2022).

¹⁷ *New South Wales Government*, “Draft Social Impact Assessment Guideline 2020 Public Briefing Session”, <<https://vimeo.com/475734400>> (accessed 8 October, 2022).

¹⁸ Department of Planning and Environment State of New South Wales, *Social Impact Assessment Guideline For State Significant Mining, Petroleum Production and Extractive Industry Development*, (2017).

¹⁹ Department of Planning and Environment State of New South Wales, "Social impact Assessment Guideline", no. July (2021): 8.

²⁰ Department of Planning and Environment, "Technical Supplement Social Impact Assessment Guideline for State Significant Projects", no. November (2021): 5.

recommended the methodologies as stated in the Technical Supplement.²¹ Therefore, it is beneficial and advantageous for proponents to facilitate the process of SIA in their development project proposal.

3.2.1.3 Western Australia

EIA has been implemented in Western Australia since the establishment of the Environmental Protection Authority (hereafter referred to as 'EPA) in 1971. By virtue of the Environmental Protection Act of 1986 (hereafter referred to as 'EP Act), the EPA determines the EIA processes and advises the government on whether development proposals from the private and public sectors are environmentally acceptable.²²

After years of EIA implementation, EPA determined that society not merely expressed on environmental issues for the intended development but raised concern more on the social matters that significantly impact their families and community. EPA has also established a guideline, EPA's Environmental Assessment Guidance, which briefly focuses on social issues. However, the practice of the EPA at that time only focused on environmental procedures.²³

²¹ Ibid.,10.

²² Beckwith, 199-213.

²³ Ibid.,202-203.

Furthermore, there was a controversial scene where the residents strongly opposed the proposed project at Coorjarloo, a place with heavy minerals²⁴. They claimed that development would destroy their community identity and area. EPA addressed this issue, commented on it, and advised the government on any recommendations. Due to EPA's criticism and prolonged concern raised by the community, a Social Impact Unit (hereafter referred to as 'SIU') was established in 1989 and attached to the Department of State Development. It is to ensure that the social impact of a development project is addressed as part of the EIA procedure. Unfortunately, the new government separated the SIU from EPA in 1993.²⁵

Since there is no legislation on SIA, it is challenging to address the complaints made by the community relating to their risk to the neighbourhood, as the jurisdiction of social impact management is out of EPA's responsibilities. Even though the definition underlined in the EP Act addresses social surroundings, it is not sufficient to give the power and duties to the EPA for implementing SIA. This will lead to confusion in the community.

²⁴ *Mining Data Online*, "Coorjarloo Mine < <https://miningdataonline.com/property/750/Cooljarloo-Mine.aspx> > (accessed 7 November, 2022).

²⁵ Beckwith, 200.

3.2.1.4 Northern Territory

The commencement of major infrastructure projects and endless potential in the energy and minerals sectors have sparked a tremendous transformation in the Northern Territory. Every development brings change and change always affects the economy of the Territory, the economics of the surrounding regions and the social welfare of the population. A key component of accelerated development is the provision of accurate and thorough impact assessments and when necessary, mitigating project-specific economic as well as social risks.²⁶

The industry there supports social licenses as part of governmental regulatory approvals. Social license means conducting the development in a way consistent with community expectations. It recognises that development, the government, and society are all responsible for promoting the growth of vibrant, sustainable communities. Due to that circumstance, the government of the Northern Territory produced a guideline in 2013, namely, Guidelines for The Preparation of An Economic and Social Impact Assessment.²⁷

The guideline aims to ensure that the project proponents are compiling data on the locality's and the region's economic and social impact of a proposed development, mitigate the negative impact and encourage sustainable growth and community well-

²⁶ NT EPA, "Guideline for the Preparation of an Economic and Social Impact Assessment, Version 2", no. November (2013).

²⁷ Ibid.,1.

being.²⁸ However, it has its limitation, whereas it is restricted to general problems regarding economic and social assessment and cannot address more significant proposal-specific difficulties. In 2020, a new guideline, Guide to Social Impact Assessment, was drafted to improve SIA implementation in the Northern Territory.²⁹

3.2.2 Legal Framework for Social Impact Assessment

SIA in resource development projects in Australia entails varied implications, ranging from formal inquiry processes to the empowerment of affected communities. Since 1980, multiple scholarly reviews of SIA practices in Australia have consistently concluded that the legislative framework is inadequate to address the demands of public policy-making and decision-making within the current economic context. The inefficacy of the Act as a tool for use by public interest groups becomes evident when the government itself seeks to circumvent or undermine its requirements for reasons of political expediency, as highlighted in the case of the Iwasaki Sangyo tourist development near Yeppoon in Queensland. Additionally, internal resistance within the Australian public service poses a significant hindrance to the Act's effectiveness.³⁰ In the early 1990s, Australian governments hesitated to fully incorporate social impact assessment into microeconomic reform policies, leading to unclear guidance on public interest tests and access equity considerations.³¹

²⁸ Ibid.,1.

²⁹ Munday,1.

³⁰ Lara K. Mottee and Richard Howitt, "Follow-Up and Social Impact Assessment (SIA) in Urban Transport-Infrastructure Projects: Insights from the Parramatta Rail Link", *Australian Planner*, vol. 55, no. 1 (2018): 46–56.

³¹ Craig Johnston, "Social Impact Assessment of Microeconomic Reform: Australian Hesitations", *Impact Assessment and Project Appraisal*, vol. 17, no. 1 (1999): 9–20.

3.2.2.1 Queensland

The Bowen Basin coal region, the North West minerals region, and investments in coal seam gas extraction in South West Queensland have all seen recent mine resource activity. Although the resource sector contributes significantly to the national economy, many communities are worried that resource corporations' rising usage of non-residential Fly-In-Fly-Out (hereafter referred to as the 'FIFO') employees would negatively impact their neighbourhoods. A FIFO worker is a worker who travels by plane or any other relevant mode of transportation to the site of a large resource project for working operations there.³² Due to this concern, the government tabulated the Strong and Sustainable Resource Communities Bill 2016. The bill was then gazetted and enforced on 31 August 2017 and named the SSRC Act.³³ SSRC Act has prohibited 100% of FIFO workers nearby the community area and developed SIA in Queensland.

The main aim of the SSRC Act is to protect the community interest nearby, specifically within 125 kilometres of the extensive resources project area. SIA was only made mandatory in the enforcement of this Act on 30 March 2018.³⁴ It is stated through section 3(2)(a) of the SSRC Act that to achieve the main objective of this Act, the owner

³² *Queensland Government*, "List of Large Resource Projects", <<https://www.statedevelopment.qld.gov.au/coordinator-general/strong-and-sustainable-resource-communities/list-of-large-resource-projects>. > (accessed 27 October, 2022).

³³ *Queensland Government*, "Strong and Sustainable Resource Communities", <<https://www.statedevelopment.qld.gov.au/coordinator-general/strong-and-sustainable-resource-communities#:~:text=The%20Strong%20and%20Sustainable%20Resource,and%20operation%20of%20those%20projects>. > (accessed 27 October, 2022).

³⁴ *Queensland Government*, "Strong and Sustainable Resource Communities", <<https://www.statedevelopment.qld.gov.au/coordinator-general/strong-and-sustainable-resource-communities#:~:text=The%20Strong%20and%20Sustainable%20Resource,and%20operation%20of%20those%20projects>. > (accessed 4 October, 2022).

of the project or project proponents must prepare SIA.³⁵ Section 9 strengthens that requirement by explicitly stating the necessary elements such as workforce management plan, community wellbeing, stakeholder engagement and others that must be included in the SIA report.³⁶

Section 9 of the SSRC Act also empowers the Coordinator-General to provide detailed guidelines for SIA implementation and publish them on the department's website.³⁷ SSRC Act does not define Coordinator-General. However, section 2 of the State Development and Public Works Organisation Act 1971 (hereafter referred to as 'SDPWO Act') interprets Coordinator-General as a corporation established solely, which has been preserved, continued and found under section 8 of this Act.³⁸ There is a relation framework in this position between SSRC Act and SDPWO Act. Section 7 of the SSRC Act states that the Coordinator-General may impose the condition for any non-compliance with the work management plan.³⁹ The condition stated by the Coordinator-General is also enforceable under SDPWO Act.⁴⁰ In addition, this position is essential as it represents the Crown, and it has access as well as the ability to exercise the Crown's authority.⁴¹

Furthermore, if the large projects are subject to an EIS process under the SDPWO Act or Environmental Protection Act 1994 (hereafter referred to as 'EP Act'),

³⁵ Strong and Sustainable Resource Communities Act 2017, (SSRC Act), s 3(2)(a).

³⁶ Strong and Sustainable Resource Communities Act 2017, (SSRC Act), s 9(3), (3A).

³⁷ Strong and Sustainable Resource Communities Act 2017, (SSRC Act), s 9(4).

³⁸ State Development and Public Works Organisation Act 1971, (SDPWO Act), s 2.

³⁹ Strong and Sustainable Resource Communities Act 2017, (SSRC Act), s 7(6).

⁴⁰ Strong and Sustainable Resource Communities Act 2017, (SSRC Act), s 7(7).

⁴¹ State Development and Public Works Organisation Act 1971, (SDPWO Act), s 9.

it is required to prepare SIA.⁴² The SSRC Act, through section 10, has supported this requirement.⁴³ The framework also provides the right to the Coordinator-General to impose any relevant conditions for managing the project's potential social impact.⁴⁴

3.2.2.2 New South Wales

In New South Wales, the Environmental Planning and Assessment Act 1979 (hereafter referred to as 'EP&A Act') explicitly states the requirement of social consideration in environmental planning and assessment.⁴⁵ It provides that all state-significant projects need development approval and assessments.⁴⁶ The projects are state-significant development (hereafter referred to as 'SSD'), state-significant infrastructure (hereafter referred to as 'SSI'), and critical state-significant infrastructure (hereafter referred to as 'CSSI').

EP&A Act sets a framework and requirements for assessing and determining applications for these projects. It is aligned with the aim of the Act, which is to promote the social and economic welfare of the community and facilitate ecologically

⁴² *Queensland Government*, "Social Impact Assessment", <<https://www.statedevelopment.qld.gov.au/coordinator-general/strong-and-sustainable-resource-communities/social-impact-assessment>> (accessed 10 September, 2022).

⁴³ Strong and Sustainable Resource Communities Act 2017, (SSRC Act), s 10.

⁴⁴ Strong and Sustainable Resource Communities Act 2017, (SSRC Act), s 11.

⁴⁵ Environmental Planning and Assessment Act 1979, (EP&A Act), s 1.3.

⁴⁶ Social Impact Assessment Guideline for State Significant Projects Acknowledgement of Country, Social Impact Assessment Guideline for State Significant Projects, (2021),9.

sustainable development.⁴⁷ All the SIA guidelines and policies in NSW are developed based on the provisions of the EP &A Act.

Furthermore, the government released the policy under the EP& A Act, namely, State Environmental Planning Policy (State and Regional Development) 2011 (hereafter referred to as 'SRD SEPP'), on 28 September 2011.⁴⁸ It has specifically identified the type of developments for SSD, SSI and CSSI through Schedules 1 to 5.

Section 4.36 of the EP&A Act state significantly the idea of the SSD.⁴⁹ However, it has been extensively declared through the SRD SEPP. The project is considered SSD if the proposed development is built upon the land consented to under Part 4 (development assessment and consent) of the EP&A Act. These developments are specified in Schedules 1 or 2 of the SRD SEPP.⁵⁰ Large-scale urban results for the specific site, primary industries and resources, as well as substantial industrial and warehousing projects are all included.⁵¹ For instance, the projects under SSD are all development on land identified as being within the Sydney Opera, development on specific sites like Sydney Olympic Park Site, development at Barangaroo, development at Penrith Lakes Site, and others.⁵² The Minister of Planning and Infrastructure also has the right to declare the SSD as long as the Independent Planning Commission has advised it.⁵³

⁴⁷ Ibid.,9.

⁴⁸ NSW Government, *State Environmental Planning Policy*, (2011).

⁴⁹ Environmental Planning and Assessment Act 1979, (EP&A Act), s 4.36.

⁵⁰ State Environmental Planning Policy (State and Regional Development) 2011, Part 2.

⁵¹ State Significant and Infrastructure Guide, Declaration of SSI and CSSI, (2021).

⁵² State Environmental Planning Policy (State and Regional Development) 2011, Schedule 2.

⁵³ Environmental Planning and Assessment Act 1979, (EP&A Act), s 4.36(3).

Section 5.12 of the EP&A Act monitors the SSI,⁵⁴ which is slightly different from SSD because infrastructure delivery can proceed without consent under Part 4 of the Act.⁵⁵ This development type is specified in Schedules 3 and 4 of SRD SEPP, such as port facilities, rail infrastructure, water storage, pipelines, submarine telecommunication cable and particular development in reserved land under the National Parks as Wildlife Act 1974.⁵⁶

Other than that, CSSI is declared through section 5.13 of the EP&A Act.⁵⁷ There is the possibility that certain SSIs will turn to this category as long as the Minister opines that the development is essential for economic, social and environmental purposes. Examples of this project are the Pacific Highway and rail infrastructure projects as stated under Schedule 5 of SRD SEPP.⁵⁸ In March 2021, the DPE provided State Significant Infrastructure Guide to brief the general principles of these two categories, SSI and CSSI. Prior to this, the department prepared the Critical State Significant Infrastructure Standard Secretary's Environmental Assessment Requirements (hereafter referred to as 'SEARs') in December 2015. The secretary of DPE will issue the SEARs during the approval application of CCSI. Thus, the guideline released in 2015 provides the standard SEARs that needs to comply with CSSI.

⁵⁴ Environmental Planning and Assessment Act 1979, (EP&A Act), s 5.12.

⁵⁵ State Environmental Planning Policy (State and Regional Development) 2011, Part 2, Clause 14(1)(a).

⁵⁶ State Environmental Planning Policy (State and Regional Development) 2011, Schedule 3.

⁵⁷ Environmental Planning and Assessment Act 1979, (EP&A Act), s 5.13.

⁵⁸ State Environmental Planning Policy (State and Regional Development) 2011, Schedule 5.

3.2.2.3 Western Australia

Section 3 of the EP Act defines environment as the interaction between living things and their physical, biological and social surroundings.⁵⁹ Even though no provision explicitly mentions SIA under EP Act, since 1997, it has been emphasised that this broad definition is sufficient to mandate SIA for the proposed development.⁶⁰ However, it is debatable that although the environmental term comprises the examination of social impact, the EPA's assessment procedure only concerns the natural environment,⁶¹ as discussed in the background of Western Australia above.⁶² Thus, it is still out of the jurisdiction of the EPA.

One recent example in 2019 is the proposed development of a fabrication facility by Subsea 7 Australia Contracting Pty Ltd, which refers to the international practise of implementing SIA as part of EIA. The IAIA guidance are the International Principles for Social Impact Assessment 2003 and Social Impact Assessment: Guidance for Assessing and Managing the Social Impacts of Projects. They also refer to the International Finance Corporations Performance Standards on Environmental and Social Sustainability 2012.

⁵⁹ Environmental Protection Act 1986, (EP Act), s 3(1).

⁶⁰ Craig, 42.

⁶¹ Beckwith, 202-203.

⁶² Refer to the background of Western Australia at Heading 3.2.1.3.

3.2.2.4 Northern Territory

Economic and SIA are significant components of EIA in the Northern Territory. The Environmental Protection Act 2019 (hereafter referred to as ‘EP Act’) is the latest legislation passed in September 2019 and enforced in 29 June 2020. This Act repeals the Environmental Assessment Act 1982.⁶³ The interpretation of environment remains as every aspect of a person's lifestyle, including its physical, biological, economic, cultural and social components. Thus, SIA is included within this definition.

Northern Territory Environment Protection Authority (hereafter referred to as ‘NTEPA’) under the EP Act, as well as the other potential Australian governmental agencies governed under the Environment Protection and Biodiversity Conservation Act 1999 (hereafter referred to as ‘EPBCA’), are responsible for the referral of the impact assessments in the Northern Territory. The referral is a scoping document describing the proponent's aims, the project's significant economic, social, cultural and technical considerations and if the proposal would have a substantial environmental impact.⁶⁴

In October 2020, a guide to SIA was drafted by Jane Munday that is intended as a future SIA tool kit. It emphasised that a much clearer flow of the SIA has been provided in the recent legislation in the Northern Territory. For example, the draft

⁶³ *Environmental Defenders Office*, “The New Environment Protection Act in the Northern Territory”, < [https://www.edo.org.au/new-enviro-protection-act-nt/#:~:text=The%20new%20Environment%20Protection%20Act%202019%20\(EP%20Act\)%20was%20passed,any%20meaningful%20way%20since%201982.>](https://www.edo.org.au/new-enviro-protection-act-nt/#:~:text=The%20new%20Environment%20Protection%20Act%202019%20(EP%20Act)%20was%20passed,any%20meaningful%20way%20since%201982.>) (accessed 14 November, 2022).

⁶⁴ Munday, 17.

document describes the detailed process of SIA, from scoping to the management plan.⁶⁵ Social impact dimensions have been adopted to suit this state, such as living environment, infrastructure and services, people and communities, economies, strong voice, cultural identity and healthy country.⁶⁶

3.2.3 Activities Requiring Preparation of Social Impact Assessment

3.2.3.1 Queensland

The Social Impact Assessment Guidelines released in March 2018 primarily lists key considerations for SIA without specifically addressing the type of development projects requiring SIA preparation. The guideline highlights various crucial aspects, including community and stakeholder engagement, workforce management, housing and accommodation, local business and industry procurement, as well as health and community well-being.⁶⁷

⁶⁵ Ibid.,1.

⁶⁶ Ibid., 7.

⁶⁷ The Department of State Development, Manufacturing, Social Impact Assessment Guidelines.

3.2.3.2 New South Wales

NSW has specifically classified development projects that are subject to SIA requirements, as stated in the discussion before. While Queensland, requires the resource projects to prepare SIA as stated under the relevant Act in that state.

Table 3.1 Type of States Significant Projects in New South Wales

Type of Projects	
State Significant Project	Infrastructure
Intensive livestock agriculture	General public authority activities requiring EIS
Aquaculture	Port, wharf & boating facilities
Agricultural produce & food & beverage processing	Rail infrastructure ARTC
Cultural, recreation & tourist facilities	Water storage or treatment facilities
Hospitals, medical centres & health research facilities	Pipelines
Educational establishments	Submarine telecommunication cables
Timber, paper & pulp milling or processing	Specific development in National Parks
Mining	
Petroleum production (oil & gas)	

Type of Projects	
State Significant Project	Infrastructure
Correctional centres & complexes	
Air transport facilities	
Port, wharf & boating facilities	
Extractive industries	
Geo sequestration	
Metal, mineral & extractive material processing	
Rail & related transport facilities	
Electricity generating works	
Water storage or treatment facilities	
Chemical manufacturing & related industries	
Other manufacturing industries	
Warehouses or distribution centres	
Sewerage systems	
Waste & resource management facilities	
Remediation of contaminated land	

Source: NSW Government, Draft Social Impact Assessment Guideline 2020, Public Briefing Session on Vimeo⁶⁸

⁶⁸ *New South Wales Government*, “Draft Social Impact Assessment Guideline 2020 Public Briefing Session”, < <https://vimeo.com/475734400> > (accessed 8 October, 2022).

Table 3.1 lists the significant state projects determined by the DPE. Prior to this, the SIA requirement was limited to mining, extractive industry and petroleum projects, as stated in the SIA Guideline in 2017 above. Nevertheless, the latest guideline indicates more comprehensive development projects and consistent procedures for assessing social impact in New South Wales.

3.2.3.3 Western Australia

No specific development projects have been highlighted in any legislation, guideline, or document that mandates SIA preparation in Western Australia.

3.2.3.4 Northern Territory

No specific development projects have been highlighted in any legislation, guideline, or document that mandates SIA preparation in Northern Territory.

3.2.4 Procedure and Process of Consideration or Evaluation for Social Impact Assessment

3.2.4.1 Queensland

Queensland SIA Guideline outlines the detailed phases of the SIA process, from scoping to monitoring.⁶⁹ The SIA must cover the following essential aspects: community and stakeholder involvement, workforce management, housing and accommodations, local company and industry procurement and health and community well-being⁷⁰ to produce a comprehensive assessment towards the proposed development. These aspects are the statutory requirement for significant resources projects as stated under section 9 of the SSRC Act.⁷¹ An SIA report must also include the outcome of its study and it will be available for public comment with the project's EIS.⁷² The Coordinator-General may ask for amendments to the SIA report based on the feedback received by the public. They have the authority to impose project conditions as part of evaluating EIS.

⁶⁹ The Department of State Development, Manufacturing, Social Impact Assessment Guideline,5.

⁷⁰ Ibid.,2.

⁷¹ Strong and Sustainable Resource Communities Act 2017, (SSRC Act), s9.

⁷² *Queensland Government*, “Social Impact Assessment”, <<https://www.statedevelopment.qld.gov.au/coordinator-general/strong-and-sustainable-resource-communities/social-impact-assessment> > (accessed 4 October, 2022).

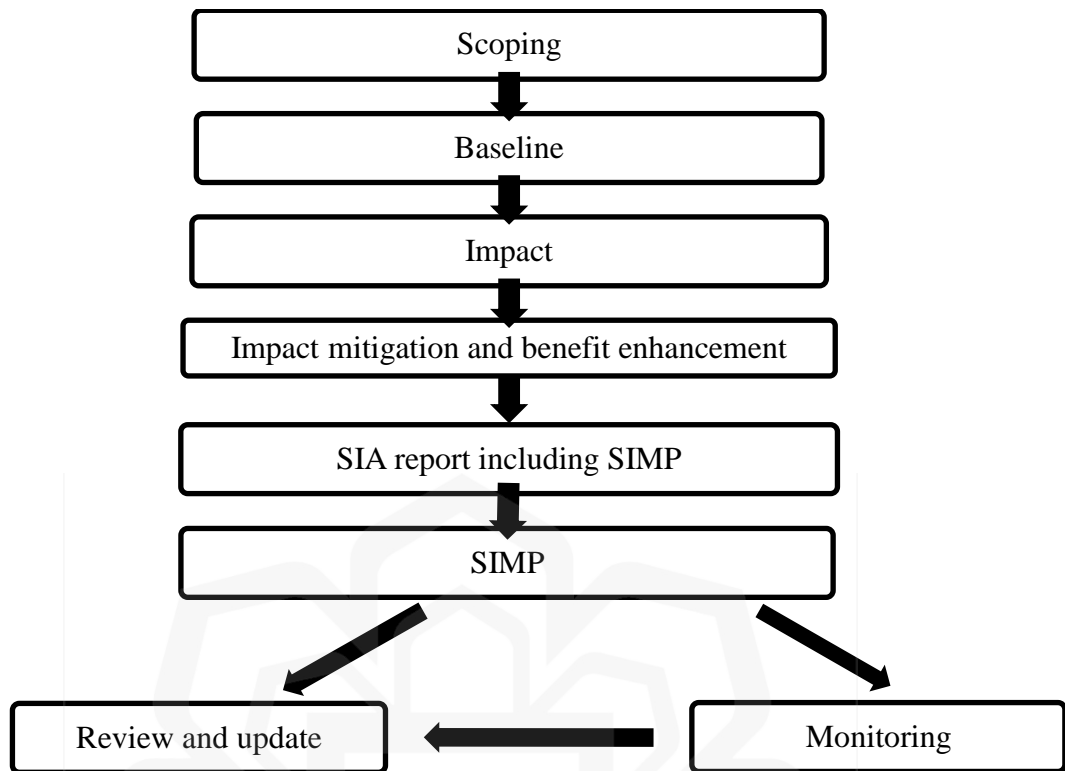


Figure 3.1 SIA Process in Queensland
 Source: (Queensland Government Portal, State Development, Infrastructure, Local Government and Planning)

Figure 3.1 illustrates the flow of the SIA process in Queensland. The project description, establishing the regulatory context, identifying stakeholders, affected communities and relevant social indicators, a preliminary review of potential social impacts and benefits, and possible project design alternatives are considered during the scoping phase.⁷³ The area of SIA study will be determined to recognise the nature, scope scale, geographical and others related to the proposed project.

⁷³ The Department of State Development, Manufacturing, Social Impact Assessment Guideline, 5.

Then, a social baseline describes the SIA study's existing social circumstances and trends. It establishes a benchmark against which potential social impacts can be accessed. This stage is direct to the community as it analyses the nature of affected districts and all the elements related to that community, such as infrastructure accessibility, facilities, housing, accommodation, market and others.⁷⁴

The next stage is an impact assessment, which aims to ensure that the SIA report must contain sufficient details and analysis for a comprehensive view of the project's potential effects. The evaluation must consider the degree of impact at various geographic scales and link the information through stakeholder engagement within the SIA study area. The social implications of technical issues evaluated in other parts of the EIS must be considered, such as traffic management, economics and noise. The Coordinator-General has the right to establish the cross-agency reference groups (hereafter referred to as 'CARGs'), which consist of either the governmental agencies or LPA for any collaboration of the SIA study. Depending on the situation, additional stakeholders might also be invited to a CARG meeting.⁷⁵

Furthermore, the project proponents must include the mitigation and management measures within the report after identifying any potentially significant social impact. It requires consultation with the affected communities as well as other stakeholders. They have to strictly follow the mitigation procedure, which will assist the effort in reducing negative impacts. The objectives of management measures should

⁷⁴ Ibid.,5.

⁷⁵ Ibid.,7.

be explicit, reasonable, transparent and monitorable. The SIMP will be developed from the management measures as part of the SIA process and integrated into the proponent's internal social management systems.

Besides the management measures, the SIMP should provide detailed data about the proposed implementation timeframe, roles and duties, stakeholders and future collaborations. It must additionally comprise procedures to ensure that throughout the project duration, management measure efficacy is monitored and ineffective management measure improvements are made. If any change arises to the plan or the period of evaluation by the Coordinator-General has lapsed after two years, the project proponents have to update the latest SIA report. They must follow up on the implementation of their SIMP over the whole project lifecycle to guarantee that the mitigation measures for the project are still efficient. The data collected from the field and stakeholders remain continuous in this phase.⁷⁶ SIMP is essential, and experts in SIA, such as Frank Vanclay, endorse the idea that SIMP within corporate and public policy innovations facilitate the proactive identification and management of social impacts throughout project implementation, thereby promoting sustainable development.⁷⁷

⁷⁶ Ibid.,9.

⁷⁷ Daniel M. Franks and Frank Vanclay, "Social Impact Management Plans: Innovation in corporate and public policy", *Environmental Impact Assessment Review*, vol. 43, no. December 2010 (2013): 40–48.

3.2.4.2 New South Wales

Every development has its level and nature of the impact. Section 1.3 of EP & A states that it is a significant social impact, as discussed under the legal framework of NSW before.⁷⁸ Thus, the impact measurement is essential to differentiate the process of the SIA report required for the proposed development. According to the NSW Guideline, scoping, SIA report, and social impact management are the three main stages of SIA implementation in New South Wales.

The initial assessment and SIA scoping are part of the first phase, which begins early in the project development process. It will measure the social impact of the proposed projects. NSW is quite advanced, whereby the DPE provides the SIA scoping worksheet as a supporting tool to identify the social impact.⁷⁹ It will assist this phase in measuring the required scale of the SIA report that needs to be done in the next stage. Several assessment levels are detailed, standard, minor and irrelevant, as illustrated in Table 3.2.

Table 3.2 Assessment Level

Level	Definition
Detailed	The project may result in significant social impacts, including cumulative impacts.

⁷⁸ Refer to the legal framework of New South Wales at Heading 3.2.2.2.

⁷⁹ Department of Planning and Environment, Technical Supplement Social Impact Assessment Guideline for State Significant Projects, 7.

Standard	The project is unlikely to have significant social impacts, including cumulative ones.
Minor	The project may result in minor social impacts.
Not relevant	The project will have no social impact, or the social implications of the project will be so small that they do not warrant consideration.

Source: (DPE. Technical Supplement, 2021)

The results and findings of the scoping phase should serve as the foundation for the second phase of the SIA and be integrated into the SIA report as well as the EIS if the project qualifies for industry-specific SEARs.

The second stage examines the challenges and finalises responses with the management strategies. An SIA report is produced as a result and included in the EIS. Fundamentally, the report should consist of the prediction and analysis of social impacts, evaluation and prioritisation of social implications for the affected group, justification feedback and a plan to control the impacts. DPE also provided the recommended structure of the SIA report⁸⁰ through the Technical Supplement, which is illustrated in Table 3.3

⁸⁰ Department of Planning and Environment, Technical Supplement Social Impact Assessment Guideline for State Significant Projects, 23.

Table 3.3 Recommended Structure for an SIA Report

Number	Chapter
1.	Introduction, project description and context
2.	The Project's social locality (alternatively, this may be included in item 5 – Social baseline)
3.	Methodology
4.	Stakeholder engagement for SIA
5.	Social baseline
6.	Impact assessment and prediction
7.	Social impact enhancement, mitigation, and residual impacts
8.	Monitoring and management framework (If appropriate)
9.	Appendices- Community profiles
10.	Appendices- Supporting information, e.g., primary research outcomes, engagement or other studies.

Source: (DPE. Technical Supplement, 2021)

Projects with low impact merely require a brief stand-alone SIA Phase 1 report, at least two pages and do not need further assessment.⁸¹ In contrast, projects with high impact need an SIA complex report with a maximum of a hundred pages for Phases 1 and 2.⁸² These scenarios will differentiate between basic and complex SIA in this state.

⁸¹ Department of Planning and Environment State of New South Wales, Social Impact Assessment Guideline, 15.

⁸² Ibid.,14-16.

After the SIA report has been approved, the third phase begins. Depending on the terms of consent or approval, it validates and improves the management of social impacts. Only some projects need to monitor and manage social impacts after approval.

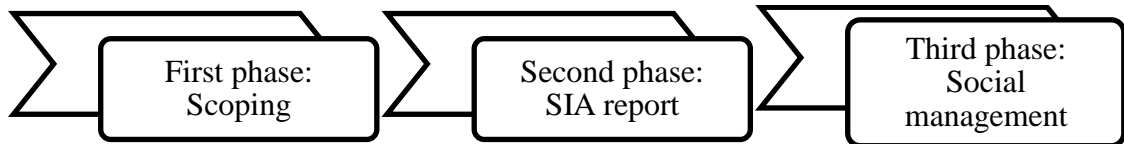


Figure 3.2 SIA Process in New South Wales, Australia
Source: (NSW Government, Social Impact Assessment Guideline 2020)

Figure 3.2 illustrates the process of SIA preparation in EIA, in which the EIA scoping report and SIA Phase 1 report are required during the development project application. The SIA implementation is based on the condition of SEARs provided by the Planning Secretary.

Then, the SIA report prepared by the project proponents will be displayed to the public during the department evaluation process after processing the SEARs application. The consent authority will approve the development application after considering all the social effects in the mitigation plan as well as the recommendations suggested in SIMP. The consent authority differs according to the type of developments provided by the environmental planning instrument/body under Part 4 of the EP & A Act. For example, the significant state project will be determined by the Independent Planning Commission or Minister, the district development will be determined by the Sydney planning panel or the related district planning panel and the local authority will determine the other products.

In addition, the SIA study team must be able to influence the SIA's design objectively. Based on the discussion above, the preparation of SIA Phase 1 is lesser than SIA Phase 2. It does not need to get the expert's feedback and can be prepared briefly by the project proponents. While for phase 2, it requires the details SIA report and SIMP. Thus, it needs the opinion of expert persons. These experts must be qualified from the social science area or have experience practising SIA and skills in social science research. The NSW Guideline also provides the qualified person for the SIA study team from professional organisations like IAIA, Environmental Institute of Planning Australia and New Zealand, Planning Institute of Australia and Australasian Evaluation Society.⁸³

3.2.4.3 Western Australia

According to the proposed development of the Learmonth Fabrication Facility, there are three main stages of the SIA process in Western Australia: social scan, social risk rating and social impact assessment.⁸⁴ The first stage examines the context, scope, and scale of the proposed Learmonth Fabrication Facility. It involves screening and scoping steps under this stage. The screening process serves three objectives: defining the criteria for impact assessments, identifying and evaluating any potential risks the project exposes to the community, and assisting in the early stages of decision-making.⁸⁵

⁸³ Ibid.,33.

⁸⁴ 360 environmental, "Fabrication Facility Social Impact Assessment", no. May (2019),8.

⁸⁵ Ibid.,9.

Scoping determines the assessment details based on the potential interactions with relevant receptors and stakeholders. This process excludes any elements deemed non-material while focusing the impact assessment on aspects considered to be material. It also identifies the activity's influence zone, the frequency and duration of impact.⁸⁶

Furthermore, the second stage is social risk rating which involves a risk assessment that will be executed for the identified impact of the proposed development. It produced a level of impact that affected the community. Early stakeholder engagement and social baseline studies were conducted in this phase to comprehend social context and community expectations.

The last crucial step is social impact management, which includes mitigation and monitoring processes. The project proponents should implement the measures underlined within the plan to monitor and minimise the negative impact of the development. Public and stakeholder engagement still proceeds to create a balancing study along the lifecycle of the proposed projects.⁸⁷

⁸⁶ Ibid.,9.

⁸⁷ Ibid.,10-11.

3.2.4.4 Northern Territory

The guide document from Jane Munday in 2020⁸⁸ indicates that the Northern Territory's SIA process is in line with the NSW guideline. It has six steps for SIA implementation, from scoping to monitoring.

The scoping stage sets the boundaries between EIA and SIA. Its process should determine what must be addressed in the study, which parties must be involved and the best methodology to be undertaken. The ideal scoping consists of much participation. Strategies should be considered with important stakeholder organisations, such as Land Councils. According to the Canadian Mackenzie Valley Environmental Impact Review Board, early and collaborative scoping results in more focused research and better outcomes.⁸⁹

The findings in the scoping process will assist the decision at the screening stage whether the proposed project can proceed or not. An accepted referral will be displayed for public comment. Then, the NTEPA will determine the status of the proposed development for the assessment requirement and EIA TOR.⁹⁰

The next stage is baseline data gathering. All the relevant data are collected to predict the potential impact of the proposed project. This will be good evidence for

⁸⁸ Refer to the draft guide to SIA at Heading 3.2.2.4.

⁸⁹ Munday, 12.

⁹⁰ Ibid.,11-14.

tracking which part of the change needs to be made later. Data and knowledge can be described in three different ways: quantitatively (using statistics), qualitatively (using words) and narratively (described using stories and metaphors).⁹¹ Having the data will significantly assist the project proponents on the consequences of social impact for the intended development.⁹²

The management phase is a crucial phase in the SIA process. The management plans should be created after identifying and prioritising the most critical impacts of the development. The plan aims to summarise the key findings and outlines the commitments, manages transparent and accountable social performance reporting, notifies the regulators and the public of ongoing management approaches, maximises positive and minimises negative impacts and guides adaptive management of emerging issues throughout the project lifecycle.⁹³

The last stage is monitoring, which will track whether the actions that have been done are aligned with the plan's strategies and baseline data analysed before. The engagement with the public continues to seek advice on the ongoing study of the proposed development. The SIMP will be reviewed regularly over five years, while the community satisfaction survey will be conducted annually.⁹⁴

⁹¹ Ibid.,17.

⁹² Ibid.,19.

⁹³ Ibid.,37.

⁹⁴ Ibid.,39.

3.2.5 Public Participation

3.2.5.1 Queensland

Community and stakeholder engagement is a critical matter for the SIA process in Queensland. The SIA Guidelines also emphasise this to address the potential and value impact for the affected community. Early in the SIA process, a consultation and comprehensive engagement programme must be initiated, taking into account both the demands of the many stakeholder groups and the type of projects.

Stakeholders should include the local citizens, landowners, state agencies, LPA, non-governmental organisations, traditional owners, unions, companies and industry associations, community groups and stakeholders who have historically been underrepresented, such as Aboriginal and Torres Strait Islander peoples, women, children, and vulnerable populations.⁹⁵

3.2.5.2 New South Wales

DPE is dedicated to developing outstanding places for communities throughout NSW to live, work and play. This objective can only be fulfilled if the community participates

⁹⁵ The Department of State Development, Manufacturing, Social Impact Assessment Guideline,15.

in the planning processes early in development.⁹⁶ One specific guideline released by the DPE in November 2019, Community Participation Plan (hereafter referred to as ‘CPP’), is to involve the NSW community in the planning phase.⁹⁷

CPP educates the community on how and when to engage with the intended development and public exhibition. They may get information about the projects as required by the DPE through the EP &A Act and Environmental Planning and Assessment Regulation 2000.⁹⁸ They can submit formal or informal feedback through NSW Planning Portal and attend events related to the proposed projects. The assessment details can be checked from time to time on the website.⁹⁹ Society there does not have to worry as all these substantial steps are mandatory in the Act and regulation.

The project proponents should organise the engagement with the stakeholders related to each stage. Table 3.4 lists down the appropriate technique of engagement in SIA implementation there.

⁹⁶ *NSW Department of Planning and Environment*, “Our Community Participation Plan”, <[https://www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan#:~:text=Our%20Community%20Participation%20Plan%20\(CPP,in%20the%20NSW%20planning%20system.>](https://www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan#:~:text=Our%20Community%20Participation%20Plan%20(CPP,in%20the%20NSW%20planning%20system.>)) (accessed 4 November, 2022).

⁹⁷ Department of Planning and Industry and Environment, *Community Participation Plan*, (2019),7.

⁹⁸ *Environmental Planning and Assessment Regulation 2000*, Part 3,4,6,14.

⁹⁹ *Planning and Environment, Community Participation Plan*,10.

Table 3.4 Technique of Engagement in SIA Implementation

Level of participation	Technique	Purpose in SIA
Sharing information	<ul style="list-style-type: none"> • Impromptu discussions and informal conversations. • Public displays, briefings, information sessions and public meetings. • Open days and site visits. • Contact points (e.g., hotlines, websites, shopfronts). • Websites, direct mail/email/SMS, fact sheets, newsletters and webinars. 	<ul style="list-style-type: none"> • Identifying affected and interested people, groups, organisations and communities • Helping people to understand the proposal and the social impact assessment • Addressing questions, concerns and complaints • Demonstrating early engagement
Consulting to collect information and insights	<ul style="list-style-type: none"> • Surveys and interviews • Community consultative committee or community liaison and advisory groups • Online forums or feedback forms, social media • Face-to-face meetings or telephone/video calls 	<ul style="list-style-type: none"> • Identifying and predicting social impacts • Collecting data, evidence and insights • Demonstrating early engagement

Level of participation	Technique	Purpose in SIA
		<ul style="list-style-type: none"> • Confirming data, assumptions and findings • Involving marginalised groups
Collaborating in decision-making	<ul style="list-style-type: none"> • Workshops and focus groups • Deliberative forums/workshops • Citizen panels • Citizens' assemblies 	<ul style="list-style-type: none"> • Encouraging co-design or collaboration in project design • Identifying and predicting social impacts • Collaborating during monitoring, mitigation and management measures and actions • Involving marginalised groups

Source: (NSW Community Participation Plan,2019)

3.2.5.3 Western Australia

Although there is no specific guideline or document mentioning the requirement of public participation within SIA implementation in Western Australia, engagement among stakeholders and affected communities still occur. The objective is to gather data, assess the risks they might face, and subsequently prepare mitigation measures for proposed projects. This situation is exemplified by the Learmonth Fabrication Facility project.¹⁰⁰

3.2.5.4 Northern Territory

Early and meaningful participation is an authentic process that incorporates people in decisions and solutions, hearing what they have to say to understand it from their perspective, telling it like it is and taking seriously what people are going through in their communities. They may be exposed to the aim and details of the intended development. The engagement should start from the scoping or planning phase, and the practise in Northern Territory must be aligned with the standard of the International Association for Public Participation (hereafter referred to as 'IAP2').¹⁰¹

¹⁰⁰ Refer to the process of SIA in Western Australia at 3.2.4.3.

¹⁰¹ Munday, 32.

3.2.6 Overall Analysis

Based on the analysis above, most states in Australia, like Queensland, NSW, Western Australia and Northern Territory, are implementing SIA. However, only three of them, Queensland, NSW and Northern Territory, have legal framework and policy specifically on SIA, as indicated in Table 3.5.

Queensland and NSW continuously update their guidelines from 2012 to 2021. The same goes for the Northern Territory, which had a guide in 2020 that has been updated in 2013. As stated above, Western Australia does not provide any legislation for SIA. It focuses more on EIA¹⁰² through the EP Act as well as several relevant documents like the Procedures Manual, statements of principle¹⁰³ and others. Even though the social elements are included in the interpretation of the environment, it leads to many ambiguities since the framework, the executing department and the procedure scope need to be clarified.

Although the SIA implementation in all the states emerges from the EIA procedure, they still have specific and the same core for the SIA process. They determine the potential impact of the intended project through the scoping stage, and it needs a management plan to monitor and track the progress. The state governments also

¹⁰² *Government of Western Australia*, “Framework for assessment procedures in EIA”, < <https://www.epa.wa.gov.au/framework-assessment-procedures-eia> > (accessed 8 November, 2022).

¹⁰³ *Government of Western Australia*, “Statement of environmental principles, factors, objectives and aims of EIA”, < <https://www.epa.wa.gov.au/statement-environmental-principles-factors-and-objectives> > (accessed 8 November, 2022).

do not abandon the public element in the process. Public consultations are being arranged for every proposed development in their area. Therefore, the community can directly participate and determine the intended development's risk as well as impact.

Table 3.5 Overall Analysis of SIA Implementation between States of Australia

Aspect	States of Australia			
	Queensland	NSW	Western Australia	Northern Territory
Minister	Minister for State Development, Infrastructure, Local Government and Planning	Minister of Planning and Infrastructure	Minister of Environment	Minister of Environment
Department	Department of State Development, Infrastructure, Local Government and Planning	Department of Planning and Environment	Environmental Protection Authority, Department of Environment Regulation	Department of Environment
Acts	Strong and Sustainable Resource Communities Act 2017	Environmental Planning and Assessment Act 1979	Environmental Protection Act of 1986	Environmental Protection Act 2019

Aspect	States of Australia			
	Queensland	NSW	Western Australia	Northern Territory
	State Development and Public Works Organisation Act 1971 Environmental Protection Act 1994			
Guidelines	Social Impact Assessment of Resource Projects, Draft Social Impact Assessment Guideline, Social Impact Assessment Guideline	Social Impact Assessment Guideline for State Significant Mining, Petroleum Production and Extractive Industry Development, Social Impact Assessment Guideline for State Significant Projects and	EPA's Environmental Assessment Guidance	Guidelines for the Preparation of an Economic and Social Impact Assessment Guide to Social Impact Assessment

Aspect	States of Australia			
	Queensland	NSW	Western Australia	Northern Territory
		Technical Supplement SIA Guideline for State Significant Projects		
Policies	Sustainable Resource Communities Policy	State Environmental Planning Policy (State and Regional Development) 2011	-	-
Subject to EIA/EIS	Yes	Yes	Yes	Yes
SIA process	Scoping, baseline analysis, impact assessment, impact mitigation and benefit enhancement, SIA report including SIMP, SIMP	Scoping, SIA report, social management	Social scan, social risk rating and social impact assessment	Scoping, screening, baseline data gathering, identify and assess potential impacts,

Aspect	States of Australia			
	Queensland	NSW	Western Australia	Northern Territory
	implementation, monitoring, review and update			management, monitoring
Qualified person	-	Member from professional organisations like IAIA, Environmental Institute of Planning Australia and New Zealand, Planning Institute of Australia and Australasian Evaluation Society.	-	-

Source: (Researcher's own,2022)

3.3 THE PRACTICE OF LEGAL FRAMEWORK OF SOCIAL IMPACT ASSESSMENT IN INDIA

3.3.1 Background

The development of SIA is not merely necessary for the society, but it is significant for numerous companies in India as part of their investment. Initially, SIA originated from EIA, like customarily practiced in other countries. However, India started formally implementing SIA in 2013 during the establishment of the new Act, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter referred to as 'RFCTLARR').¹⁰⁴ The Indian government is increasingly utilising SIA as a means to proactively plan remedial actions before project commencement. For instance, there have been cases where farmers protested against certain development projects due to anticipated negative impacts.¹⁰⁵ Even though SIA has its procedure, it must be done simultaneously if the proposed development requires EIA.¹⁰⁶

Some business owners perceive SIA as bureaucratic red tape since it can be time and resource intensive. Nevertheless, this assessment continues to be an indispensable

¹⁰⁴ *India Briefing*, "Social Impact Assessments in India: Red Tape or Good for Business?", <<https://www.india-briefing.com/news/social-impact-assessments-india-red-tape-good-business-11182.html/>> (accessed 17 October, 2022).

¹⁰⁵ Mathur, H. (2016). *Assessing the Social Impact of Development Projects: Experience in India and Other Asian Countries*. *Assessing the Social Impact of Development Projects*. <https://doi.org/10.1007/978-3-319-19117-1>.

¹⁰⁶ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 4(4).

component of the Indian investment process. The business owners might overlook SIA's primary goal to involve society and stakeholders in analysing, evaluating and managing economic growth. Additionally, SIA can be crucial in ensuring that land acquisition is carried out to benefit all parties involved and that the development process does not marginalise local communities. It enables the community to have a say in the development process.¹⁰⁷

3.3.2 Legal Framework for Social Impact Assessment

The parliament approved and replaced the Land Acquisition Act 1894 with RFCTLARR¹⁰⁸ in 2013. RFCTLARR is enforced by the Department of Land Resources, an agency under the Ministry of Rural Development.¹⁰⁹

RFCTLARR not merely redresses the power imbalance between the state and land losers, but it also addresses the implementation of SIA to ascertain the social consequences of land acquisitions.¹¹⁰ Statistics from the Planning Commission Report showed that sixty million people were displaced between 1947-2007 and around twenty

¹⁰⁷ *India Briefing*, "Social Impact Assessments in India: Red Tape or Good for Business?", <<https://www.india-briefing.com/news/social-impact-assessments-india-red-tape-good-business-11182.html/>> (accessed 19 October, 2022).

¹⁰⁸ Government of India, *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*, (2013).

¹⁰⁹ *Department of Land Resources*, "Acts, Rules & Policies", < <https://dolr.gov.in/en/acts-rules-policiesacts/acts> > (accessed 21 September, 2022).

¹¹⁰ *The Economic Times*, "How Central and State Governments Have Diluted the Historic Land Legislation of 2013", < <https://economictimes.indiatimes.com/news/politics-and-nation/how-central-and-state-governments-have-diluted-the-historic-land-legislation-of-2013/articleshow/63764378.cms> > (accessed 15 September, 2022).

million did not receive compensation for their losses.¹¹¹ This considerable conflict cannot be retained anymore as it will cause much trouble in future. Thus, establishing this new law that imposes SIA is a better alternative, especially for significant development¹¹² and public protection.

RFCTLARR, through Part Two, clearly states the determination of the social impact and public purpose. It is divided into two parts: preliminary investigation for determination of the social impact and public purpose as well as appraisal of social impact assessment report by an expert group.

Table 3.6 Provisions related to Part Two of RFCTLARR

Section	Provision
A. Preliminary Investigation for Determination of Social Impact and Public Purpose	
Section 4	Preparation of Social Impact Assessment study
Section 5	Public hearing for Social Impact Assessment
Section 6	Publication of Social Impact Assessment study
B. Appraisal of Social Impact Assessment Report by An Expert Group	
Section 7	Appraisal of Social Impact Assessment report by an Expert Group
Section 8	Examination of proposals for land acquisition and Social Impact Assessment report by appropriate Government

¹¹¹ *India Briefing*, “Social Impact Assessments in India: Red Tape or Good for Business?”, < <https://www.india-briefing.com/news/social-impact-assessments-india-red-tape-good-business-11182.html/> > (accessed 18 October, 2022).

¹¹² *India Briefing*, “Social Impact Assessments in India: Red Tape or Good for Business?”, < <https://www.india-briefing.com/news/social-impact-assessments-india-red-tape-good-business-11182.html/> > (accessed 17 October, 2022).

Section	Provision
Section 9	Exemption from Social Impact Assessment

Source: (RFCTLARR,2013)

As stated above, SIA and SIMP requirements are mandatory for any development project that acquires land in India for the public interest. Its condition is clearly stated in section 4(1) of RFCTLARR, which requires the project proponent to consult the council of the affected area together with the preparation of SIA.¹¹³ Then, section 4(6) stipulates that SIMP prepared should include the necessary components, such as addressing the potential impact to align the impact measurement with the proposed development.

One of the practical references of the study is the project of Mumbai Metro Line 3 by the general consultant, MAPLE Consortium.¹¹⁴ This project is related to the metro mode of transport in Mumbai and it acquired 75.89 hectares of land. As it is associated with the land acquisition for a development project, thus, SIA was required to measure the social impacts as well as develop a Resettlement Action Plan (hereafter referred to as ‘RAP’). RAP is crucial as it will cover the mitigation plan, loss compensation calculation and address the well-being of the affected persons.¹¹⁵ It targets to proactively rebuild the affected livelihoods.

¹¹³ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 4(1).

¹¹⁴ Maple Consortium, General Consultant, Mumbai Metro Line, and Mumbai Metro Line, "Updated Social Impact Assessment Report (Volume – I)", (2020).

¹¹⁵ World Bank, "Handbook for Preparing a Resettlement Action Plan", (2002),10.

The community in the affected area will know precisely about the nature of the proposed development as the government publicly¹¹⁶ notifies the commencement of the SIA process on the website. They should also understand the proposal because it is published in the local language, as outlined in section 4(2) of RFCTLARR.¹¹⁷ The project proponents and consultants must comply with the SIA report's contents based on section 4(4). It includes the determination of acquired land for the public, the number of affected families, the extension of properties involved, the appropriateness of the alternative place and the study of SIA for the project.¹¹⁸

Furthermore, prior to the gazette of RFCTLARR, the Land Department Resources, through the Land Reforms Division, formulated the National Rehabilitation & Resettlement Policy (hereafter referred to as 'NRP 2007') in New Delhi on 31st October 2007.¹¹⁹ Rehabilitation and resettlement are becoming severe issues in India as they affect the continuous livelihood activities of the community. NRP 2007 provides the minimal requirement to all proposed development resulting in people's involuntary displacement and must extensively address rehabilitation and resettlement issues.¹²⁰ Chapter Four of the NRP 2007 states that the government will ensure that any development project involving a displacement of four hundred or more people in the related area is required to carry out an SIA study.¹²¹

¹¹⁶ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 4(3).

¹¹⁷ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 4(2).

¹¹⁸ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 4(4).

¹¹⁹ Department of Land Resources, The National Rehabilitation and Resettlement Policy 2007, (Controller of Publication, 2007).

¹²⁰ Ibid.,35.

¹²¹ Ibid.,38.

Section 109 of RFCTLARR confers power on the government to make any rule to carry out the purpose of this Act.¹²² It includes the authority to regulate the manner and time limit to carry out as well as publish an SIA study or any other related requirement.¹²³ Thus, in 2014, the Department of Land Resources published a new rule namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules (hereafter referred to as '2014 Rules'). This rule supports the principal Act, RFCTLARR, which consists explicitly of three chapters that comprises SIA implementation and its consent.¹²⁴ It defines the definition of SIA through rule 2(c) which clearly states that it is an assessment made under section 4(1) of RFCTLARR.¹²⁵ The details of the SIA process underlined within 2014 Rules will be explained below.¹²⁶

While SIA has become a mandatory policy for projects causing significant displacement, it has become a contentious issue in recent years.¹²⁷ Even though much effort has been put into upholding beneficial SIA, there is some claim about the disadvantage of SIA, which leads to slowing down development projects. The projects amounting to three hundred billion dollars remain stalled even after the establishment of RFCTLARR due to land acquisition and bureaucracy complications. On 3rd April 2015, the parliament passed the ordinance issued by the Prime Minister of India,

¹²² The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 109(1).

¹²³ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 109(2)(a), (c), (d), (t) & (u).

¹²⁴ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014.

¹²⁵ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014, Rule 2(c).

¹²⁶ Refer to the SIA process at Heading 3.3.4.

¹²⁷ Shekhar Singh, "Turning policy into law: A new initiative on social impact assessment in India", *Advances in Asian Human-Environmental Research*, no. 9783319191164 (2016): 63–74.

Narendra Modi, to reflect the simple requirement for SIA towards companies that are involved in major significant developments.¹²⁸ Those projects like defense, rural infrastructure, affordable housing and industrial corridors have been exempted from obtaining consent through SIA from the authority. As a result, the process of development will be expedited.

3.3.3 Activities Requiring Preparation of Social Impact Assessment

Section 2(2) of RFCTLARR lists down the types of projects and activities relating to land acquisition, consent, compensation, rehabilitation, and resettlement by the government.¹²⁹ Further, the consent process shall be carried out along with the SIA study referred to in section 4 of this Act.

Any development project from private companies requires 80% consent from the affected families,¹³⁰ while 70% is needed for joint venture projects from public-private companies.¹³¹ This consent is crucial to determine the development status, either to approve or reject the project and it is required to be done along with the SIA study.

¹²⁸ *Outlook India*, “Break the Land-Lock”, < <https://www.outlookindia.com/website/story/break-the-land-lock/293862> > (accessed 19 October, 2022).

¹²⁹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 2(2).

¹³⁰ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 2(2)(b)(i).

¹³¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 2(2)(b)(ii).

Table 3.7 Lists the Types of Development Projects related to the SIA Requirement

Provision	Type of development
Section 2 (a)	for public-private partnership projects, where the ownership of the land continues to vest with the Government for public purpose as defined in subsection (1);
Section 2 (b)	for private companies for public purposes, as defined in subsection (1):
Proviso	(i) private companies, the prior consent of at least eighty per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; (ii) public-private partnership projects, the prior consent of at least seventy per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3,

Source: (RFCTLARR,2013)

3.3.4 Procedure and Process of Consideration or Evaluation for Social Impact Assessment

Developers from government, private companies, or joint venture companies (government-private) are required to pay the processing fee to their state governmental departments for SIA execution on any development that involves land acquisition for the public interest. Then, those departments will issue a notice of SIA execution with

the starting date of study in their locality. This date also needs to be announced to the related community.

The SIA unit in the department for each state must provide the detailed term of reference (hereafter referred to as ‘TOR’) for the development project. It needs to consist of the necessary information, such as a brief explanation of the project and suggested site to acquire the land, activities that need to be done by the SIA study team, study timeline and date for report submission, size and profile of SIA study team, overall cost for the project with detailed segmentation during the study and processing fee to the group according to the result of the study.

The developers will pay all the costs during this study, which will be accessed based on the parameters such as affected area, size and type of development, as well as several families affected as stated in the TOR. Besides that, the SIA unit is responsible for hiring the study team member from registered professional organisations¹³² or individuals in the Qualified Social Impact Assessment Resources Partners and Practitioners database.¹³³ Most states have databases that provide information about the organisations or individuals qualified to conduct SIA studies. The team comprises practitioners, social activists, academicians, technical experts and at least one woman. All the team members should not have a relationship with the developers. The

¹³² *India Briefing*, “Social Impact Assessments in India: Red Tape or Good for Business?”, <<https://www.india-briefing.com/news/social-impact-assessments-india-red-tape-good-business-11182.html/>> (accessed 19 October, 2022).

¹³³ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014, Rule 6.

developers will not be involved in the appointment process of the member of the SIA study team.

The SIA study team are responsible for collecting and analysing the data through the qualitative and quantitative methodology for preparing the SIA report. The other main activities during the study are site visits to the proposed development area and engagement like FGD as well as interviews with the affected community.¹³⁴ The period is within six months, as stated further in the proviso of section 4(2).

Rule 7 of 2014 Rules states that the procedure to carry out SIA is to determine the effect of the proposed development project on the environment and the local community. The study team must ensure that the evaluation on certain things needs to be done, such as the determination of family number involved in relocation, impact measurement toward affected land, public or private properties and identification of minimum of acquired land for the proposed development. Bikram Kumar Dutta and Sanhita Bandyopadhyay state that India's SIA process is divided into seven stages; baseline condition, public participation, project description and identification of alternatives, screening, scoping, predicting responses to impact, management and monitoring.¹³⁵

¹³⁴ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014, Rule 7(1).

¹³⁵ Bikram Kumar Dutta and Sanhita Bandyopadhyay, "Environmental Impact Assessment and Social Impact Assessment - Decision Making Tools for Project Appraisal in India", *International Journal of Human and Social Sciences*, vol. 5, no. 6, (2010): 350–355.

The first step is the baseline condition which is the existing circumstances and historical patterns related to the human environment where the proposed action is to be conducted. These conditions depend on the kind of project being undertaken. For example, when it comes to construction projects, the baseline unit might be a group of people recognised along with the distribution of a particular population in danger. The impacted stakeholders, organisations, institutions, and individuals may make up the relevance of that human environment. Population characteristics, community and educational structure, political and social resources, individual and family changes and community resources should all be included in the general set of aspects for study.¹³⁶

The following process is public participation. This phase necessitates identifying and collaborating with all groups influenced by the proposed action's development. People who live nearby, those whom the development intervention would impact, those who are compelled to relocate due to a project and those who are interested in a new project or policy change but may not live nearby are among the groups whom the proposed actions would impact. Others who may ordinarily utilise the property where the project or policy change is taking place but do not necessarily reside nearby are also affected.¹³⁷

After their identification, representatives from each group would undergo a systematic interviewing procedure to ascertain potential impact areas and how each representative might participate in the planning process. Information on public

¹³⁶ Ibid.,1119.

¹³⁷ Ibid.,11120.

perceptions cannot be obtained solely from public meetings. Therefore, this can be strengthened by using survey data. The foundation for a public involvement programme that will span the duration of the environmental and social impact assessment process is laid in this first step.¹³⁸

Besides that, the SIA process needs to include a project description and identification of alternatives. The anticipated course of action is sufficiently detailed to allow for the identification of the data required to frame the SIA. The following information should be included: the location, the land requirements, the requirements for ancillary facilities (roads, transmission lines, sewer, and water lines), the construction schedule, the size of the workforce (construction and operation, by year or month), the size and shape of the facility, the requirement for a local force; and institutional resources. Finding workable alternatives for suggested actions that fall within the project's scope is equally vital.¹³⁹

Screening is the next stage to ascertain the boundaries of SIA. It emphasises on a few developments that require evaluation. Proposing the impact on individuals and their relative significance is necessary for conducting a screening. The fundamental fact and figures of the project, as well as its location, are also required. The screening techniques used can be based on the current legal frameworks.¹⁴⁰

¹³⁸ Ibid.,11120.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

The SIA variables should be selected for further study after the first screening. The effects seen by the acting agency and those affected communities need to be considered. The methodologies that experts will apply include examining the current published data and literature, public input, and a socio-economic survey of the affected community. The opinions of those who are impacted must be accounted for. Overall, the determination of the variables, either through a participatory approach or a review conducted by responsible officials, derives from all impacted individuals and families. The following are the relevant criterion for determining significant impacts: the likelihood that the event will occur, the number of affected people, including indigenous populations; the duration of the effects (long term vs short term), the value of benefits and costs to impacted groups (intensity of impacts), the extent to which the effect is reversible or can be mitigated, the likelihood of causing subsequent impacts, the relevance of the event to current and future policy decisions, the uncertainty over potential effects and the presence or absence of controversy.¹⁴¹

Furthermore, it needs to predict responses to the impact after identifying the implications. ‘Social impact’ refers to the effects on the human population of any public or private actions that influence how people live, work, play, relate to one another, organise to meet their needs, and behaviour within society. The phrase also refers to cultural effects that involve adjustments to the values, norms, and beliefs that lead and reflect how people think about themselves and their society. Loss of land, buildings, livelihood, crops or trees and access to public utilities are a few examples of the adverse societal effects that could arise. Besides estimating the direct impact, it is essential to

¹⁴¹ Ibid.,11121.

determine the affected individuals' feedback so that the next phase of SIA can be done efficiently.

The last stage is management and monitoring. SIA is not merely to forecast the impact but should initiate ways to lessen the adverse effects in development projects. The alternative management varies depending on the severity of the impact. If it is too severe, the proposed project can be avoided; otherwise, if it is less severe, a mitigation strategy through Social Management Plan (hereafter referred to as 'SMP') is needed to minimise predicted effects. Enumeration of the project-affected persons or families, measurement to minimise resettlement, consultation, entitlement framework, and institutional arrangements must be included in the SMP.¹⁴²

It has also been observed that creating a monitoring mechanism that can recognise deviations from the suggested course of action and any significant predicted effects is necessary. This is for the purpose of monitoring the project and development progress from time to time to differentiate the real impact and the predicted one. Then, it should specify (to the extent possible) the kind and scope of additional actions that need to be taken in the event of unexpected consequences or consequences that are more significant than projected.¹⁴³

Section 7 of RFCTLARR is related to the evaluation process for the SIA report by experts from various multidisciplines. They consist of two social scientists, two

¹⁴² Ibid.,11121.

¹⁴³ Ibid.

representatives from Panchayat, Gram Sabha, Municipality or Municipal Corporation, two experts on rehabilitation, and an expert on the project subject.¹⁴⁴ These experts must evaluate the report within two months, decide whether the project fulfils the public interest, and ensure that the positive impact exceeds the negative.¹⁴⁵ If they think that the land acquired is minimal and the other grounds will have a more negative effect, thus, they will recommend approving the proposed development plan.

Any recommendation from the experts, either to approve or reject the development project, will be recorded in writing¹⁴⁶ and made available to the Panchayat, Municipality, or Municipal Corporation as well as the community affected area.¹⁴⁷ The State Authority will consider the proposal determined by the experts and ensure that the land acquisition involves a low risk towards the family, environmental and ecological surroundings.¹⁴⁸ The authority must ensure that the consent of the affected families' have already been given for the proposed development. The government's decision will also be recorded in writing and displayed to the affected group; a similar procedure made by the experts.¹⁴⁹

¹⁴⁴ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 7(2).

¹⁴⁵ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 7(4).

¹⁴⁶ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 7(5).

¹⁴⁷ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 7(6).

¹⁴⁸ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 8(2).

¹⁴⁹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 7(6).

3.3.5 Public Participation

Section 5 of RFCTLARR explicitly states that the government shall ensure that a public hearing is held in the affected area whenever an SIA is required, as mentioned under section 4. The purpose of the public hearing is to gather opinions from the affected families that will be recorded and included in the SIA report. This public hearing shall be held after providing adequate notice of the date, time, and location for the hearing.

150

The notice is to be served three weeks before the event, and its location must be within a five kilometres radius of the proposed development project area. At the same time, the SIA report draft and SIMP must be distributed to the related Panchayat, Municipality, or Municipal Corporation. Volunteer organisations and media also be invited to attend the session. The feedback from each party involved in this hearing is vital as it will be analysed and included in the final SIA report.

3.3.6 Overall Analysis

Based on the analysis above, the government of India has mandated SIA implementation in the principal Act, RFCTLARR 2013 and 2014 Rules for any

¹⁵⁰ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 5.

significant development projects. It governs specifically the procedure of execution and the qualified person to prepare the report. The relevant policy has been released to support the SIA practice.

Furthermore, the initiative of SIA may address complaints raised by the community regarding uncompensated land acquisition as well as the other risks involved, such as displacement, rehabilitation and resettlement. Aligning SIA with corporate social responsibility programs also promotes sustainable development and cultivates a positive corporate image, benefiting both communities and the environment.¹⁵¹ Reassessment of the current development model is essential, necessitating proper consideration of cultural marginalisation and traditional social structures to ensure sustainable development for all stakeholders.¹⁵² Table 3.8 below extracts the aspects related to SIA in India.

Table 3.8 Overall Analysis of SIA Implementation in India

Aspect	Government of India
Minister	Minister of rural development
Department	Department of land resources

¹⁵¹ E. Manohar, “Essential Alignment: Corporate Social Responsibility and Social Impact Assessment for Sustainable Development -An Empirical Study”, *Journal of Management*, vol. 6, no. 3 (2019): 186-191.

¹⁵² Raghav Srivastava and Namrata Ramachandran, “Sustainable Development: Towards A New Paradigm for India”, *European Journal of Sustainable Development*, vol. 5, no. 4 (2016): 51-60.

Aspect	Government of India
Acts	The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013
Rules	The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules 2014
Policies	National Rehabilitation & Resettlement Policy
Subject to EIA/EIS	No
SIA process	Seven stages: baseline condition, public participation, project description and identification of alternatives, screening, scoping, predicting responses to impact, management, and monitoring
Qualified person	Member from registered professional organisations or individuals in the Qualified Social Impact Assessment Resources Partners and Practitioners database

Source: (Researcher's own,2022)

3.4 CONCLUSION

This chapter's comparative legal framework analysis addresses the first research objective, which is identifying the current law and practice on implementing SIA in Australia and India. After analysing the frameworks, the researcher determines the differences in SIA practise between the countries.

The implementation in India is standardised to all its states and union territories because they are subject to RFCTLARR and supported by the 2014 Rules. This is

different in Australia, where SIA implementation is more towards the state approach which could be attributed to the different governance systems in both countries. India is a Republic while Australia is a federation. For example, NSW, Queensland and the Northern Territory have different state legislation and guidelines sources. Even though they have different frameworks, the basic practise is still similar and does not diminish the spirit of SIA. SIA is required as part of the regulatory approval mechanism for the developments of both countries.

Generally, both countries have the same basic structure in the SIA process, which covers scoping and SIMP. All the significant projects in their countries require SIA. However, India exempts SIA in specific circumstances. According to section 9 of RFCTLARR, the government may omit the undertaking of the SIA study where land is proposed to be acquired through urgency procedures under section 40.¹⁵³

The discussions in this chapter have assisted to provide a good understanding of current legal frameworks for both countries. This analysis clarifies the current circumstances and proposes the appropriate recommendation later in Chapter Six. Moreover, these discussions should contribute to the discussion in the next chapter, which continues discussion on the legal framework and focuses on how the SIA is practised and governed through the legislation in Malaysia.

¹⁵³ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (RFCTLARR Act), s 9.

CHAPTER 4:

SOCIAL IMPACT ASSESSMENT IN MALAYSIAN LAW AND PRACTICE

4.1 INTRODUCTION

The previous chapter recognised the implementation of SIA in Australia and India from the legal framework perspective. Several states in Australia, like New South Wales, Queensland, and Northern Territory, provide SIA guidelines based on their Acts. At the same time, India has implemented SIA explicitly through RFACTLARR, rules, and policy. It shows that Australia and India possess the legal structure to govern SIA for development projects, similar to Malaysia.

This chapter, therefore, aims to explain and analyse the legal framework of SIA in Malaysia through the Acts, guidelines and manuals provided by the Federal and State governments. The chapter also analyses the current practice and implementation of SIA. To achieve the objectives set in the study, the researcher critically reviews and analyses policies, plans and relevant documents involving social elements. A series of interviews and FGD were conducted to obtain the actual practice of SIA among local authorities, states and SIA consultants. The information from this chapter are considered when analysing the legal issues and gaps in SIA implementation in the next chapter.

4.2 DEVELOPMENT AND PLANNING LEGISLATION

The Federal Constitution (hereafter referred to as 'FC') is the apex law in Malaysia. Any law passed after Merdeka Day which is inconsistent with the FC shall be void.¹ This FC is known as the parent act because it binds all laws like Acts, ordinances, and enactments. It supports the national development component through Article 92. The provision states that when the Yang di-Pertuan Agong (hereafter referred to as 'YDPA') is satisfied that the development is valuable to the national interest, especially after being reviewed by an expert committee, the National Finance Council, the National Land Council and the Government of any State concerned, then Parliament will have the power to put effect the development plan.²

The FC also protects the rights of the public from the perspective of personal liberty, equality, property rights, and others. These matters are governed under the second part of the FC through fundamental liberties.³ The community has also been guaranteed legal protection, including any matter relating to development that will affect their socio-economy. These are aligned with the spirit of the National Social Policy that focuses on social development based on high moral values and human capital capacity building.

Furthermore, the FC lays down the power to enact the law and these are distributed between the federal (parliament) and state (state legislative assembly) governments. There are three lists, namely, the Federal, State, and Concurrent Lists.

¹ Federal Constitution, Article 4(1).

² Federal Constitution, Article 92(1).

³ Federal Constitution, Part II.

The Federal List provides matters under federal jurisdiction, while the State List relates to matters under state jurisdiction. The Concurrent List lists federal and state jurisdiction, and federal law will prevail if any conflict arises between the state and federal law.⁴ Table 4.1 illustrates the matters governed through the three lists under the Ninth Schedule of FC.

Table 4.1 Lists under Federal Constitution

Federal Constitution (Ninth Schedule)		
List I: Federal List	List II: State List	List III: Concurrent List
1. External affairs	1. Islamic law and personal and family law	1. Social welfare
2. Defense	2. Land	2. Scholarships
3. Internal security	3. Agriculture and forestry	3. Protection of wild animals and wild birds; National Parks
4. Civil and criminal law and procedure and the administration of justice	4. Local government	4. Animal husbandry; prevention of cruelty to animals; veterinary services; animal quarantine
5. Federal citizenship and naturalisation	5. Other services of a local character	
6. The machinery of government	6. State works and water	5. Town and country planning, except in the federal capital
7. Finance	7. Machinery of the State Government	
8. Trade, commerce, and industry	8. State holidays	6. Vagrancy and itinerant hawkers
	9. Creation of offences in respect of any of the matters included in the State List or dealt with by State law, proofs of State law and things done	

⁴ Federal Constitution, Article 75.

Federal Constitution (Ninth Schedule)		
List I: Federal List	List II: State List	List III: Concurrent List
9. Shipping, navigation, and fisheries	thereunder, and evidence of any case for purposes of State law	7. Public health, sanitation, and the prevention of diseases
10. Communications and transport	10. Inquiries for State purposes, including commissions of inquiry and collection of statistics concerning any of the matters included in the State List or dealt with the State law	8. Drainage and irrigation
11. Federal works and power	11. Indemnity in respect of any of the matters in the State List or dealt with by State law	9. Rehabilitation of mining land and land which has suffered soil erosion
12. Surveys, inquiries, and research	12. Turtles and rivering and fishing	10. Fire safety measures and fire precautions in the construction and maintenance of buildings
13. Education	13. Libraries, museums, ancient and historical monuments, records and archaeological sites, and remains other than those declared to be federal by or under federal law	11. Culture and sports
14. Medicine and health, including sanitation in the federal capital		12. Housing and provisions for housing accommodation; improvement trusts
15. Labour and social security		13. Subject to the Federal List, water supplies and services
16. Welfare of the aborigines		14. Preservation of heritage
17. Professional occupations other than those specifically enumerated		
18. Holidays other than State holidays		
19. Unincorporated societies		

Federal Constitution (Ninth Schedule)		
List I: Federal List	List II: State List	List III: Concurrent List
<p>20. Control of agricultural pests; protection against such pests; prevention of plant diseases</p> <p>21. Newspapers; publications; publishers; printing and printing presses</p> <p>22. Censorship</p> <p>23. Subject to item 5(f) of the State List: theatres; cinemas; cinematograph films; places of public amusement</p> <p>24. Co-operative societies</p> <p>25. Tourism</p> <p>26. Subject to item 9A of the Concurrent List, prevention and extinguishment of fire, including fire services and fire brigades</p>		

Federal Constitution (Ninth Schedule)		
List I: Federal List	List II: State List	List III: Concurrent List
27. All matters relating to the Federal Territories		

Source: (Schedule Nine, Federal Constitution)

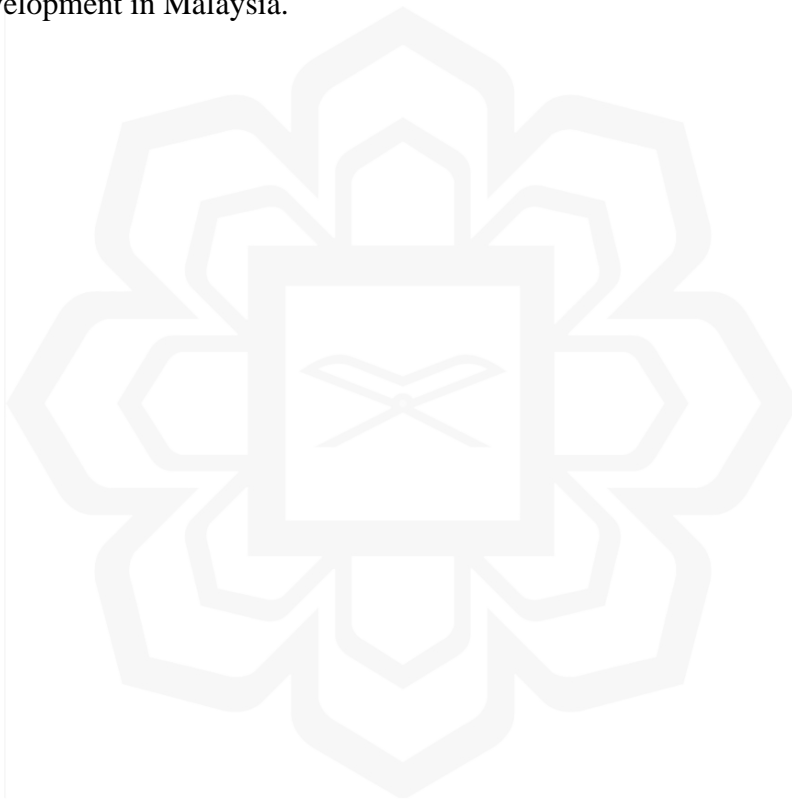
Town and country planning is allocated under the Concurrent List. Federal and state governments have responsibilities to ensure resilient development and land use for the sake of the community. Parliament is the Federal legislative body that enacts the primary law, involving a number of sessions including debate, reading and discussions before the law is gazetted. Parliament is divided into the House of Representatives and the House of Senate. The State Legislative Assembly legislates state law. If there is a conflict of jurisdiction between the state legislature and federal legislature, federal law prevails.⁵

Various Acts have been enacted relating to land development and planning aspects, such as the National Land Code (hereafter referred to as ‘Act 828’), Local Government Act 1976 (hereafter referred to as ‘Act 171’), Town and Country Planning Act 1976 (hereafter referred to as ‘Act 172’), Housing Development Act (Control and Licensing) (hereafter referred to as ‘Act 118’), Strata Management Act 2013 (hereafter referred to as ‘Act 757’), Strata Titles Act 1985 (hereafter referred to as ‘Act 318’),

⁵ Yusoff and et al, "Pembangunan Warisan di Malaysia: Tinjauan Umum Tentang Dasar", *Jurnal Melayu*, vol. 5, (2010): 277–283.

Street, Drainage and Building Act 1974 (hereafter referred to as ‘Act 133’), Environmental Quality Act 1974 (hereafter referred to as ‘Act 127’) and others.

The most relevant legislation for SIA is Act 172, which clearly states the requirements for proposed developments. Act 172 is a law enacted based on Article 76(4) of FC to ensure the efficient control and management of town and country planning matters in Peninsular Malaysia.⁶ Figure 4.1 extracts the related law relating to land development in Malaysia.



⁶ Town and Country Planning Act 1976, (Act 172), Preamble.

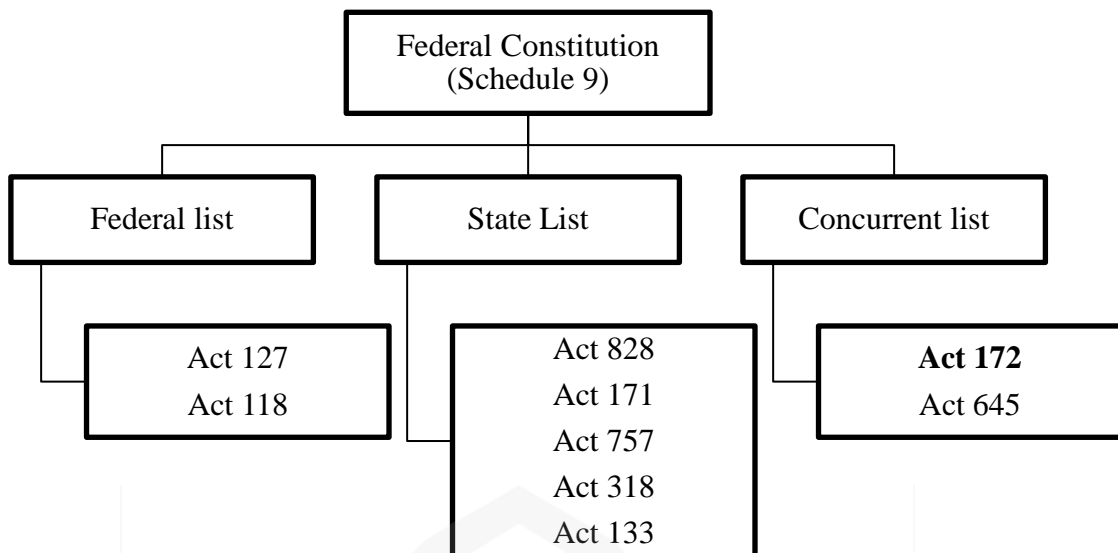


Figure 4.1 Related Law relating to Land Development in Malaysia

Source: (Researcher's own, 2022)

4.3 THE LEGAL FRAMEWORK OF SOCIAL IMPACT ASSESSMENT IN WEST MALAYSIA

4.3.1 Background

Malaysia has formally discussed SIA as a tool for social and land use planning since the mid-1990s.⁷ In 2005, the Ministry of Women, Family and Community Development gave an update in Parliament about the status of SIA. The ministry initiated a study on SIA implementation to prevent any adverse effects before, during or after development projects. The minister's secretary also said that the ministry addressed the management

⁷ *Malaysian Association of Social Impact Assessment*, "About us", < <https://msiamy.org/about-us/>> (accessed 19 January, 2022).

of social development through a National Social Policy (hereafter referred to as 'NSP'). Based on this feedback, the SIA was still not legally implemented then.⁸

There are SIA applications in Malaysia, such as for development projects under Act 172, feasibility studies (highway projects under the Ministry of Work), EIA under the Sabah Environmental Protection Enactment 2002, EIA under Sarawak Natural Resources and Environment Ordinance, policy and program (under Ministry Women, Family and Community Development), certification schemes like Malaysian Sustainable Palm Oil (hereafter referred to as 'MSPO'), Roundtable on Sustainable Palm Oil (hereafter referred to as 'RSPO')⁹ and Forest Stewardship Council (hereafter referred to as 'FSC'), and for the international organisations that provide financing (World Bank and International Monetary Fund). However, the researcher focuses more on the application under Act 172 within this thesis.

In Malaysia's practice, the related governmental bodies and project proponents are the primary bodies involved directly with SIA, while the other parties are secondary. These groups have a responsibility for the preparation and approval of SIA. Project proponents are the parties that execute the development projects. They are not necessarily developers but include lawyers, planners, engineers, consultants, banks, contractors, accountants and others. All these project proponents are involved in the preparation phase for the SIA report.

⁸ Parliament Hansard, Session 20 December 2005, Category of Social Impact, Oral Answer, 2.

⁹ Nur Atheefa Sufeena M Suaree and et al, "The Development of Policy and Legal Framework for Social Impact Assessment in Malaysia", *Planning Malaysia Journal*, vol.20, no.3 (2022): 299.

Moreover, the agencies consist of government departments from the federal or state level, panel of experts, courts, licensing authorities, and others. This group is involved in the evaluation process for the SIA report. Both parties, project proponents or governmental agencies, play a vital role in ensuring that all the development projects are aligned with the policy and the law. They also have to ensure that the development will benefit society and have a less negative impact on the community.

4.3.2 Malaysian Planning System

Sustainability and development are two main features that cannot be separated from the town and country planning context. The ability of local planning authorities to regulate the usage and development of land is fundamentally based on the concept of development. The development term can be applied in two different forms: construction, engineering, mining and other operations in, on, over or under land or making any significant change in the use of any building or other land.¹⁰ The term has been mentioned explicitly pursuant to the provisions under Part I of Act 172.

Section 2 of Act 172 defines the development and details of the development process. Section 2(1) interprets the development process¹¹ comprises carrying out any building, engineering, mining, industrial or other related operation in, over or below land, making any material change in the use of any land or building or any part thereof,

¹⁰ Abdul Haseeb Ansari and Ismawi Hj Zen, "Towards A Sustainable Land Use Planning : An Appraisal with Special Reference to Malaysian", *The Malayan Law Journal*, vol. 6, (2006): 2-3.

¹¹ Town and Country Planning Act 1976, (Act 172), s 2(1).

or the subdivision or amalgamation of lands.¹² A building has been defined under section 2 as any house, hut, shed or roofed enclosure, wall, fence, platform, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing stage or bridge and anything that connected to those structures, either use or not as a human habitation.¹³

Section 2(1) of Act 172 also explains that the engineering operation process involves the formation or levelling of land, the building or laying out of means of access to a road and the laying out of cables, mains or means of water supply or drainage.¹⁴ Section 2(2) states things that can be considered for a material change in land use, such as the place for depositing refuse or waste materials if the superficial area and height of waste deposited are extended.¹⁵ Paragraph (b) of section 2(2) states that the material in land use can be changed if the land use is contrary to the development plan.¹⁶ At the same time, section 2(3) declares a material change in the use of a building, such as an incrementing number of building units from the original number for approval units as empowered under the other written law. The material also can be changed due to any alteration of buildings approved by other written laws and building use that is contrary to the development plan.¹⁷

Furthermore, the development involves the subdivision, partition and amalgamation of the land. These processes have been explicitly regulated under three

¹² See more in Norliza Hashim, Malaysian Institute of Planners, “New Trends in Urban Planning and Development, Development Control and Guidelines”, 30 October 2008,1.

¹³ Town and Country Planning Act 1976, (Act 172), s 2(1).

¹⁴ Town and Country Planning Act 1976, (Act 172), s 2(1).

¹⁵ Town and Country Planning Act 1976, (Act 172), s 2(2)(a).

¹⁶ Town and Country Planning Act 1976, (Act 172), s 2(2)(b).

¹⁷ Town and Country Planning Act 1976, (Act 172), s 2(3)(a), (b), (c), (d) and (e).

chapters of Part IX of Act 828. Section 135 of Act 828 allows the proprietor to apply for subdivision of the land into two or more portions with the approval of the State Director or Land Administrator.¹⁸ The proprietors must align with the conditions provided under section 136 for that application, such as not contravening any restriction, other written laws and others.¹⁹ Section 140 states that the co-proprietor may partition the alienated land with the conditions approved by the State Director and Land Administrator.²⁰ While section 146 gives the power to the proprietor in applying the application for amalgamation of contiguous lots and the State Director and Land Administrator must approve it.²¹ All the applications, either in the subdivision, partition or amalgamation, need to fulfil the requirements stated under Act 828 as stated above to ensure resilient development.

The operational development in Malaysia has been regulated through development plans²² and planning control²³ under Parts III and IV of Act 172.²⁴ Figure 4.2 illustrates the definition of the term ‘development’ as prescribed under Act 172 and Act 828.

¹⁸ National Land Code (Revise 2020), (Act 828), s 135(1).

¹⁹ National Land Code (Revise 2020), (Act 828), s 136(1).

²⁰ National Land Code (Revise 2020), (Act 828), s 140(1).

²¹ National Land Code (Revise 2020), (Act 828), s 146(1).

²² Town and Country Planning Act 1976, (Act 172), Part III.

²³ Town and Country Planning Act 1976, (Act 172), Part IV.

²⁴ Refer also to the Malaysia Planning System in Figure 4.3.

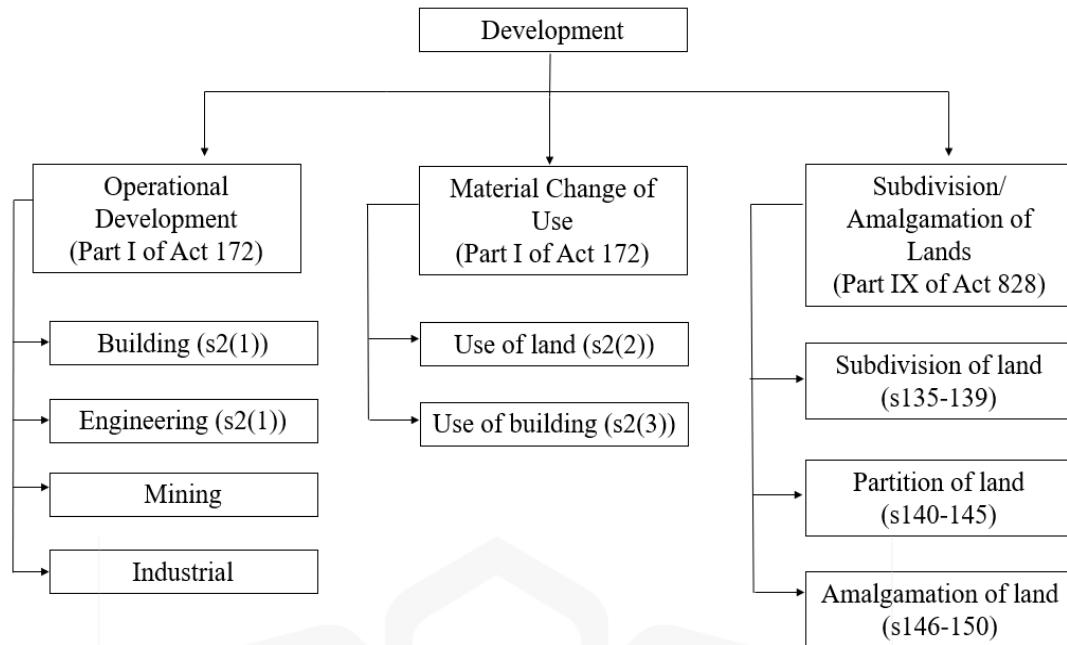


Figure 4.2 Definition of ‘Development’ under Act 172 and Act 828

Source: (Researcher’s own,2023)

The development plan comprises three planning levels: national, state and local planning. The plans involve national physical, regional or structure, local and special area plans. These plans are crucial in formulating the policies and rules of the intended development. The National Physical Plan (hereafter referred to as ‘NPP’) pursuant to section 6B(2)(a) of Act 172 is a statutory document²⁵ that outlines strategic parameters to determine the path and trends of Peninsular Malaysia's physical development and conservation.²⁶ Section 6B(2) (b) and (c) states that the draft of NPP must be accompanied by the indicative plans and the relevant matters to clarify the strategic

²⁵ Town and Country Planning Act 1976, (Act 172), s 6B(2)(a).

²⁶ Official Portal PLANMalaysia, “National Physical Plan ”,
< <https://www.planmalaysia.gov.my/index.php/en/soalan-lazim-rancangan-fizikal-negara/soalan-lazim-rfn/345-apakah-rancangan-fizikal-negara-dan-fungsinya> > (accessed 22 February, 2023).

policies.²⁷ It is reviewed every five years and complements the National Five-Year Development.²⁸

Besides that, based on section 6A of Act 172, the regional plan is a plan for coordinating the region's development.²⁹ The regional planning committee establishes the plan for an area comprising two or more states.³⁰ This committee will advise the State Planning Committee (hereafter referred to as 'SPC') and local planning authorities on a comprehensive development plan relevant to its territory.³¹ In contrast, a state structure plan is a written statement comprising policy and development proposals in a state.³² It consists of macro planning policies compared to the policies in the local plan, which are more detailed.³³ Section 8 states the process and requirements for preparing the structure plan.³⁴ Amongst the conditions that need to be fulfilled are the policies designed must provide the measures for improvement of the physical living environment, communication, traffic and socio-economic wellbeing.

According to section 12(3) of Act 172, a local plan consists of a map and written statement prepared by the local planning authority. It should comply with the requirements for its preparation, such as the plan is to formulate, amongst others, proposals for the preservation of the natural environment and include any matters

²⁷ Town and Country Planning Act 1976, (Act 172), s 6B(2)(b) & (c).

²⁸ Town and Country Planning Act 1976, (Act 172), s 6B (4).

²⁹ Town and Country Planning Act 1976, (Act 172), s 6A(5)(b).

³⁰ *PLANMalaysia*, "Regional Plan",

< <https://www.planmalaysia.gov.my/index.php/pages/view/266?mid=633> > (accessed 6 March, 2023).

³¹ Town and Country Planning Act 1976, (Act 172), s6A(5)(a).

³² *PLANMalaysia*, "State Structure Plan",

< <https://www.planmalaysia.gov.my/index.php/pages/view/269?mid=632> > (accessed 6 March, 2023).

³³ *Malaysian Bar*, "Law and Realty: Hill-Slope Disasters (Part 1)",

< <https://www.malaysianbar.org.my/article/about-us/committees/conveyancing-practice/law-realty-hill-slope-disasters-part-1> > (accessed 22 February, 2023).

³⁴ Town and Country Planning Act 1976, (Act 172), s8.

prescribed by the SPC.³⁵ Another plan at the local planning level is the special area plan prepared by the local planning authority or State Director. The preparation of this plan is similar to the local plan. However, section 16B states that it must be attached with detailed guidance for specific implementation and management.³⁶ The plan consists of development proposals for the designated and identified special area for redevelopment, improvement, conservation and treatment.³⁷

An efficient development plan has a significant impact on planning control. Section 18(1) of Act 172 states that no person shall use or permit to be used any land or building otherwise than in conformity to the local plan.³⁸ Section 20 prohibits any development that contravenes the planning permission granted to the person.³⁹ It shows that the development plan is one of the indicator factors to determine the application for planning permission.⁴⁰ The planning permission approval is an essential requirement in the development control process because it is one of the most critical and practical aspects in determining the standard of the built environment and physical planning.⁴¹

In the context of current planning control, section 21(1) of Act 172 explicitly states that the application of planning permission must be submitted to the LPA.⁴² The LPA will evaluate the application and consider the direction and advice from SPC as

³⁵ Town and Country Planning Act 1976, (Act 172), s 12(3) & (4).

³⁶ Town and Country Planning Act 1976, (Act 172), s 16B (3).

³⁷ *PLANMalaysia*, "Special Area Plan",

< <https://www.planmalaysia.gov.my/index.php/pages/view/274?mid=635> > (accessed 6 March, 2023).

³⁸ Town and Country Planning Act 1976, (Act 172), s 18(1).

³⁹ Town and Country Planning Act 1976, (Act 172), s 20.

⁴⁰ Faizah Ahmad and et al, "Malaysian Development Plan System: Issues And Problems", *Planning Malaysia Journal*, vol. XI (2013): 1–20.

⁴¹ Mohammad Yusup and et al, "Temporary Planning Permission in Development Control System for Urban Development", *Planning Malaysia Journal*, vol. 16, no. 3 (2018): 143.

⁴² Town and Country Planning Act 1976, (Act 172), s 21(1).

stated vide section 22 (2)(aa).⁴³ According to section 4, the duties of the SPC are to regulate, control, plan and coordinate all development activities and ensure that all state developments are within the national policy framework.⁴⁴ Section 22(4) also strengthens the planning permission procedure by stating that the LPA will not grant planning permission approval if the application does not conform to the plan and directions from the SPC.⁴⁵ Thus, the LPA is the responsible committee with discretionary power and will grant or refuse planning permission applications.⁴⁶ The Federal Court, through a case in Gelugor, has acknowledged specific scenarios under section 22(4) that contravene the development plan and are against the directions of the SPC. These will lead to the refusal of granting of planning permission by the LPA vide section 22(3).⁴⁷

The LPA's flexibility and discretionary power in approving the application are based on material considerations. The United Kingdom has also practised it since early 1960.⁴⁸ The local plan is one of the material considerations that must be considered when deciding the planning permission. The essential assessments such as EIA, SIA and others are among the other material considerations of granting the permission. The projects under SIA Category 1(section 20B) and 2 (section 22(2A)) require an SIA report to be submitted to consider the decision of planning permission. Figure 4.3 shows the flow of the planning system in Malaysia under Act 172.

⁴³ Azila Ahmad Sarkawi and et al, "Development Control in Sabah within a Context of Planning System in Malaysia", *APSA 2011 / 11th International Congress of Asian Planning Schools Association*, (2011): 1.

⁴⁴ Town and Country Planning Act 1976, (Act 172), s 4(4).

⁴⁵ Town and Country Planning Act 1976, (Act 172), s 22(4).

⁴⁶ Ahris Yaakup and et al, "GIS and Development Control System for A Local Authority in Malaysia", *Habitat International*, vol. 27, no. 4 (2003): 683–696.

⁴⁷ Lik Meng Lee, "The Boundaries of Discretionary Town Planning Powers", *Malayan Law Journal*, vol. 3, no. March (2014): 1.

⁴⁸ *Ibid.*,2.

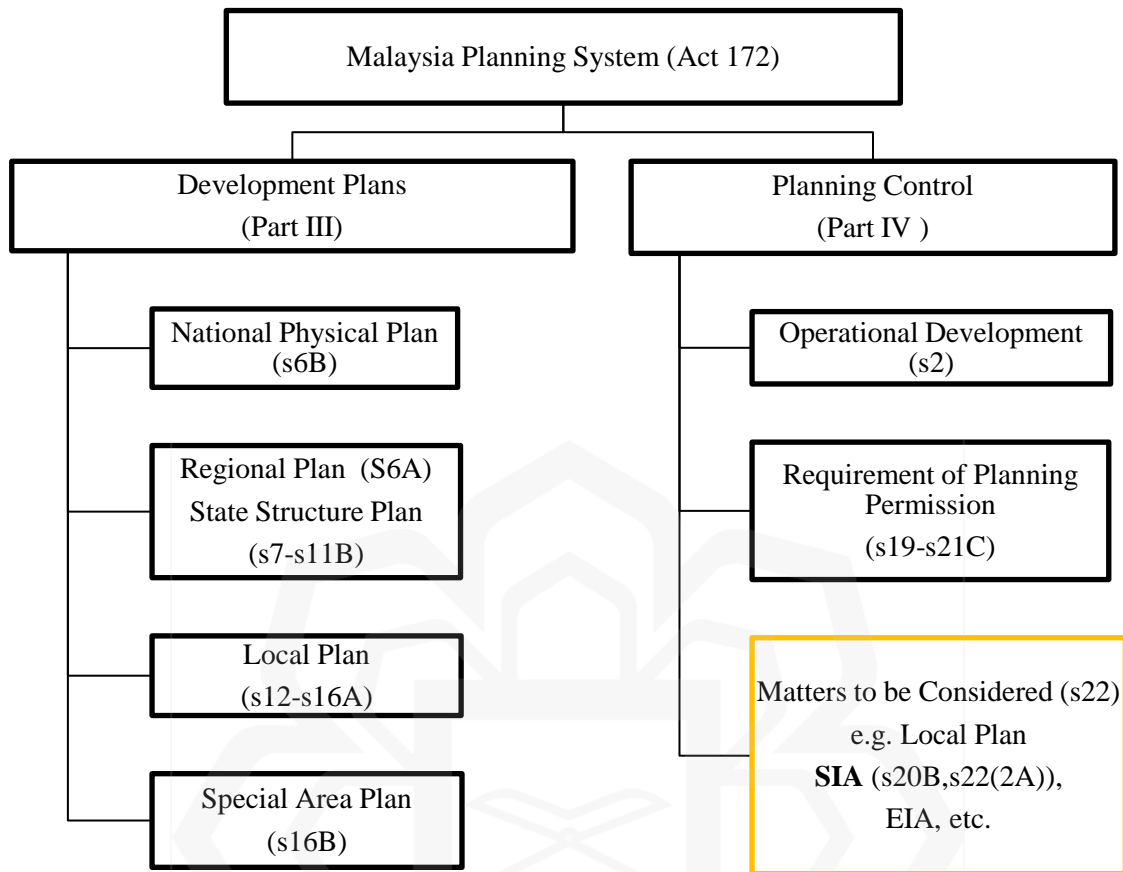


Figure 4.3 Malaysia Planning System
Source: (Researcher's own, 2023)

4.3.2.1 Overall analysis

A development project must comply with all the related legal requirements and ensure that it does not conflict with national, state, and local policies. The government must consider numerous social considerations and implications in deciding the outcome and consequences of the policies to the community because the implementation of government policies would eventually impact the general population. To ensure that social requirements and the interests of diverse stakeholders are considered in the

policy-making process, public interest and sustainable development objectives must be taken into account throughout the drafting of the policy and manual.

4.3.3 Town and Country Planning Act 1976 (Act 172)

4.3.3.1 Background of Act 172

Act 172 was drafted through Article 76(4) of the FC. The date of Royal Assent for Act 172 is 18 March 1976, and it was gazetted on 25 March 1976. However, section 1(2) of Act 172 explains that the operation of the Act by the states can commence on the dates appointed by the State Authority and approved by the Minister through the State Gazette. The Minister here is the cabinet minister responsible for town and country planning matters. Sabah,⁴⁹ Sarawak⁵⁰ and Federal Territory⁵¹ have their own town and country planning legislation. The lack of coordination of planning policies affects the resilient development in Malaysia either from federal-state governments or project proponents. Since early 1990, several alternatives have been made through the amendments of Act 172.⁵²

⁴⁹ Town and Country Planning Ordinance 1950 of Sabah is the legislation that controls and regulating of proper planning in Sabah.

⁵⁰ Town and Country Planning Ordinance 1952 of Sarawak is the legislation that controls and regulating of proper planning in Sarawak.

⁵¹ Federal Territory (Planning) Act 1982 (Act 267) is the legislation that controls and regulating of proper planning in the Federal Territory.

⁵² Lynette Taye, "Key Features of the Town and Country Planning (Amendment) Act 2001: An Analysis of the Impact of the Recent Key Amendments to the Town and Country Planning Act 1976", *Malayan Law Journal*, vol. 4, no. ixv (2002): 1.

4.3.3.2 Amendments to Act 172

Act 172 has been amended five (5) times over the years to accommodate requirements under new laws as well as to strengthen the legal provisions under this Act to deal with various problems that have arisen in regards to planning control. Currently, Act 172 has twelve (12) parts with eighty-three (83) sections.

4.3.3.2.1 Town and Country Planning Act in 1993

The first amendment in 1993, is known as the Town and Country Planning Act (Amendment) 1993 (hereafter referred to as ‘Act A866’).⁵³ This amendment includes sewerage activities under the Sewerage Services Act 1993 (hereafter referred to as ‘Act 508’ that was passed in that year. However, Act 508 has been repealed by the Water Services Industry Act 2006 (hereafter referred to as ‘Act 655’).

4.3.3.2.2 Amendments to Town and Country Planning Act in 1995

In 1995, Act 172 was amended to manage and preserve the physical environment in the planning system due to a tragedy on 11 December 1993 at Highland Towers that caused 48 deaths and substantial financial loss.⁵⁴ The amendment seeks developers to submit a detailed development report regarding the geological and geotechnical aspects of the

⁵³ Town and Country Planning (Amendment) Act 1993, (Act A866).

⁵⁴ Ainul Jaria Maidin, *Malaysian and Town and Country Planning, Law and Procedure*, (Kuala Lumpur: CLJ Publication, 2012), 64.

development. The amendment also included tree preservation orders under the Town and Country Planning Act (Amendment) 1995 (hereafter referred to as ‘Act A933’). All the related provisions relating to tree preservation orders can be found in Part VA from section 35A to section 35H of Act 172.

4.3.3.2.3 Amendments to Town and Country Planning Act in 2001

Act 172 was amended for the third time through the Town and Country Planning Act (Amendment) 2001 (hereafter referred to as ‘Act A1129’). This amendment revealed the central policies for planning, such as the establishment of the federal government's role in matters of town and country planning in line with the spirit of shared responsibility provided for in the FC, the formation of the Council, the introduction of NPP, enhancement of SPC's role and others.⁵⁵ The amendment also contains two new sections and introduces several new approaches, particularly in the development plans and planning control system, into Act 172. The structure of the town and country planning framework is enhanced a lot through the amendment.

Among the discussion of the amendment regarding the establishment of the Council are the composition of members, duty and function, procedure, meetings and rules. This formation is essential to promote the improvement of the physical environment through the framework of national policy and country planning, to advise

⁵⁵ Taye, 3.

the government as stated above and to perform the core part of advising and approving the development plan.⁵⁶

4.3.3.2.4 Amendments to Town and Country Planning Act in 2007

The next amendment was in 2007, known as the Town and Country Planning Act (Amendment) 2007 (hereafter referred to as 'Act A1313').⁵⁷ It inserted the provision related to control of solid waste and public cleansing. The purpose of the amendment of section 22(2) of Act 172 is to allow the local authority to consider the Solid Waste and Public Cleansing Management Act 2007 (hereafter referred to as 'Act 672')⁵⁸ in the planning permission application. Act 672 was gazetted on 30 August 2007.

4.3.3.2.5 Amendments to Town and Country Planning Act in 2017

The latest amendment was in 2017, known as Act A1522, gazetted on 16 January 2017. The fifth amendment involved a new provision, inserting the requirement of SIA for intended development that needs to be submitted to the Council to seek its advice. Among the projects are coastal reclamation and major national infrastructure.

⁵⁶ Ibid.,4-6.

⁵⁷ Town and Country Planning Act (Amendment) 2007 (Act A1313).

⁵⁸ Solid Waste and Public Cleansing Management Act 2007 (Act 672).

During the debate session in Parliament on 26 October 2016, YB Tan Sri Haji Noh⁵⁹ explained the importance of SIA implementation in the proposed amendment. Prior to this proposal, SIA has been implemented informally as there were no relevant provisions mentioned under Act 172. Thus, inserting this assessment through the Act will strengthen the implementation of the SIA legal framework and protect the affected community living near the intended development area.⁶⁰ The minister also said that not all development requires the preparation of SIA, but it is subject to the scale of development. Based on this debate, the minister stated that the proposed provision is of high persuasive value and not legally binding.⁶¹

In addition, the minister explained that section 21A(1A) would be repealed and a new paragraph would be inserted under that provision, which is paragraph (ea).⁶² Prior to this, paragraph (1A) states that the State Authority may specify that the development proposal report submitted must include an analysis of the social implications of the development for the area, which is the subject of the application for planning permission. The reason for the changes is that the additional documents for the application of planning permission are not limited to the development concept and justification, location map, site plan and others. It also involves submitting social implication analysis according to the LPA at the state level.⁶³

⁵⁹ YB Tan Sri Haji Noh bin Omar was the Minister of Urban Wellbeing, Housing and Local Government from June 2016 till May 2018. YB Noh proposed the Town and Country Planning (Amendment) Bill of 2016.

⁶⁰ Parliament Hansard, Session 20 October 2016, Town and Country Planning (Amendment) Bill of 2016,69.

⁶¹ Parliament Hansard, Session 20 October 2016, Town and Country Planning (Amendment) Bill of 2016,72.

⁶² The new paragraph (ea) will be inserted through section 21A (1) and it will be section 21A (1) (ea).

⁶³ Parliament Hansard, Session 20 October 2016, Town and Country Planning (Amendment) Bill of 2016,68.

The social element under section 21A (1) (ea)⁶⁴ indicates analysis of the social impact (hereafter referred to as ‘ASI’), and it is not SIA. Even though subsection (1A) has been repealed, states like Kelantan, Perlis and Johor that do not adopt SIA, still practise ASI under section 21A (1A).⁶⁵ They implement it to include considerations of social implications of the development. Consequently, another issue arises, whether the practise of subsection (1A) is still valid in the period after the amendment.

Based on the Parliament session above, this amendment is necessary to strengthen inclusive development and create a resilient society. The SIA process in project planning is a social-based development impact assessment approach that emphasises the well-being of the people.⁶⁶ It evaluates issues from a development proposal by proposing and making the best alternatives to avoid impact as well as minimise adverse effects on the community. Figure 4.4 illustrates the list of amendments to Act 172, as explained above.

⁶⁴ Refer to the explanation of insertion paragraph (ea) under section 21A (1) above. (Footnote 380 and 381).

⁶⁵ Sanisah Shafie, “interview by Nur Atheefa Sufeena M Suaree”, Putrajaya, 9 June 2021.

⁶⁶ Perancangan Bandar dan Desa, Manual Penyediaan Laporan Penilaian Impak Sosial (SIA) bagi Projek Pembangunan, 1-2.

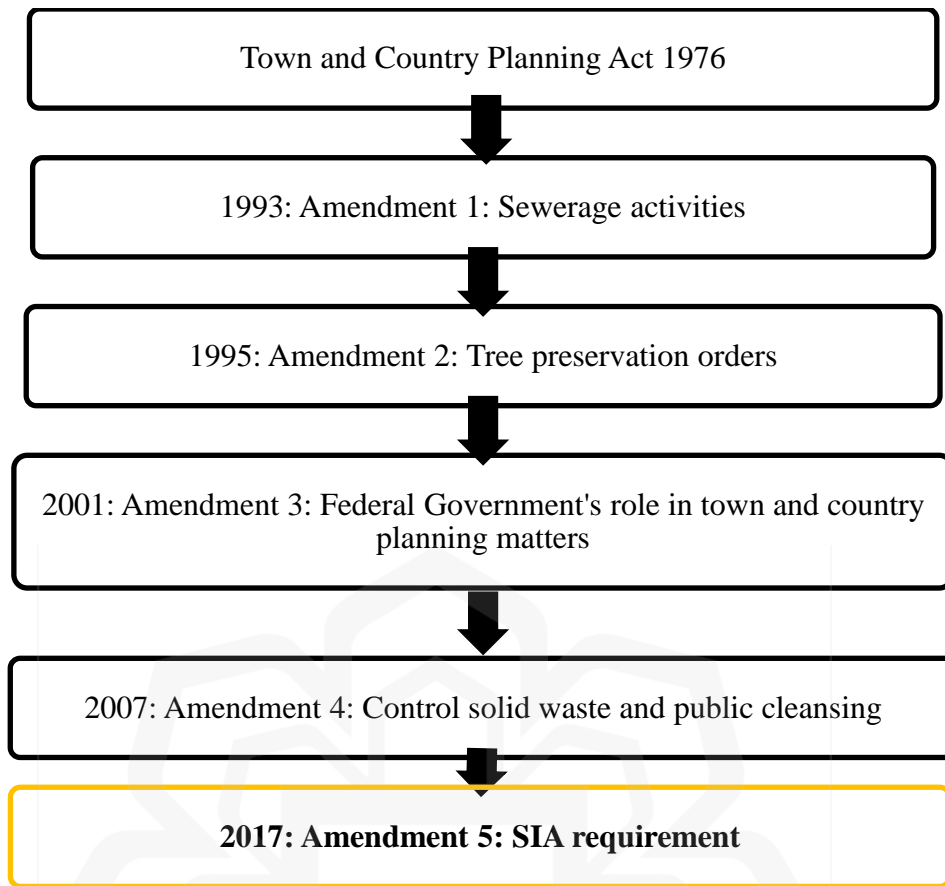


Figure 4.4 Amendments of Act 172

Source: (Act A866, Act A933, Act A1129, Act A1313, Act A1522)

4.3.3.3 SIA under Act 172

Based on section 2B of Act 172, the Director-General of Town and Country Planning is responsible for determining the planning guideline and coordination.⁶⁷ Significant development projects need to be referred to the PLANMalaysia (Federal) under the direction of its Director General since July 1999. The centralised referral body for planning is essential for ensuring the planning compliance policies as well as

⁶⁷ Town and Country Planning Act 1976, (Act 172), s 2B.

monitoring the progress of the intended projects⁶⁸. Among the primary duties of the Director General are providing general advice, manuals and procedure according to the law, including the requirement of SIA.

The requirement for the SIA report and other reports to be submitted to the Council is to enable the Council to give proper advice on the development proposal. The role of the Council was initiated through the amendment of Act 172 in 2001.⁶⁹ According to section 2A(2)(b), the Council must advise the federal government or the government of any state on matters relating to the town and country planning required under Act 172.⁷⁰ In this context, the approval of the SIA report by the panel of evaluators will be the basis of consideration by the Council.

According to the planning permission process under sections 21 and 22 through Part IV of Act 172, the State Authority and LPA needs to consider various technical, physical, environmental and social factors when determining any decision to approve a development project. All the proposed developments should comprise social variables such as social well-being, quality of the environment, economy, culture and history, community and institution impact, as well as legislation.

If no law explicitly regulates a matter, then the State Authority will refer to any guideline or manual prepared by PLANMalaysia (Federal). The manuals significantly assist them in executing the planning functions at state level. In the SIA context, the relevant guideline is the Manual. The project proponents and SIA consultants refer to

⁶⁸ Taye, 1.

⁶⁹ Ibid., 1-3.

⁷⁰ Town and Country Planning Act 1976, (Act 172), s 2A(2)(b).

the Manual to prepare the report. It will also assist in decision-making, especially in managing social issues from the intended development.

This Manual acts only as a guideline and is not legally binding.⁷¹ The State Authority has the power whether to implement or not to implement the Manual through the State Gazette and it becomes part of town and country planning policies for that state.⁷² Consequently, the legislation and court will consider the Manual as an authoritative reference in preparing SIA at state level. However, the status of the SIA report will not be automatically void if there is any non-compliance with this Manual. The Manual is merely considered a soft law with no sanctions provided for non-compliance.

Three categories of SIA (SIA Category 1, SIA Category 2 and SIA Category 3) consist of different development projects. According to section 20B (1), SIA Category 1 involves the development of coastal reclamation and significant national infrastructure.⁷³ Section 22 (2A) states the development relating to SIA Category 2, such as a new township for a population exceeding ten thousand or covering an area of more than one hundred hectares, any major infrastructure and any development affecting hilltops or hill slopes.⁷⁴ While projects under SIA Category 3 are listed in the Manual and will be determined by the State Authority and LPA from time to time.⁷⁵

⁷¹ Nur Atheefa Sufeena M Suaree and et al, "The Development of Policy and Legal Framework for Social Impact Assessment in Malaysia", *Planning Malaysia Journal*, vol.20, no.3 (2022): 303.

⁷² Town and Country Planning Act 1976, (Act 172), s 1(2).

⁷³ Refer to details of SIA Category 1 at Heading 4.5.2.

⁷⁴ Refer to details of SIA Category 2 at Heading 4.5.3.

⁷⁵ Refer to details of SIA Category 3 at Heading 4.5.4.

Currently, no provision under Act 172 explicitly states about the SIA implementation except section 20B (2) which requires SIA to be prepared for projects under SIA Category 1. Other issues that arise are that no requirement of SIA is stated for projects in Categories 2 and 3, there is no clarity on the SIA approval process, and no SIA enforcement has been taken, especially on the monitoring and auditing of the report. There is also no criteria prescribed for the qualified person to prepare the SIA in the Act or Manual.

Compared to EIA, most of its implementation is based on Act 127 through section 34A and the provisions in amendment Acts.⁷⁶ These provisions are comprehensive as it outlines the essential governance for EIA, from the requirement of the assessment to the monitoring process. Section 2 of the Environmental Quality (Amendment) Act 2012 (hereafter referred to as ‘Act A1441’) defines the qualified person as the one who fulfils the requirement by Director-General (hereafter referred to as ‘DG’) to prepare an EIA report and conduct an environmental audit.⁷⁷ The DG provides the list of qualified persons to prepare the EIA,⁷⁸ which will significantly assist the project proponents in selecting the consultant. The eligible persons do not merely prepare the report, but they have a responsibility to ensure the authenticity of the contents of the report.⁷⁹

Furthermore, section 34A(2C) of Act A1441 states that the report must be aligned with the guidelines prescribed by the DG, which consists of the potential impact

⁷⁶ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34A and s34AA.

⁷⁷ Environmental Quality (Amendment) Act 2012, (Act A1441), s 2.

⁷⁸ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34A(2A).

⁷⁹ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34A(2B).

of the project and the proposed measures to mitigate the adverse effects surrounding it.⁸⁰ This provision explicitly states that the EIA Guidelines are binding in nature when implementing the EIA report and approval procedure.

According to section 3 of Interpretation Acts 1948 and 1967 (hereafter referred to as ‘Act 388’), subsidiary legislation is any declaration, order, notification, by-law, or other documents under any Act, Enactment, and other legitimate authority.⁸¹ An enabling provision in a particular statute will give to a specific person or body the power to make laws, general rules or policies which form subsidiary legislation under such statute. This appears in section 58(1) and (1A) where power is given to the State Authority and Council to make rules relating to the SIA requirement under Act 172. Section 58 (2) of Act 172 states the scope of the rule that can be made,⁸² including the qualified person to prepare the plan, documents, or any particular for purposes of this Act.⁸³

The State Authority at the state levels has the right to make rules based on the power mentioned above. For example, the State Authority of Johor has made several rules, such as the Planning Control Rules General State of Johor 2008, Qualification Preparation and Submission of Plan and Document for Planning Permission Rules (Amendment) 2014, Johor Development Charge Rules, and others.⁸⁴ The rule that has

⁸⁰ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34A(2C).

⁸¹ Interpretation Acts 1948 and 1967, (Act 388), s 3.

⁸² Town and Country Planning Act 1976, (Act 172), s 58(2).

⁸³ Town and Country Planning Act 1976, (Act 172), s 58(2)(h).

⁸⁴ *PLANMalaysia@Johor*, “Kaedah-Kaedah”,

< <https://jpbj.johor.gov.my/index.php/perkhidmatan/muat-turun/kaedah> > (accessed 20 October, 2022).

been gazetted will be enforced and must be implemented for every local area in such state.

4.3.4 Guidelines for SIA

Other than Act 172, SIA guidelines and manual have been prepared at federal and state levels. PLANMalaysia (Federal) has provided two manuals for project development, and several State Authorities have provided their own SIA guidelines. Another guideline used in SIA implementation is the Guideline of Application for Development Proposal under Act 172 (hereafter referred to as 'PPA').

4.3.4.1 Manual for Social Impact Assessment for Project Development

The first SIA manual, '*Pengenalan Ringkas SIA Penilaian Impak Sosial*' was released in 2012 by the Ministry of Women, Family and Community Development.⁸⁵ During this period, no provision from any Act requires the SIA implementation in Malaysia.⁸⁶ This manual is one of the government's efforts, according to Dato' Seri Najib, to spread the SIA practise through planning and development issues in Malaysia. Prior to this, a handbook related to SIA was drafted in 2002. The process of drafting was completed that year,⁸⁷ but unfortunately, it has not been formally accepted by PLANMalaysia

⁸⁵ Ministry of Women Family and Community Development, "Social Impact Assessment Handbook of Malaysia", (2002): 27.

⁸⁶ Refer to the status of SIA at Heading 4.3.1.

⁸⁷ Gaim James Lunkapis, previously a member of the Town and Regional Planning Department in Sabah involved in drafting that handbook.

(Federal). However, that manual has served as a guide for practitioners in carrying out SIA in Malaysia.⁸⁸

Moreover, after the amendment of Act 172, through Act A1522, SIA was formally implemented in the legislation. Consequently, the new second edition was published in 2018, transforming SIA implementation details. The structure and content of this edition are more comprehensive than the previous manual. It outlines the types of project requiring SIA, including the procedure and methodology for carrying out the study. The input of the monitoring and evaluation phases have also been inserted in the Manual. It assists all relevant groups, such as project proponents, governmental agencies, consultants and others, in preparing the SIA report. However, the content in the Manual is still insufficient to counter the conflict regarding SIA implementation. All the relevant legal issues will be discussed in detail in the next chapter.

4.3.4.2 Evolution of State Manuals on SIA

Several states have produced detailed manuals and guidelines based on the PLANMalaysia (Federal) Manual. Selangor, Negeri Sembilan, Terengganu, Perak, Kedah, Malacca and Pahang are among the states that provide their state guidelines. The purpose of the guidelines is to assist the project proponents and consultants to prepare a quality report and to manage the social issues from the intended development,

⁸⁸ Nur Atheefa, 299.

especially under SIA Category 3.⁸⁹ The other states that do not have the state manual will use the Federal Manual as a guideline.

The Selangor Manual expands the list of development projects subjected to SIA Category 3, such as the worker placement centre projects, utility lines or reserves and rail transport routes. It has two manual editions, the first released in April 2019.⁹⁰ In comparison, the second edition was released in November 2020 with the addition of certain parts.⁹¹ The differences between these editions are that the latest manual has inserted the requirement on standardisation of this manual to the Manual from PLANMalaysia (Federal). It also states that a qualified person's criteria for preparing the SIA report are based on section 21C of Act 172. Under the manual, the Malaysia Institute of Planners (hereafter referred to as 'MIP') is the qualifying body for the registered town planner to practice urban and rural planning in this country, including preparing the SIA report.⁹²

The manuals from the other states have a similar structure as the contents indicating the SIA implementation from the federal Manual. The main difference is the specific list of projects under SIA Category 3. After the state planning authority gazettes Act A1522, they will approve and gazette the guidelines for the state implementation, which differs according to the state. Table 4.2 lists the gazettment of the state manual

⁸⁹ PLANMalaysia Selangor, *Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Peringkat Negeri Selangor*,1.

⁹⁰ PLANMalaysia@Selangor, "Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Di Peringkat Negeri Selangor Akta Perancangan Bandar Dan Desa 1976 (Akta 172) (Pindaan) 2017 [Akta A1522]", vol. 1, no. April (2019): 1–27.

⁹¹ PLANMalaysia Selangor, *Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Peringkat Negeri Selangor*,7-17.

⁹² *Ibid.*,4.

for those states seeking advice from the Council, while Figure 4.5 illustrates the implementation of SIA manual at federal and state level.

Table 4.2 Application and Gazettement of State Manual

State \ Element	Gazettement of State Guideline/Manual
Selangor	2018
Negeri Sembilan	9 June 2020
Terengganu	1 January 2019
Perak	14 October 2020 (SIA 3)
Kedah	July 2020
Malacca	1 July 2021
Pahang	-

Sources: (Dataset Malaysia, Ministry of Housing and Local Government, 2021)

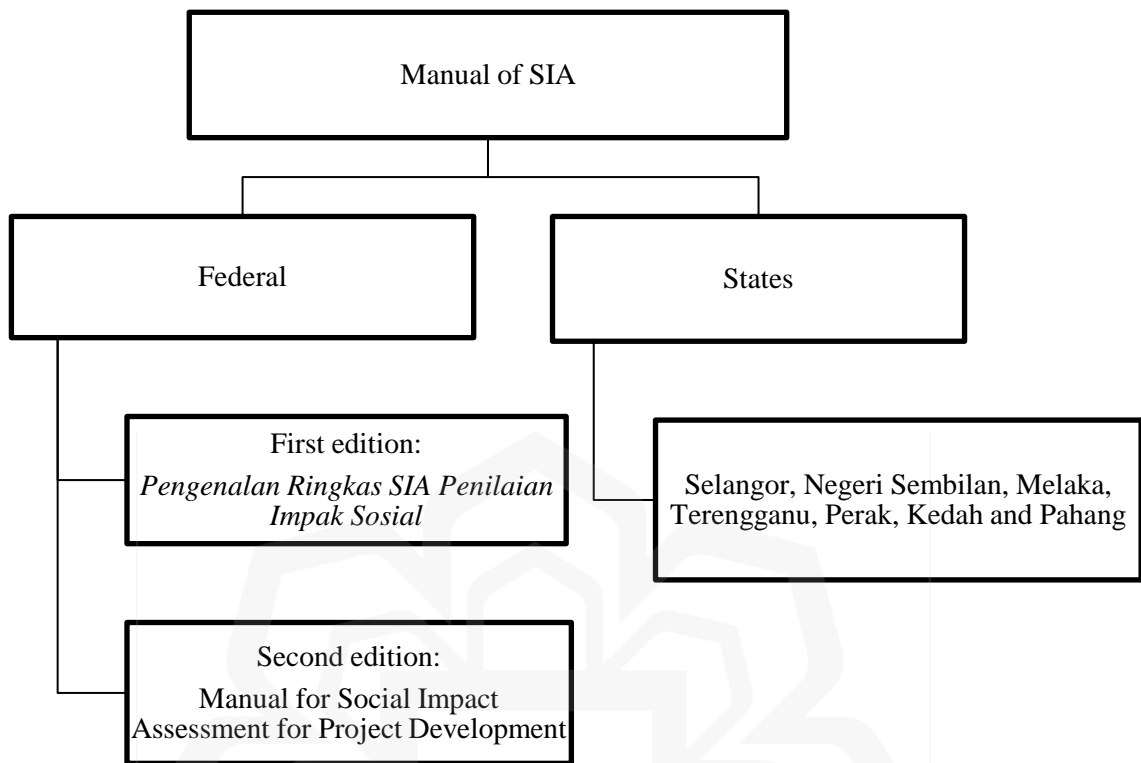


Figure 4.5 Manual of SIA

Source: (Federal Manuals and States Manuals)

4.3.4.3 Guideline of Application for Development Proposal under Act 172 (PPA)

The requirement of SIA under section 20B⁹³ of Act 172 has been supported by the Guideline of Application for Development Proposal under Act 172 (hereafter referred to as 'PPA 14'). PPA 14 is intended to guide Ministries, State Governments, departments and agencies in obtaining the Council's advice for all the proposed developments under SIA Category 1. It specifies the projects stated in that category. For instance, the development scope of a highway project is any expressway or highway classified by the Ministry of Public Works and Malaysian Highway Authority across two states and involving land use improvement.⁹⁴

All the applicants must submit the development application under section 20B with the plan and relevant documents to the committee of the Council. Based on the checklist provided under PPA 14, the Council requires an SIA report and the review feedback from PLANMalaysia (Federal) in processing the application.⁹⁵ The same situation applies to PPA 13 which relates to development applications under section 22(2A) (c),⁹⁶ SIA Category 2. The only difference in this provision is that it does not explicitly state the requirement of an SIA report for those projects. Nevertheless, based on the checklist of PPA 13, the Council still requires the submission of SIA and its approval from PLANMalaysia (Federal).⁹⁷

⁹³ Refer to section 20B details at Heading 4.3.3.3 and 4.5.2.

⁹⁴ PLANMalaysia, Panduan Pelaksanaan Akta 172, PPA 14, Permohonan Cadangan Pemajuan di Bawah Seksyen 20b, (2017),10.

⁹⁵ Ibid.,19.

⁹⁶ Refer to section 22(2A) details at Heading 4.3.3.3 and 4.5.3.

⁹⁷ PLANMalaysia, Panduan Pelaksanaan Akta 172, PPA 13, Permohonan Cadangan Pemajuan Di Bawah Perenggan 22 (2 A) (c), (2017),19.

The existence of PPA 13 and 14 can assist to achieve uniformity and facilitates in managing the related applications. Even though the guidelines do not have legal effect, it serves many valuable functions,⁹⁸ as explained above.

4.4 THE PRACTICE OF LEGAL FRAMEWORK OF SOCIAL IMPACT ASSESSMENT IN EAST MALAYSIA

4.4.1 Background

Act 172 is gazetted to regulate the town and country planning jurisdiction in Peninsular Malaysia, while Sabah, Sarawak and the Federal Territories have other legislations for town and country planning.⁹⁹

4.4.2 Practice in Sabah

Sabah's town and planning system is based on the Town and Country Planning Ordinance 1950 of Sabah (hereafter referred to as 'Sabah Cap. 141'). This ordinance was enforced in 1950 when Sabah's governance as North Borneo under the British Government after the end of the Second World War.¹⁰⁰ The central cities, such as Jesselton and Sandakan, were destroyed due to the air raids during the war. Therefore,

⁹⁸ The United States Department of Justice, "Principles for Issuance and Use of Guidance Documents", < <https://www.justice.gov/jm/1-19000-limitation-issuance-guidance-documents-1> > (accessed 11 December, 2022).

⁹⁹ Taye, 2.

¹⁰⁰ Open Edition Journal, "The Name of Sabah and the Sustaining of a New Identity in a New Nation", < <https://journals.openedition.org/archipel/495#:~:text=When%20North%20Borneo%20achieved%20its,sate%20prior%20to%20western%20colonialisation.> > (accessed 28 November, 2022).

alternative ways were found to rebuild the area towards planned and systematic placement. Sabah Cap. 141 was drafted to meet the physical development needed in Sabah till today.¹⁰¹

The establishment of Sabah Town and Regional Planning Department is also based on the provision from Sabah Cap. 141. This department is a governmental agency responsible for ensuring systematic and stable physical development for Sabah. The department commenced on 1 January 1980 under the Minister of Local Government and Housing, taking over the duties and obligations from the Lands and Survey Department. Section 3(1) of Sabah Cap. 141 establish the Central Town and Country Planning Board.¹⁰² Section 3(2) describes the duties of this board, which must consider all schemes submitted by Local Authorities, make recommendations to the Yang di-Pertua Negeri, advise the Yang di-Pertua Negeri generally on the development of land, supervise and control Local Authorities in the exercise of the powers and duties conferred and imposed upon them by Sabah Cap. 141.¹⁰³ The Town and Regional Planning Department provides state-wide planning services and serves as the Central Town and Country Planning Board's secretariat and advisor on planning, land use and development control issues to the government.¹⁰⁴

The SIA study in Sabah is incorporated through the EIA under the Environment Protection Enactment 2002.¹⁰⁵ Based on section 2 of the Enactment, the term

¹⁰¹ Noor Suzilawati, 2.

¹⁰² Town and Country Planning Ordinance 1950 of Sabah, (Sabah Cap. 141), s 3(1).

¹⁰³ Town and Country Planning Ordinance 1950 of Sabah, (Sabah Cap. 141), s 3(2).

¹⁰⁴ Lawyerment, "Jabatan Perancangan Bandar dan Desa (JPBD) Sabah",

< https://www.lawyerment.com/guide/gov/State_Governments/Sabah/2607.htm > (accessed 29 November, 2022).

¹⁰⁵ Daily Express, "Without enforcement, EIA, SIA useless",

< <https://www.dailyexpress.com.my/news.cfm?NewsID=103856> > (accessed 1 December, 2022).

environment is defined as the physical surrounding that affects the growth of people, plant, animal, and social conditions.¹⁰⁶ The element of social here can be interpreted as SIA. Section 10(3) of the Enactment also states that the environmental action plan should consider any conflict relating to the social condition in ecological protection management.¹⁰⁷

According to Tsutomu Nagae, the chief representative of the Japan International Cooperation Agency (hereafter referred to as 'JICA') in Malaysia, Sabah possesses one of the highest levels of biodiversity in the entire world, with the statistic of 59% of its land covered with forest. However, he claimed that due to the state's rapid economic growth, it was at risk of extinction.¹⁰⁸ Therefore, various conservation alternatives must be undertaken to protect the natural wealth of Sabah, especially developments near the community areas.

In August 2016, an SIA report was prepared by a district forest officer, Awangku Effendy Pg Mahmud, for the Conversation Area Management Plan (hereafter referred to as 'CAMP') of Nuluhan Trusmadi Forest Reserve and Sungai Kiluyu Forest Reserve. The most critical data relates to the villagers' community around that area. The analysis showed that two main variables affect the community: positive impact on water resources and restriction of society's lifestyle and social culture. Usually, the villagers will be hunting for wild animals and natural resources in the forest. However, this plan restricts their activities through forest monitoring by the relevant officers. Not only that,

¹⁰⁶ Environment Protection Enactment 2002, s 2.

¹⁰⁷ Environment Protection Enactment 2002, s 10(2).

¹⁰⁸ Daily Express, "Sabah Has One of Richest Biodiversities: Jica",
< <https://www.dailyexpress.com.my/news.cfm?NewsID=79583> > (accessed 1 December, 2022).

but the report also provides the justification and mitigation plan to counter the restriction that arises. It shows that the SIA report assists all related stakeholders like the community, forestry department, and others.¹⁰⁹

In 2018, a project, namely, Sugut Conservation Area, located in Beluran, was another of the case studies that prepared the SIA review report. It aims to manage social issues, especially the villagers' lifestyle variables.¹¹⁰ The social baseline study indicates that they usually use the woods from the forest for housing and boat construction. The related stakeholders, like the government sector, non-governmental organisations (hereafter referred to as 'NGOs'), consultants, plantation companies, contractors and villagers, were involved in addressing the social impact of this project. In the engagement session, the villagers' representatives stated that they knew they needed to preserve the forest and no longer depend on such resources for housing and boats. They can obtain supplies of building materials from the town.¹¹¹

The Sabah Forestry Department intended to firmly comply with all applicable national laws and regulations as well as any international law connected to the standard for Forest Management Certification in Malaysia. For instance, the laws related are Forest Enactment 1969, State Cultural Heritage (Conservation) Enactment 1997, Land Ordinance (hereafter referred to as 'Sabah Cap. 68'), United Nations Declaration of the Rights of Indigenous People 2007, and others.¹¹² Having the SIA report prepared may enhance the development progress of Sugut Conservation Area. Public participation

¹⁰⁹ Awangku Effendy Pg Mahmud, "(Social Impact Assessment) Pelaksanaan Strategi Konservasi Camp Fmu10", (2016),1-20.

¹¹⁰ HR Office, "Review Document For Social Impact Assessment", no. March (2018),3.

¹¹¹ Ibid.,8.

¹¹² Ibid.,9.

element has been practised, which addresses the necessity of protecting the villagers' lifestyles and natural resources. Including all the residents is unnecessary, but having their representatives voice their opinions about the project is sufficient. The data collected from the villagers can assist the project management by the stakeholder.

The SIA report also contains details of all the feedback and mitigation plans for further action. Even though the negative impact cannot be avoided, at least it has been reduced to a minimal level through the SIA process. As explained above, alternatives for villagers to building housing and boats are one example of mitigation action that can be done. Although the SIA report acts as a restrictive mechanism for society's lifestyle, it still provides an alternative way to accommodate their routine activities and prevent any grievance in future.

4.4.3 Practice in Sarawak

The planning law applicable in Sarawak is the Town and Country Planning Ordinance 1952 of Sarawak (hereafter referred to as 'Sarawak Cap. 87').¹¹³ However, Sarawak Cap.87 has never been practised as it is irrelevant to the scenario in Sarawak. Thus, Sarawak Land Code (hereafter referred to as 'Cap. 81') was introduced in 1958 to regulate the land use planning system there.¹¹⁴

¹¹³ Ainul Jaria Maidin and Bashiran Begum Mobarak Ali, "Powers of the Local Authority in Regulating Land Planning and Development Control: Whither Control", *Planning Malaysia Journal*, vol. 7, no. 1 (2009): 133–147.

¹¹⁴ Mohammad Yusup, "Statutory Procedure and Planning Machinery for Urban Development in Sarawak," (Master thesis, Universiti Teknologi Mara, 2013), 5.

The planning branch of the Land and Survey Department is responsible for ensuring that the planning and controlling of development are in line with the principles of town and country planning. All the applications for planning permission must be submitted to this branch. It consists of four sections. One of them is the Research and Regional Study Section, that is responsible for evaluating research related to feasibility, regional studies, EIA and others, conducted by public or private organisations, such as plantations or large-scale mixed-use developments, studies on the creation of Rural Growth Centres (hereafter referred to as ‘RGC’), transport planning studies and SIA.¹¹⁵ In the recent five years, Sarawak has begun showing growth in the SIA practice even though there is no specific legislation on SIA requirements.¹¹⁶

SIA study in Sarawak is through the EIA under Sarawak Natural Resources and Environment Ordinance, Chapter 84 (1958 Edition). Section 2 of this Ordinance defines the term environment, to include the social factor towards the physical surrounding.¹¹⁷ Section 11A (1) of the Ordinance states that the Natural Resources and Environment Board (hereafter referred to as ‘NREB’) has the power to make rules and require the submission of reports relating to the impact of environmental and natural resources.¹¹⁸ Other legislations that involve the social element management are Natural Resources and Environment (Prescribed Activities) Order 1994 (hereafter referred to as ‘NREO’) and the Natural Resources and Environment (Audit) Rules, 2008.¹¹⁹ NREO requires that

¹¹⁵ *Land and Survey Department Sarawak*, “Planning Branch”, < <https://landsurvey.sarawak.gov.my/page-0-266-1574-Planning-Branch.html> > (accessed 30 November, 2022).

¹¹⁶ Munirah Mohd Hassan and et al, “Social Impact Assessment in Sarawak- Challenges and Lessons Learnt”, *MSIA* (21 August 2021).

¹¹⁷ Sarawak Natural Resources and Environment Ordinance, Chapter 84 (1958 Edition), s 2.

¹¹⁸ Sarawak Natural Resources and Environment Ordinance, Chapter 84 (1958 Edition), s 11A(1).

¹¹⁹ Chemsain Konsultant Sdn Bhd, *Environmental and Social Impact Assessment (ESIA) Study for the Proposed Baleh – Mapai 500 kV Transmission Line Project*.

EIA or Environmental and Social Impact Assessment (hereafter referred to as 'ESIA') for the prescribed activities must be submitted to NREB prior to the commencement of the development project.¹²⁰

The issue of logging is not new in Sarawak. The community has raised many complaints relating to this. In December 2018, an SIA report was prepared based on the green economy concept at logging and oil palm operations in the Sungai Katibas area. The green concept can be classified as an operation that uses fewer resources, produces low carbon dioxide, and is socially inclusive. However, there is an Iban longhouse community near the river, and the SIA study played a vital role in countering the disproportionate impact.¹²¹

The green concept is ideal for contributing to economic growth and enhancing the ecosystem.¹²² However, the community's well-being must also be prioritised in this scenario. In the beginning, the SIA study analysed the prediction or impact that might be affected the 92 longhouses of the Iban community in the first round. It measured the social changes before and after the implementation of that concept. Undeniably, there was a challenge during community engagement in the second round as not all residents stay there at that time. They only come during special occasions and events. Some of them were also reluctant to give details about the study area. The aspect of transportation also contributes to this difficulty.¹²³

¹²⁰ Ibid., ES1.

¹²¹ World Wildlife Fund, "Social Impact Assessment of Implementing Green Economy Concepts at Logging and Oil Palm Operations within the Song-Katibas Area WWF-Malaysia Project Report (Project Code : BM010201-907-INTL)", (2018), ES-1-2.

¹²² Ibid., ES-2.

¹²³ Ibid., ES-3.

Despite that, the leaders of the 18 longhouses were accountable for supplying the data. The data indicates that logging and oil palm operations improve accessibility and create job opportunities for the community. However, some negative impacts have frightened the community, such as low productivity activity that leads to low income, river pollution and reduction of the water level and river resources. A management plan has been proposed to mitigate the potential adverse effects of this development. Amongst the strategies are using technology in improving the productivity of operations and initiative of finance, charging penalties to the polluters, efficient system in waste industrial and others.¹²⁴ A monitoring programme also has been set up as a check and balance for the mitigation plan.

In September 2021, the consultant Chemsain Konsultant Sdn Bhd prepared a comprehensive ESIA report on Baleh-Mapai 500 kV Transmission Line Project (hereafter referred to as 'BMTLP').¹²⁵ The project proponent, Sarawak Energy Berhad, planned to transmit and transform the energy from Baleh Hydroelectric Project to the Mapai Substation. This development is required to prepare ESIA as listed under Item Seven of the prescribed activities of the NREO. The proposed development was estimated to affect the resource use by the community. The assessment study shows that there would be a minor impact such as increment of soil loss, deterioration of water quality, dust and air pollution, noise and others.

Engagement with stakeholders was made to indicate the environmental and social issues arising from that development. A mitigation plan was produced to counter

¹²⁴ Ibid., C7-4.

¹²⁵ Chemsain Konsultant Sdn Bhd, Environmental and Social Impact Assessment (ESIA) Study for the Proposed Baleh – Mapai 500 kV Transmission Line Project, ES-1.

these adverse effects. Measurement on site clearance, soil erosion, site management to reduce dust and various relevant methods were outlined. Therefore, the ESIA report is significant in creating a resilient development, especially for affected communities nearby.

4.4.4 Overall Analysis

Sabah and Sarawak have different legislation to implement SIA compared to the law governing West Malaysia, which is not bound by Act 172.¹²⁶ Both states implement SIA through the EIA framework.

For Sabah, the SIA implementation is based on the EIA framework, under the Environmental Protection Enactment 2002. An example of a case study is in Nuluhan Trusmadi Forest Reserve and Sungai Kiluyu Forest Reserve, preparing the SIA report in a simple and understandable form.¹²⁷ It can be seen in another case study, Sugut Conservation Area, in 2018.¹²⁸ The SIA process, such as social baseline study, mitigation, public participation, and others, is carried out along with the preparation of the report.

The SIA implementation in Sarawak is quite similar to Sabah. It is based on the Sarawak Natural Resources and Environment Ordinance. It also has NREO and rules to govern the proposed development's environment, natural resources, and social

¹²⁶ Ainul Jaria, 140.

¹²⁷ Awangku Effendy, 10.

¹²⁸ HR, 5.

considerations. Both examples, such as the proposed development in Sungai Katibas and Baleh, show that Sarawak actively participates in SIA implementation, even in amalgamation with EIA.

4.5 CATEGORIES OF SIA

4.5.1 Introduction

Social impact has a significant effect that can be estimated as a direct impact. It needs comprehensive mitigation measures and effective management through the SIA report. Furthermore, SIA consists of three categories in Malaysia: Category 1, Category 2, and Category 3. The development projects under these categories are different natures. SIA Categories 1 and 2 have more impact on the nation and are subject directly to PLANMalaysia (Federal), while most SIA Category 3 projects are within the state boundaries, thus, it is making them subject to State Authorities. The Manual provided by PLANMalaysia (Federal) has prescribed the details of categories.

4.5.2 Category 1

SIA Category 1 comprises development projects like any coastal reclamation, excluding reclamation for the construction of a jetty or beach rehabilitation and any structure of major national infrastructure. The scale of these developments is massive

as they involve the national level. It has been stated clearly through section 20B of Act 172.¹²⁹

The SIA report under this category needs advice from the Council during the submission of the development proposal report.¹³⁰ This provision has been supported by the Act 172 Implementation Guidelines,¹³¹ consisting of the checklist that mentions the requirement of review for the SIA report during the project application submission.¹³²

Furthermore, the Manual has specifically listed the development projects for this category. The project proponents may refer to the list as a reference to determine their category of SIA.

Table 4.3 List of Development Projects for SIA Category 1

No	Category	Type of Development	Characteristic of Development
1.	Coastal reclamation		
	a. Coastal reclamation	Coastal reclamation, including the artificial island.	<ul style="list-style-type: none"> • 50 hectares or more. • Excluding reclamation for the construction of a jetty or beach rehabilitation (Department of Irrigation and Drainage).
2.	Major national infrastructure		
	a. Airport	<ul style="list-style-type: none"> i) International airport; ii) Domestic airport; and iii) Military air base. 	<ul style="list-style-type: none"> • Involve passengers and cargo; and • Involve upgrade and broader the area by more than 50% or constructing a new airport runway, involving land acquisition.

¹²⁹ Town and Country Planning (Amendment) Act 2017, (Act A1522), s 20B (1) (a) and (b).

¹³⁰ Town and Country Planning (Amendment) Act 2017, (Act A1522), s 20B (2).

¹³¹ PLANMalaysia (Jabatan Perancangan Bandar dan Desa), Panduan Pelaksanaan Akta 172 (PPA 14), "Permohonan Cadangan Pemajuan di bawah seksyen 20B", (November, 2017), 4.

¹³² PLANMalaysia Selangor, Guideline Processing SIA Report Selangor State Level, (Selangor: PLANMalaysia Selangor, 2nd edn., 2020), 8.

No	Category	Type of Development	Characteristic of Development
	b. Seaport	i) National port; ii) Province's port; iii) State port – boundaries of state; and iv) Navy base.	<ul style="list-style-type: none"> • Involve passengers and cargo; • Involve upgrade and broadening of the area by more than 50%; and • Not involve jetty, fisherman, Malaysian Maritime Enforcement Agency, or marine police.
	c. Land port	Land port.	<ul style="list-style-type: none"> • All land ports; and • Involve upgrades and broader the area by more than 50%.
	d. Railway station	Railway station.	<ul style="list-style-type: none"> • Involve passengers and loads; • Involve speed train, train between the towns; • Involve railway across two states or more; and • Upgrade new railway, which involves land acquisition.
	e. Highway	i) Expressway; and ii) Highway.	<ul style="list-style-type: none"> • Expressway and highway as classified by the Malaysian Public Works Department and Malaysian Highway Authority; • Highway across two states (including Federal Territory) or more; and • Involve upgrade project, which involves land acquisition.
	f. Power station	The power station and plants.	<ul style="list-style-type: none"> • All plants and nuclear power stations; • Plants and power stations that outsource power to two states or more (including solar or wind farms); and • Involve upgrade project, which involves land acquisition.
	g. Dam	i) Dam; ii) Hydroelectric dam; and iii) Irrigation dam.	<ul style="list-style-type: none"> • Involve dam construction or reservoir with an area of 100 hectares or more; and • Upgrade project for a dam with an area exceeding 50% existing area, which involves land acquisition.
	h. Hazardous waste disposal site	The hazardous waste disposal site	<ul style="list-style-type: none"> • All hazardous waste disposal sites; and • Upgrade project for a dam with an area exceeding 50% existing area, which involves land acquisition.
3.	Other major national infrastructure		
	<ul style="list-style-type: none"> • Will be determined by Council from time to time, focussing on the following: <ul style="list-style-type: none"> ○ Infrastructure across two states or more; and ○ Infrastructure involves community catchment in two states or more. 		

Source: (Manual,2018)

4.5.3 Category 2

SIA Category 2 consists of the development projects under section 22(2A) of Act 172. This category also needs to seek advice from the Council. Since the projects are considered colossal scale and have a higher impact, the project proponents must prepare the SIA report. SPC has to submit the development proposal and SIA report to the Council.

Table 4.4 List of Development Projects for SIA Category 2

No	Type of Development	Characteristic of Development
1.	New township	
	a. New township	<ul style="list-style-type: none"> • Area of more than 100 hectares or population exceeding 10,000; and • Relocation of the existing community.
2.	Major national infrastructure	
	a. Airport (involve private short take-off landing ports (STOLports))	<ul style="list-style-type: none"> • Major infrastructure other than SIA Category 1; and • Proposed infrastructure in sensitive receptors that have a high social impact.
	b. Seaport (involve private container terminal)	
	c. Railway station and highway (include dedicated rail dan highway)	
	d. Dam and power station	
3.	Development affecting hilltops or hill slopes	
	a. Hilltops or hill slopes	<ul style="list-style-type: none"> • Development under Act 172 Implementation Guidelines: Application Development Proposal under section 22(2A) (c) (PPA 13) involves: <ul style="list-style-type: none"> - Area \geq 20 hectares; - Development area is an area with more than 50% slope 25°; and - Development proposal with a high density of \geq 40 units per acre (100 units per hectare) for housing proposal and \geq 1:4 plot ratio for business.

Source: (Manual,2018)

4.5.4 Category 3

SIA Category 3 differs from SIA Category 1 and 2 as it is not mentioned in Act 172. It involves all the projects determined by the State Authorities or LPA at the state level. They may update the list of projects from time to time. Furthermore, there is no fixed project for this category, and the Manual merely states the example of the developments. Generally, the State Authority will require the SIA report for higher impact projects, which is insufficient for submitting a development proposal report only.

Table 4.5 List of Development Projects for SIA Category 3

No	Category	Type of Development	Characteristic of Development
1.	Night Club / Theme Park/ Casino with massive scale	i) Night Club; ii) Theme Park; and iii) Casino.	<ul style="list-style-type: none"> • New construction includes a project with a sensitive scale toward society around; and • A potential risk will affect life quality and other impacts on the settlement area.
2.	Cemetery area /Crematorium /Columbarium	i) All types of cemetery (depend on race); ii) All types of crematoriums; dan iii) All types of Columbarium.	<ul style="list-style-type: none"> • Cemetery area with a vast scale that affects social sensitivity; • A potential risk will affect life quality, community unity, and other impacts on the settlement area; and • Columbarium of any size.
3.	Mining (Depends on the local government that imposes planning permission)	i) All types of mining; ii) Includes all types of stone fragments; iii) Quarry; iv) Mineral dredging; and v) Sand dredging.	<ul style="list-style-type: none"> • A potential risk will affect life quality, safety, and other impacts on the settlement area.
4.	Main industry area	All types of industrial areas with colossal scale.	<ul style="list-style-type: none"> • A potential risk will affect life quality, safety, and other impacts on the settlement area;

No	Category	Type of Development	Characteristic of Development
			<ul style="list-style-type: none"> • Create economic impact and material welfare to the community; and • Affect implication to the property value nearby.
5.	Aquaculture project / Livestock with huge scale	i) Aquaculture; and ii) Livestock that needs planning permission.	<ul style="list-style-type: none"> • A potential risk will affect life quality, safety, pollution, and other impacts on the settlement area. • Affect surrounding value/ aesthetic value; and • Increase the burden of physical infrastructure and affect settlements nearby.
6.	Plant and Oil and Gas Filtration Centre	Oil and Gas Filtration.	<ul style="list-style-type: none"> • A potential risk will affect life quality and safety, like smoke emissions, explosions, and oil leaks in the settlement area.
7.	Incinerator and solid waste disposal site	i) Incinerator; and ii) Solid waste disposal site.	<ul style="list-style-type: none"> • Include catchment of two states or more; and • A potential risk will affect life quality, safety, pollution like odour pollution, and other impacts on the settlement area.
8.	Other development projects that the State Authorities and LPA determine from time to time.		

Source: (Manual,2018)

4.6 PROCESS OF SOCIAL IMPACT ASSESSMENT

4.6.1 Preparation of SIA report

There are three primary levels for the implementation of SIA. It starts with preparing the report in six stages, screening, scoping, baseline study, impact projection and evaluation, mitigation, and SIMP. Project proponents will submit the development proposal and SIA report through these six stages. Then, it continues with monitoring by

the respective governmental agencies, evaluation, and audit phase. The duration of the process is not fixed, and it depends on each development project application.

4.6.1.1 Screening

Screening is the first important step in preparing the SIA report. This stage is new as the process merely comprises the primary phases of scoping, profiling, formulation of alternatives, projection, and others before this.¹³³ The purpose of screening is to determine the requirement of the SIA report for a development project. This stage is crucial to clarify the category of SIA, either to put it under SIA Category 1,2 or 3.

4.6.1.2 Scoping

Scoping is an early process to determine the issue related to the development area. Several objectives of this stage include recognising the problem that needs to be controlled, identifying the main stakeholders involved, and connecting with the relevant methodology under this study.

Generally, SIA is a process of analysing, managing, and monitoring the social impact, either positive or negative. Based on this definition, it is significant to recognise the scope of the issue and social changes that might arise in each development project. Social impact refers to the actual effects that society will face in the form of perception

¹³³ Ministry of Women, Family and Community Development, "Social Impact Assessment Handbook of Malaysia", (2002): 21-27.

or physical, either individually or according to the level of the community. However, there are specific issues like the increment of the district, relocation, and other changes. It happens without being influenced by the local context. These changes will also produce a social impact on society, depending on the features of local social and mitigation measures.

A planned development project should produce social changes aligned with the government's policy and objectives. Van Schooten has analysed the variables for social impact and social changes for development projects.¹³⁴ There is no static variable for social impact. However, a general list has been released as scoping reference for preparing the SIA report. The variables are health and social well-being, liveability, economic implications and material welfare, cultural and historical, family and community, law, politics, and equity.

The variables of the social change process are also crucial in preparing the SIA report. It is an indicative list and needs to be completed. It is difficult to predict the social changes and their influences in a new era and technology. Demography, economy, geography, emancipatory and empowerment, and socio-culture are examples of variables.

Moreover, a community profile involves analysing stakeholders needed to trace the affected society by the development project. It involved three groups: affected groups, interest groups, and authority.

¹³⁴ M. Van Schooten, Frank Vanclay and Roel Slootweg, "Conceptualizing Social Change Processes and Social Impacts". *The International Handbook of Social Impact Assessment: Conceptual and Methodological Advances*, (2003):74-91.

4.6.1.3 Baseline study

This stage involves the data collection for social issue areas of the community, either in the form of quantitative or qualitative. The use of data can be from a primary source through a base study or existing data from a secondary source. The baseline data is vital as a reference to analyse the impact and compare the prediction of social changes of the development projects.

The valuable baseline data will be used to draft mitigation strategies and the continuous phase. This level also involves building a community profile from the perspective of community value, culture, and community acceptance of the development project.

4.6.1.4 Impact projection and evaluation

After determining the positive and negative social impact in the scoping process and having baseline data, the next stage is making impact projections from the development project. Clark defined impact as a portion of the total outcome that happened from the activity of an organisation.¹³⁵

The impact value chain concept has been applied to differentiate between the impact and the output or outcome. The effect is dissimilar to the output. For example,

¹³⁵ Clark, C and et al, Double Bottom Line Project Report: Assessing Social Impact in Double Bottom Line Ventures. *Methods Catalog* (2004), 10.

the impact is related to the consumer, while the output is related to the one preparing the product, activity, or service. The impact within this context includes the predictable and unpredictable positive or negative effects in the short and long term. The impact produced should be aligned with the social mission of the government. This stage is very crucial in the SIA study. It involves three steps, determining, predicting, and evaluating the impact.

4.6.1.5 Mitigation

According to Barrow, SIA is an approval mechanism to determine whether the development project should proceed and what conditions should be applied.¹³⁶ It is not merely forecasting the impacts but also identifying ways to mitigate the potential conflicts. This level involves making a strategy to reduce the adverse effects of the development project. There are several options, such as avoiding the impact entirely, reducing the impact at certain parts, and paying compensation for the affected or unavoidable effects.

It will consider several factors within this process. The focus of mitigation is to avoid the negative impact, and it needs to seek consent from the community. This effort should be aligned with the objective of social community development and socio-economy policy to ensure effective mitigation measures.

¹³⁶ C.J. Barrow, *Social Impact Assessment: An Introduction*, (London: Arnold, 2000), 230.

4.6.1.6 Social Impact Management Plan (SIMP)

SIMP should clearly identify the role and responsibilities for project proponents, governmental agencies and related parties in managing the social impact during the development period. This plan contributes to the study's results, including the community's feedback. It will state the positive and negative effects of the development project, mitigation strategies, and impact management during the phase of construction, operation, and decommissioning, if necessary.

Moreover, the impact must also be categorised according to the high or low level. The cumulative effect is also essential to drafting the SIMP. The stakeholders need to consult with the related parties to prepare the mitigation measures and manage the impacts. SIMP is also one of the methods to monitor the strategies and impact management. The components of SIMP are the desired outcome, key performance indicators (hereafter referred to as 'KPI'), and monitoring. All the KPIs are necessarily aligned with the policy and strategy of the government. It should be informative, relevant, measurable, understandable, and established. For projects with a high impact, a specific period is needed for mitigation.

4.6.1.7 Monitoring

After preparing the SIA report and obtaining approval, the next phase relates to the monitoring process. This phase aims to ensure that the proponents will fulfil SIMP. The

governmental agencies¹³⁷ will conduct regular monitoring at the construction and operation stage to assess the progress of SIMP and the effect of the execution. The monitoring stage will ensure that the mitigation measures are aligned with the proposal in the SIMP. SIMP states the responsible agency that will monitor progress and the suitable duration.



¹³⁷ The governmental agencies here refer to any relevant agency according to the period of monitoring stage. PLANMalaysia, Public Works Department, Land Office and others are among the agencies.

4.6.1.8 Evaluation and Auditing

After a certain period of operation, the evaluation and auditing process must be conducted to complete SIA implementation. It is to ensure the best outcome of the SIA report. This level involves evaluating the mitigation measures outlined and the actions to be taken by the project proponents. The auditing process requires a qualified third party appointed by project proponents to comply with the SIMP holistically.

There are two types of evaluator panels from the federal and state levels. Usually, the panels consist of several agencies, State Authorities, LPA, experts from the Malaysian Institute of Planners (hereafter referred to as ‘MIP’), Malaysian Association of Social Impact Assessment (hereafter referred to as ‘MSIA’), and academicians. The Director-General of PLANMalaysia (Federal) will chair the evaluation part at the national level for projects under SIA Category 1 and 2. In contrast, the State Authority will handle the state level for SIA Category 3.

In addition, the function of evaluator panels is to approve the SIA report, either by approving fully, approving the amendment or rejecting the report. They need to give their expert input to improve the report and ensure the effective submission of SIMP and that the report's content complies with the Manual.

4.6.2 Public Participation

SIA is one of the effective engagements of affected communities in participatory processes of identification, assessment, and management of social impacts. Engagement between the community and the stakeholders is essential in analysing the implications, drafting the social development and mitigation measures, and managing social impact through the SIA study.

The effectiveness of SIA depends on the community's participation through interaction and dialogue as input to influence the decision-making process. There is a legal provision related to public involvement in preparing the plans through section 9, section 12A and section 13 of Act 172. Section 9 states the requirement of publicity during the preparation of the structure plan.¹³⁸ The State Director shall publish the plan draft at least in two local newspapers to secure input and feedback from the public.¹³⁹ Section 12A and section 13 require LPA to implement publicity procedures during the local plan preparation.¹⁴⁰ Even though these provisions are not explicitly mentioned in the SIA process, the publicity process is a part of planning law. This procedure can be utilised as input for SIA.¹⁴¹

A principle through the case of *Mohamad Yusof Bin A Bakar & Anor v. Datuk Bandar Kuala Lumpur*¹⁴² is where the Court held that members of the public are entitled to obtain a copy of the technical reports as follows;

¹³⁸ Town and Country Planning Act 1976, (Act 172), s 9(1).

¹³⁹ Town and Country Planning Act 1976, (Act 172), s 9(2).

¹⁴⁰ Town and Country Planning Act 1976, (Act 172), s 12A and 13.

¹⁴¹ Town and Country Planning Act 1976, (Act 172), s 9, s12A and 13.

¹⁴² *Mohamad Yusof bin A Bakar & Anor v Datuk Bandar Kuala Lumpur* [2019] MLJU 1098, no. 1 (2021): 0–8.

- a) The proposed development report
- b) Traffic assessment report
- c) Social impact report
- d) Any other related reports.

In this case, the respondent applied for planning permission for a proposed development in Taman Tiara Titiwangsa. The applicants, adjoining landowners, met with the representatives of the respondent to obtain further particulars and reports of the proposed development as the proposed project was near their properties. The respondent did not furnish the technical reports, including SIA, as requested. The Federal Court dismissed the appeal by DBKL and upheld the decision of the Court of Appeal that the residents were entitled to have access to the technical reports to prepare for their objections during the public hearing. This case highlights the significance of public participation in the decision-making process for preparing the SIA report. The response and data gathered from the Taman Tiara Titiwangsa community are valuable for informing the development of mitigation measures in the proposed project. Negotiation with the community will contribute to understanding the value and experience among stakeholders and the community. They may ascertain the available data, assist in resolving the conflict, and avoid any objection to the proposed project.

It proves that SIA can guarantee the community's right to be involved in decision-making toward development projects. Empowerment and social inclusivity have been absorbed into society, especially the minority group.

Furthermore, the project proponents must identify the methods of public participation, either in qualitative or quantitative form. Five techniques can be applied during the engagement with society, and the combination of approaches will be more effective. The methods include FGD, workshops, public forums, interviews, and surveys.

FGD is verbal interaction with the community in preparing SIA. It is a qualitative approach to gaining a specific view of certain things using the in-depth questioning guide. Society may understand their situation and voice opinions about the proposed project. All the verbal data from FGD need to be recorded for data analysis. Qualitative methods, such as thematic analysis or framework techniques, can produce practical analysis.

Usually, an experienced moderator will lead the FGD session with around eight to twelve participants who actively contribute to the discussion. This group will consist of various criteria and areas that represent the stakeholders.

Besides that, the following technique is a workshop. It is a process of presenting, discussing, and debating matters relating to the proposed development. The specific recommendations will support the discussion. This medium's ideal number of participants is between twenty and fifty persons. All the data gained from the workshop are qualitative in the form of verbal and need to be analysed using the appropriate method.

The public forum is one of the information providers involving a large-scale community and is not limited to the host community. The exhibition in the forum will explain the proposed project, and the participants can also give their specific feedback. This approach may produce the critical issue related and share the view of community support to the development project.

The interview technique is more flexible and informal for the host community to give their opinions on the development project. This technique can gauge the acceptability of the development project to the affected community.¹⁴³ Social acceptability is essential for project proponents as they demand better quality of life. Semi-structured interviews and open-ended questions will produce an effective result.

The last technique is a survey. It is a systematic approach to collecting the perception and opinions toward issues that arose from the proposed project. It can be used to summarise the demography profile of a community. A particular sample framework for a survey should be based on accurate statistics. The sample size needs to consider at least a 95% of confidence level and a 5% margin or error based on the suggestion of any statistical schedule. Post, telephone calls, face-to-face interviews, and online surveys are among the types of surveys. The collected data will be analysed using the quantitative method, such as frequency, cross-tabulation, and correlation.

¹⁴³ Halimah Hassan, "Social Impact Assessment (SIA) in the Context of Environmental Impact Assessment (EIA): Malaysian Practice" in *Social Impact Assessment in Malaysia*, edited by Asmah Ahmad, Dahlia Rosly, Kamalruddin Shamsudin and Susheel Kaur. (Selangor: Malaysian Association of Social Impact Assessment (MSIA),2009),36.

Moreover, any SIA consultant must follow the report's format, which compromises all the stages mentioned above in the preparation process of the SIA report. Ideally, the SIA report should have an introduction, project background, research methodology, mitigation measures, SIMP, and conclusion. The Selangor Guidelines also has attached the checklist of applications for the SIA report.¹⁴⁴ They may refer to that list to prepare an excellent report for their development project.

Thus, in the researcher's opinion, it indicates that it is not necessarily the role of the LPA only in development planning, but public involvement is also significant. Any development proposal should reflect the interest of the community affected, and it will produce a healthy cycle of development worldwide.

4.7 JUDICIAL AND PLANNING APPEAL DECISIONS ON SIA

Case law reports and judicial decisions are primary sources of the law. It is a law that judges and courts interpret and decide.¹⁴⁵ The Appeal Board is an established dispute resolution mechanism under Act 172, such as an inferior tribunal and performs a quasi-judicial function.¹⁴⁶ If any person feels aggrieved with the decision of the LPA, that person may appeal to the Appeal Board pursuant to section 23.¹⁴⁷ Section 36(10) lists

¹⁴⁴ PLANMalaysia Selangor, "Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Peringkat Negeri Selangor", no. November (2020), 20-23.

¹⁴⁵ University of Strathclyde Glasgow, "Case law", < https://guides.lib.strath.ac.uk/case_law > (accessed 11 December, 2022).

¹⁴⁶ Official Portal of PLANMalaysia@Penang, "Function of Appeal Board", < <https://jpbid.penang.gov.my/index.php/webmail/fungsi> > (accessed 03 May, 2023).

¹⁴⁷ Ainul Jaria Maidin, "The Dispute Resolution Mechanism in the Town and Country Planning System in Malaysia: An Analysis and Suggestions for Reform", (2016): 2.

down the duties of the board, which are to hear the appellant and LPA, summon and examine witnesses, require any person to bind himself by an oath to state the truth, compel the production and delivery of any relevant document to the appeal, confirm, vary or reverse the order or decision appealed against, award costs and make order whether provided or not provided by Act 172.¹⁴⁸ According to section 36(13), any decision by the Appeal Board is final and cannot be brought to the court of law.¹⁴⁹

There are cases relating to the SIA and these cases have been decided by the Appeal Board as well as some judicial review type of cases has gone to the court. The cases are discussed below.

a) *Blumenthal Realty Sdn Bhd & Ors v Majlis Perbandaran Ampang Jaya (MPAJ) & Malaysian Assurance Alliance Bhd (MAA)*¹⁵⁰

- **Facts of the case:**

MPAJ, as respondent, had approved the planning permission to MAA in *Mesyuarat Penuh Majlis Bil 13/07* on 31 December 2007. The respondent rejected the appellant's objection through Form B on 18 March 2008. This appeal is on the MPAJ's decision that approved the permission, such as C1, to MAA for the development of 149 bungalows lot units and 460 shop units (office 10 levels and parking 5 levels) on lot 1680 and 1681 (Lot PT

¹⁴⁸ Town and Country Planning Act 1976, (Act 172), s 36 (10).

¹⁴⁹ Town and Country Planning Act 1976, (Act 172), s 36 (13).

¹⁵⁰ *Blumenthal Realty Sdn Bhd & Ors v Majlis Perbandaran Ampang Jaya (MPAJ) & Malaysian Assurance Alliance Bhd (MAA)* Appeal No: Sel. (83-85) MPAJ (07-09)/08(1).

14250 HS (D) 24220) and lot 530 and 531 (Lot PT 14251) HS (M) 10339
Jalan Hulu Kelang, District of Gombak, Selangor.

The reason of appeal is the development proposal report (DPR) does not state the land use analysis and development effect on the neighbouring land, particularly the environmental impact. This is non-compliance with the required procedures when submitting a DPR as provided under section 21A (1) of Act 172. The Topography Guidelines also state the requirement for EIA for hilly areas with a slope between 12-25 degrees, which was not followed. The Appellant suggested that the MAA conduct research on the soil's geology to ensure a more friendly development nature.

The appellant also gave reasons that the development that MAA will carry out will invite various problems such as traffic congestion, noise pollution and air pollution because of the development activities carried out. The other reason is that it would disturb the surrounding ecological system, following the failure of the MPAJ to ensure that the MAA would have an obligation to maintain the existing water bodies and streams when carrying out the proposed development. In addition, the appellant also claimed that the development would threaten the sloping area. This will create a problem when an emergency, such as a fire, where difficulties will be faced for vehicles of fire and rescue forces to move.

- **Issue:**

Does the local government have the power to make exemptions without reference to the relevant provisions and guidelines?

- **Application of Principles:**

The development planning control has already been provided under the planning law, in which every development must comply with the Structure Plan.

When there is a statutory rule or guideline, discretion mode cannot be used unless the provision is not clear. Discretion can also only be used if the power is provided by law or existing guidelines.

- **Decision:**

Based on the evidence presented, the Selangor Appeal Board found that the MPAJ did not comply with the procedures provided for under Act 172, the Planning Control Method (General) (Selangor) 2001 and established guidelines. Some mandatory procedures were ignored when approving the planning permission to MAA on 17 March 2008. Therefore, the Board allowed the appeal of the Appellant and the planning permission application was rejected.

b) *Lee Wan Nam v Majlis Perbandaran Subang Jaya (MPSJ) & Tetuan TM Facilities Sdn Bhd. & Tetuan Pujangga Budiman*¹⁵¹

¹⁵¹ *Lee Wan Nam v Majlis Perbandaran Subang Jaya & Tetuan TM Facilities Sdn Bhd. (Pencelah) & Tetuan Pujangga Budiman*. Appeal No: LR.SEL. (109) MPSJ/03/2009.

- **Facts of the case:**

The appellant, a resident of 9, Jalan USJ 6/4A, UEP Subang Jaya, Subang Jaya, is eligible to object to the planning permission in the area. He was upset with the decision of the MPSJ to allow permission of development on 1 block (9 levels of office and 2 levels of parking), lot 22395, Persiaran Perpaduan, USJ 6, Subang Jaya, Damansara, Petaling, Selangor to TM Facilities and Pujangga Budiman.

Among the objections from residents of the USJ 6 housing area are:

- (i) The development will cause road congestion and endanger residents, especially children and the elderly;
- (ii) Development will cause air pollution from car and lorry smoke and noise from air conditioners and others; and
- (iii) The privacy rights of USJ 6 residents will be disrupted.

After the Objection Hearing and the OSC Committee meeting, the respondent raised this matter for consideration by the Selangor State Planning Committee to get a decision on whether the Telekom reserve can be developed for commercial (office) buildings.

- **Issue:**

Whether the MPSJ meeting has a particular check on the application, as the Traffic Impact Assessment (TIA) was not strictly presented to the committee meeting?

- **Application of Principles:**

TIA is not a procedural requirement to make a decision in relation to the development of a place. If the TIA is not even presented, it cannot invalidate the decision that has been made. However, the authority gives conditions to ensure the improvement of the traffic.

- **Decision:**

The Appeal Board rejected the appeal with some conditions.

c) *BU Developments Sdn Bhd v Selangor Appeal Board & Ors*¹⁵²

- **Facts of the case:**

The applicant is the registered owner of the land. The second respondent is the registered owner of the land adjacent to the applicant's land. The applicant's land is connected to the MRR2.

¹⁵² *BU Developments Sdn Bhd v Selangor Appeal Board & Ors* [2014] 8 MLJ 539.

The applicant has submitted to the third respondent one application to develop the applicant's land. The application includes a TIA Report and a Geotechnical Report, and the Local Service Center of the Ampang Jaya Municipal Council processes it. The Council submitted their comments to all relevant departments and agencies on any objections. The applicant obtains approval from all concerned.

While the planning permission application for the applicant was being processed, the Council prepared a draft of the local plan for the public for any objections, if any. The second respondent has objected to the proposed development. After hearing the objection, the third respondent approved the applicant's application for planning permission. Being dissatisfied with the third respondent's decision, the second respondent filed an appeal against the Selangor Appeal Board.

Ms Hajjah Norasiah bt Yahya (a member of the board who heard the appeal) raised the issue that the DPR submitted for the proposed development did not comply with the requirements of Act 172 (Section 21A & 21B). The board allowed the second respondent's appeal and set aside the planning permission. The Board also raised the issue that the applicant's TIA Report was incomplete. Hence this application is for review regarding the board's decision.

The application for reconsideration is based on the following grounds:

(i) That the board went to great lengths to find reasons for that purpose to allow the second respondent's appeal;

(ii) That the board itself has raised issues that the second respondent did not;

(iii) That the board without any reasonable excuse failed to take into account the explanations given by the applicant's experts; and

(iv) That the board has acted in a way that gives the impression or presumption that the appeal before the board is an appeal or dispute between the board on one side and the third respondent on the other.

- **Issue:**

(i) Whether is there an element of bias from the Selangor Appeal Board?

(ii) Whether the Selangor Appeal Board made a mistake in the exercise of jurisdiction?

(iii) Whether the Selangor Appeal Board erred on the facts and the law?

- **Application of Principles:**

The Selangor Appeals Board has touched on matters outside its scope of duties and functions as an appeal body so that its bias towards a certain party is clear.

The decision of the Selangor Appeals Board is riddled with invalidity due to mistakes in the law. The board has also exceeded its

jurisdiction by asking for things it shouldn't. There are serious errors of fact and law on the basis of the decision, resulting in an unreasonable decision.

- **Decision:**

The decision of the board is rejected.

d) *Shahrizal bin Sabri & Ors v Majlis Perbandaran Seberang Perai*¹⁵³

- **Facts of the case:**

An appeal was made under section 23(1)(b) of Act 172 by a group of home buyers or local residents in Taman Merbau Indah, Sungai Dua, Butterworth. The respondent had previously obtained one planning permission to develop a housing development project. The respondent wants to make changes to a part of the Planning Proposal that has not yet been developed, the respondent has applied for new planning permission. Therefore, a notice was sent to the neighbours of the land.

¹⁵³ *Shahrizal bin Sabri & Ors v Majlis Perbandaran Seberang Perai* [2010] MLJU 2164.

Following that, the respondent (neighbour) objected to the proposed amendment. Among their objections are:

- (i) Interference with air flow;
- (ii) Privacy issues;
- (iii) The developer failed to obtain the necessary comments from the relevant department;
- (iv) The developer failed to comply with section 21A (1A) because no SIA had been carried out.

- **Application of Principles:**

In order to proceed with the appeal at the Appeal Board, the allegations by the appellant must be substantiated, and evidence must also be presented. The appellant cannot claim without evidence that the respondent has failed to fulfil all the terms and conditions of the application and expect the respondent to prove that they have complied with all the terms and provisions in the Act. The Board of Appeal sees this as an abuse of process.

- **Decision:**

In relation to the objection of non-compliance with section 21 A(1A), the appellant's counsel has failed to elaborate on the allegations and has also failed to provide any evidence that non-compliance has occurred. The lawyer has also failed to show how the provision relates to this case. Therefore, the Board of Appeal decided not to consider this objection. Appeal dismissed.

- **Observation:**

If the appellant objects to the planning permission because of not fulfilling the SIA requirement, the appellant must provide proof and justification of the relation between the provision and the fact of the case. Without this, the Appeal Board will not consider whether section 21A (1A) is fulfilled.

e) *Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and Another Appeal*¹⁵⁴

- **Facts of the case:**

Sunway City is a registered subject landowner and housing project developer. The proposed development on hill land has been granted planning permission. However, Appeal Board set aside that approval by application of Appellants. Sunway filed a judicial review in High Court and succeeded.

The Appellants appealed to the Court of Appeal and the court affirmed with High Court's decision. Then, Appellants appealed to the Federal Court.

¹⁵⁴ *Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and Another Appeal* [2023] 3 MLRA 44.

- **Issue:**

(i) Whether the LPA exercised its power within the purview of Act 172 through section 22 which deals with the grant or refusal of planning approval?

(ii) Whether the court is only permitted to look at the decision in isolation or permitted to consider the entirety of the approval process leading up to the final decision?

- **Application of Principles:**

(i) The validity of a directive issued by the SPC must be derived from the purview of Act 172 that will be utilised by the LPA in deciding on planning approval.

(ii) SPC has no right to issue directives based on the repealed zoning plan (*Pelan Dasar*).

- **Decision:**

The LPA's approval of Sunway's application for planning permission is ultra vires and void. The High Court and Court of Appeal erred in law for upholding the decision approved by the local authority.

- **Observation:**

Due to the conflict of approval in the planning process, the amended section 10 of Act 172 was referred to as the role of Council in the decision-making process. Section 22(2A) (c) also states that the SPC must consult with the Council for

direction and advice for development affecting hill tops or hill slopes. This type of development falls under SIA Category 2.

Based on the case discussions above, the role of the court and Appeal Board is very crucial in protecting the aggrieved community as well as promoting resilient development in Malaysia. It is strengthened with the planning law through Act 172, which outlined the principles of development such as the compliance of development plans, the role of the Council in assisting the decision-making process, the fulfilment of SIA requirements and others.

4.7.1 Summary of Analysed Cases

Below are the summary cases in court and the Appeal Board related to the non-compliance of SIA and EIA. It indicates principles in considering the non-compliance issue in the development project.

Table 4.6 Summary of Cases on SIA and EIA

Selangor Appeal Board Report	
<i>Blumenthal Realty Sdn Bhd & Ors v Majlis Perbandaran Ampang Jaya (MPAJ) & Malaysian Assurance Alliance Bhd (MAA)</i> ¹⁵⁵	
Application of principles	The development planning control has already been provided under the planning law, in which every development must comply with the Structure Plan.

¹⁵⁵ *Blumenthal Realty Sdn Bhd & Ors v Majlis Perbandaran Ampang Jaya (MPAJ) & Malaysian Assurance Alliance Bhd (MAA)* Appeal No: Sel. (83-85) MPAJ (07-09)/08(1).

Selangor Appeal Board Report	
	When there is a statutory rule or guideline, discretion mode cannot be used unless the provision is not clear. Discretion can also only be used if the power is provided by law or existing guidelines.
<i>Lee Wan Nam v Majlis Perbandaran Subang Jaya (MPSJ) & Tetuan TM Facilities Sdn Bhd. & Tetuan Pujangga Budiman</i> ¹⁵⁶	
Application of principles	TIA is not a procedural requirement to make a decision in relation to the development of a place. If the TIA is not even presented, it cannot invalidate the decision that has been made. However, the authority gives conditions to ensure the improvement of the traffic.

Selangor Appeal Board Report	
<i>BU Developments Sdn Bhd v Selangor Appeal Board & Ors</i> ¹⁵⁷	
Application of principles	<p>The Selangor Appeals Board has touched on matters outside its scope of duties and functions as an appeal body so that its bias towards a certain party is clear.</p> <p>The decision of the Selangor Appeals Board is riddled with invalidity due to mistakes in the law. The board has also exceeded its jurisdiction by asking for things it shouldn't. There are serious errors of fact and law on the basis of the decision, resulting in an unreasonable decision.</p>
Penang Appeal Board Report	
<i>Shahrizal bin Sabri & Ors v Majlis Perbandaran Seberang Perai</i> ¹⁵⁸	
Application of principles	In order to proceed with the appeal at the Appeal Board, the allegations by the appellant must be substantiated, and evidence must also be presented. The appellant cannot claim without evidence that the respondent has failed to fulfil all the terms and conditions of the application and expect the

¹⁵⁶ *Lee Wan Nam v Majlis Perbandaran Subang Jaya & Tetuan TM Facilities Sdn Bhd. (Pencelah) & Tetuan Pujangga Budiman*. Appeal No: LR.SEL. (109) MPSJ/03/2009.

¹⁵⁷ *BU Developments Sdn Bhd v Selangor Appeal Board & Ors* [2014] 8 MLJ 539.

¹⁵⁸ *Shahrizal bin Sabri & Ors v Majlis Perbandaran Seberang Perai* [2010] MLJU 2164.

	respondent to prove that they have complied with all the terms and provisions in the Act. The Board of Appeal sees this as an abuse of process.
Federal Court of Malaysia	
<i>Perbadanan Pengurusan Sunrise Garden Condominium v Sunway City (Penang) Sdn Bhd & Ors and Another Appeal</i> ¹⁵⁹	
Application of principles	<ul style="list-style-type: none"> The validity of a directive issued by the SPC must be derived from the purview of Act 172 that will be utilised by the LPA in deciding on planning approval. SPC has no right to issue directives based on the repealed zoning plan (<i>Pelan Dasar</i>).

Source: (Researcher's own, 2022-2023)

The SIA framework is essential to assist all the groups involved, such as SIA practitioners, regulatory agencies, developers, financiers, affected people, NGOs and development agencies. The guidelines will improve their skill practise in preparing and evaluating SIA reports. IAIA also strives to collaborate with the industry sector to create policies relevant to their practise.¹⁶⁰ Consequently, the actual practise aligns with the contents of the framework.

¹⁵⁹ *Perbadanan Pengurusan Sunrise Garden Condominium v Sunway City (Penang) Sdn Bhd & Ors and Another Appeal* [2023] 3 MLRA 44.

¹⁶⁰ Frank Vanclay, 10.

4.8 ANALYSIS OF EIA FRAMEWORK UNDER ENVIRONMENTAL QUALITY ACT 1974 (ACT 127)

In Malaysia, the EIA process has primarily been developed to monitor environmental planning for both, new and existing development projects. The mention of EIA policy dates back to the establishment of the Third Malaysian Plan (1976-1980) and was reiterated in the Fifth Malaysia Plan (1986-1990). Pollution control, a long-standing focus in Malaysia, primarily involves corrective measures.¹⁶¹ In contrast, mandated EIA procedures, in effect since 1 April 1988 serve as a preventive tool, aiming to forestall costly mistakes in planning and development.¹⁶² Before initiating any development work, all activities specified in the Environmental Quality (Prescribed Activities) (EIA) (Amendment) Order 2015¹⁶³ must undergo EIA scrutiny.¹⁶⁴

The implementation of EIA primarily falls under Act 127, alongside other regulations and guidelines that are periodically updated by the Department of Environment, Ministry of Natural Resources, Environment and Climate Change.¹⁶⁵ The requirement for an EIA is explicitly stated in section 34A of Act 127, mandating that all project proponents intending to carry out any prescribed activity submit the EIA report to the Director General of Environmental Quality.¹⁶⁶ In addition to the legal

¹⁶¹ R. Hashim S. Yusoff, "A Case Study on an Environmental Impact Assessment in Malaysia", *Transactions on Ecology and the Environment*, vol. 11 (1996): 160–169.

¹⁶² Department of Environment, EIA Procedure and Requirements in Malaysia, 2007.

¹⁶³ Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) (Amendment) Order 2015 has replaced Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1986.

¹⁶⁴ S. Yusoff, A Case Study on an Environmental Impact Assessment in Malaysia.

¹⁶⁵ Nur Atheefa, Sufeena M Suaree and et al, "A Comparative Analysis of the Legal Frameworks For SIA And EIA In Malaysia", *Planning Malaysia Journal*, vol. 21, no. 6 (2023): 87–99.

¹⁶⁶ Environmental Quality Act 1974, (Act 127), s 34A (2).

requirement of EIA preparation, Act 127 also addresses important elements of EIA, such as the enforcement of EIA, which will be explained below. The latest amendment to Act 127, reforming EIA implementation, is the Environmental Quality (Amendment) Act 2012, which firmly regulates the qualifications of the person preparing the EIA and the approval process for the EIA report.¹⁶⁷

Furthermore, the principal guideline of EIA implementation is the Environmental Impact Assessment (EIA) Guidelines in Malaysia, prescribed by the Director General of Environmental Quality. The objective of the guideline is to assist the project proponent and the qualified person (registered consultants under the DOE) in preparing the EIA reports. At the project identification stage, the project proponent is required to appoint registered consultants and engage in consultations with the DOE regarding the proposal.¹⁶⁸

The approval process is not new for EIA reports. According to section 34A (4) of Act A1441, any person intending to carry out any of the prescribed activities must obtain approval of the EIA report from the Director General.¹⁶⁹ The report must be granted by the Director General before proceeding with the development. This requirement is supported by the case of *Kajing Tubek & Ors v Ekran Bhd & Ors (1996)*,¹⁷⁰ where the court said that the approval process is compulsory and any decision made by the Director General that does not align with the procedure is against section

¹⁶⁷ Qualified persons and report approval are among the important elements of EIA implementation.

¹⁶⁸ The Federal Environmental Protection Authority, Environmental Impact Assessment Guideline in Malaysia, (2016).

¹⁶⁹ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34A (4).

¹⁷⁰ *Kajing Tubek & 2 Ors v Ekran Bhd & 4 Ors* [1996] 3 CLJ 96 (High Court).

34A (2C) of Act A1441.¹⁷¹ Section 34A (2C) states that the EIA report must align with the guidelines as the Director-General may prescribe. The report shall contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse effects on the environment.¹⁷²

The Director General also has the power to request another report submission if he believes that the previously submitted report did not align with the prescribed guidelines.¹⁷³ Public participation is one of the statutory processes for the EIA. Section 3(3) of Environmental Quality (Prescribed Activities) (EIA) Order 2015 explicitly states that any activities from the Second Schedule are required for public display and comments.¹⁷⁴ The EIA report must be accessible to the public for thirty days after its announcement. The public has forty-five (45) days to submit their views to the DOE.¹⁷⁵ Recently, DOE has made the EIA report downloadable, making it easier for public reference.¹⁷⁶

Furthermore, the term 'qualified person' has been introduced through section 2 of Act A1441, stating that only individuals who fulfil the requirements, as determined by the Director General, may conduct the environmental audits, EIAs and submit the reports.¹⁷⁷ Thus, any project proponent intending to carry out the prescribed activity

¹⁷¹ See para 3, the decision of James Foong Judge under Kajing Tubek's case, 6.

¹⁷² Environmental Quality (Amendment) Act 2012, (Act A1441), s 34(2C).

¹⁷³ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34A (5).

¹⁷⁴ Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015, s 3(3).

¹⁷⁵ The Federal Environmental Protection Authority, Environmental Impact Assessment Guideline in Malaysia, (2016).

¹⁷⁶ MK, Andrew Ong, "DOE Makes Environmental Impact Reports Downloadable", < <https://m.malaysiakini.com/news/679217/> (accessed 5 November, 2023).

¹⁷⁷ Environmental Quality (Amendment) Act 2012, (Act A1441), s 2.

shall appoint the qualified person as prescribed by the Director General.¹⁷⁸ This qualified person also has duties as stated under section 34A (2B): responsible for preparing reports and recommendations, ensuring the authenticity of the report and taking professional indemnity insurance for any liability arising during the preparation of EIA reports.¹⁷⁹ They must ensure that the report prepared is in accordance with the guidelines prescribed by the Director General.¹⁸⁰ The DOE has committed to providing guidance and a scheme to generate qualified persons aligned with the standards of professional knowledge and skills in the area of EIA. This commitment is illustrated through the Guidance Document on the EIA Consultant Registration Scheme. One of the requirements determined by the Director General is to register under this scheme, after which the DOE will allow the successful applicant to conduct any EIA study.¹⁸¹ This document provides guidance to assist the applicant to assess their eligibility for successful registration and complete the necessary registration requirements.

The enforcement of EIA is stipulated under section 28 of Act 127, wherein any person contravening section 34A is deemed guilty of an offence and is liable to a fine not exceeding five hundred thousand ringgit or imprisonment not exceeding five years.¹⁸² Section 34AA of Act A1441 strengthens the previous provision, empowering the Director General to prohibit any activity carried out without approval and fulfilment of conditions prescribed under section 34A.¹⁸³ This formulation of enforcement strengthens and effectively transforms its mechanisms and procedures for processing

¹⁷⁸ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34(2).

¹⁷⁹ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34(2B)

¹⁸⁰ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34(2C)

¹⁸¹ Malaysia Department of Environment, "Guidance Document on EIA Consultant Registration Scheme", (2019): 1–56.

¹⁸² Environmental Quality Act 1974, (Act 127), s 28.

¹⁸³ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34AA.

EIA reports related to activities listed in the First and Second Schedule of the Environmental Quality (Prescribed Activities) (EIA) Order 2015. Table 4.7 below extracts the aspects related to EIA in Malaysia.

Table 4.7 Overall Analysis of EIA Implementation in Malaysia

Aspect	Implementation of EIA
Minister	Ministry of Natural Resources, Environment and Climate Change
Department	Department of Environment
Acts	Environmental Quality Act 1974, Environmental Quality (Amendment) Act 2012
Order	Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) (Amendment) Order 2015
Guideline	Environmental Impact Assessment (EIA) Guidelines in Malaysia, Guidance Document on EIA Consultant Registration Scheme
EIA process	Ten stages: screening, scoping, baseline study, identification of mitigation, impact assessment & evaluation, EIA report preparation, EIA report review, decision making, project implementation and environmental monitoring and audit.
Qualified person	Person fulfils the requirement as the Director General determined to conduct the environmental audit, EIA and submit the report (Section 2 of Act A1441)

Source: (Researcher's own,2023)

4.9 CONCLUSION

The primary purpose of this chapter is to achieve the first research objective, which is to examine how SIA is implemented in Malaysia. This was done by identifying the

policies and plans that engage with social elements and SIA. Then the current law, through Act 172 and the Manual, has been reviewed to determine the practice of SIA in this country, especially in Peninsular Malaysia. However, Sabah and Sarawak have different legislation for implementing SIA but still refer to the same Manual.

Through an analysis of Act 172 and manuals, this research has found that the existing provisions are inadequate for effective SIA implementation. Based on the interviews with the stakeholders, they are facing problems in preparing, monitoring and auditing the SIA report.

This research has so far identified how SIA has been implemented through the legal framework in Australia and India in Chapter Three and how it has been implemented in Malaysia within this chapter. India operates under a federal system of government, yet it employs a centralised law through the RFCTLARR Act 2013 for the implementation of SIA. Conversely, in Australia, the nature of SIA implementation is decentralised, driven by individual states. Both models from these countries offer potential suitability for adoption in Malaysia. In Australia, aside from legislative Acts, the comprehensive policies and guidelines among states, particularly those from New South Wales, present an efficient blueprint for PLANMalaysia.

The Indian model established by the RFCTLARR Act 2013 is highly systematic, encompassing SIA provisions applicable across all Indian provinces. Replicating this model through the implementation of Act 172 in Malaysia would necessitate the inclusion of necessary provisions to accommodate SIA requirements. The next chapter analyses the legal issues and gaps, mainly through the provisions under Act 172.

CHAPTER 5:

ANALYSIS OF SIA IMPLEMENTATION BY GOVERNMENTAL AGENCIES AND PROJECT PROPONENTS

5.1 INTRODUCTION

The previous chapter examined Malaysia's legal framework and practice. It is undeniable that Malaysia has a legal structure that includes consideration of social impacts in development projects, either in legislation or policies. However, the current SIA implementation needs to be more comprehensive and holistic. Act 172 through section 20B (2) merely requires the preparation of SIA reports for the SIA Category 1¹ and is silent about the other categories. Many issues arise regarding the need for more appropriate procedures and framework of SIA from Act 172 as well as the Manual.

Furthermore, stakeholders like state authorities, LPA, project proponents and consultants continuously face issues in preparing, approving and monitoring SIA. Therefore, this chapter addresses the second research objective: to analyse the legal issues and gaps related to the implementation, enforcement and monitoring of SIA under Act 172. Each issue within this chapter includes all related conflicts raised by the stakeholders. The data from this chapter is significant and was considered when proposing future recommendations in the coming Chapter Six.

¹ Town and Country Planning (Amendment) Act 2017, (Act A1522), s 20B (2).

5.2 EXECUTION OF SIA IS NOT COMPREHENSIVE IN THE STATES IN MALAYSIA

Federal Constitution has several lists under the Ninth Schedule: Federal List, State List and Concurrent List². Town and country planning, except in the federal capital,³ is allocated under the Concurrent List, allowing Parliament and the State Legislative Assembly to make laws for the matters listed there. So long as they are not in conflict with each other, they can exist and operate together to preserve land, develop stability and protect the public interest.

Mujaheed states that Act A1522⁴ applies to Peninsular Malaysia and the Federal Territory of Labuan by state adoption of such amendment through a state gazette.⁵ However, the states have the right either to execute or not SIA. The local authority is the primary government body that has the power to exercise control at the local level in Malaysia. This also results in a lack of uniformity in the administration of town and country planning regulations in the states despite Act 172's stated intention to promote uniformity in the planning legislation in the West Peninsular Malaysian states.⁶

² Federal Constitution, Ninth Schedule.

³ Federal Constitution, Ninth Schedule, Concurrent List, Item 5.

⁴ Town and Country Planning Act (Amendment) 2017, Act 1522

⁵ Mohammad Mujaheed Hassan, "Social Impact Assessment (SIA): A Review of SIA Procedure in Malaysia", *The International Journal of Social Science and Humanities Invention*, vol.5, no.4, (April 2018): 4550-4557.

⁶ Ainul Jaria Maidin and Bashiran Begum Mobarak Ali, "Powers of the Local Authority in Regulating Land Planning and Development Control: Whither Control", *Planning Malaysia Journal*, vol. 7, no. 1 (2009): 133-147.

If the states implement SIA, its procedure can differ because they refer to the states' guidelines or manuals. The state's guidelines or manuals are the references produced by the state government according to the Manual from Federal PLANMalaysia (Federal). Eight states have gazetted Act A1522, including Terengganu, Selangor, Negeri Sembilan, Perak, Kedah, Pahang, Melaka, and Penang. Nonetheless, not all these states have guidelines or manuals at their level except for Selangor, Negeri Sembilan, Kedah, Melaka and Terengganu.⁷

5.2.1 Analysis of SIA Implementation by the States in Peninsular Malaysia

Eight states have implemented Act A1522, as stated above. To implement any Act in the state, it must obtain approval from the State Executive Council (hereafter referred to as 'Exco'). Exco, headed by the chief minister, is responsible in regards to approving and tabling laws in the State Legislative Assembly. Table 5.1 lists down the chronology of application and gazettment of Act A1522, as well as the state manual for those states seeking advice from the Council.

Table 5.1 Application and Gazettment of Act A1522 and State Manual

State \ Element	State Executive Council Approval of Act	Gazettment of Act	Gazettment of State Guideline/Manual
PLANMalaysia (Federal)	-	16 January 2017	-
Selangor	7 March 2018	1 March 2019	2019

⁷ State Manuals.

Negeri Sembilan	14 May 2019	5 January 2020	9 June 2020
Terengganu	17 January 2018	1 January 2019	2021
Perak	-	2 August 2018	14 October 2020 (SIA 3)
Kedah	17 October 2017	17 October 2017	July 2020
Malacca	17 June 2020	1 April 2021	April 2021
Pahang	11 January 2018	-	-
Penang	-	-	28 November 2019

Sources: (Dataset Malaysia, Ministry of Housing and Local Government, 2021)

Based on the table above, different dates have been released from other states because it depends on the approval by the state's Exco. Kedah was the earliest state to gazette Act A1522, followed by Perak, Terengganu, Selangor, Negeri Sembilan and Malacca. The date of gazettment is the official point in time in regard to SIA implementation for each state. However, prior to that, the state, through the SPC and Exco, would have already approved the proposal for implementation. For example, Selangor SPC (No.4/2017) approved the gazettment of Act A1522 on 23 October 2017. Then, Exco considered and approved it on 7 March 2018. Consequently, by 1 March 2019, Act A1522 came into operation in Selangor.⁸

In addition, certain states that gazette Act A1522 have provided the state manuals for their specific implementation, especially for SIA Category 3.⁹ Selangor produced the manual's first edition in 2019 and updated the second edition in November

⁸ PLANMalaysia@Selangor, Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Di Peringkat Negeri Selangor Akta Perancangan Bandar Dan Desa 1976 (Akta 172) (Pindaan) 2017 [Akta A1522],4.

⁹ Refer to the state manual at Heading 4.3.4.2.

2020.¹⁰ Penang SPC (No.10/2019) released the development project addition under SIA Category 3 on 28 November 2019.¹¹ Negeri Sembilan SPC (No.3/2020) approved the state manual on 9 June 2020. Then, the approval of the state manual was followed by Kedah, Perak, Malacca and Terengganu.

Three states do not yet implement Act A1522: Johor, Kelantan and Perlis.¹² On 20 June 2018, Kelantan Exco, through a meeting (No.12/2018), opposed the implementation of Act A1522 because they considered that section 22(2A)¹³ was sufficient to regulate SIA. At the same time, Perlis did not proceed with implementation because they wanted first to observe SIA's maturity in the other states.¹⁴ Thus, eight out of eleven states in Peninsular Malaysia have implemented Act A1522, while the other three states have not.

Table 5.2 Overall Number of LPA that Require SIA under Planning Permission Conditions for States that Apply Act A1522

State	SIA report preparation in the checklist	SIA report approval in the checklist
Selangor	10/12	3/12

¹⁰ PLANMalaysia Selangor, *Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Peringkat Negeri Selangor*.

¹¹ PLANMalaysia@Penang, *Senarai Projek Pembangunan Bagi SIA Kategori 3 Peringkat Negeri Pulau Pinang*, (2019).

¹² *Data.gov.my*, "Status Pewartaan Akta A1522", < https://www.data.gov.my/data/ms_MY/dataset/status-pewartaan-akta-a1522/resource/39a6c3fd-2035-4095-9290-d14733f2f022> (accessed 20 November, 2022).

¹³ Refer to the details of section 22(2A) at Heading 4.3.3.3.

¹⁴ *Data.gov.my*, "Status Pewartaan Akta A1522", < https://www.data.gov.my/data/ms_MY/dataset/status-pewartaan-akta-a1522/resource/39a6c3fd-2035-4095-9290-d14733f2f022> (accessed 20 November, 2022).

Perak	7/15	2/15
Malacca	2/4	0/4
Penang	2/2	1/2
Terengganu	3/7	3/7
Kedah	5/11	5/11
Pahang	11/11	11/11
Negeri Sembilan	3/7	3/7
Total	43/69	28/69

Source: (Checklist planning permission, OSC, LPA of Terengganu, Selangor, Negeri Sembilan, Perak, Kedah, Pahang, Melaka, Penang)

Table 5.2 indicates the overall number of LPA that require the preparation and approval of SIA reports to planning permission in the states that implemented Act A1522. The total LPA in Malaysia is one hundred and fifty-one.¹⁵ Eight (8) states comprise sixty-nine (69) LPAs and out of sixty-nine (69), forty-three (43) LPAs require the preparation of an SIA report based on the checklist while twenty-eight (28) LPAs require SIA approval. All eleven (11) LPAs in Pahang require both, preparation and approval of SIA in applying for planning permission. While both LPAs in Penang require SIA preparation, only one requires SIA approval, which is Penang City Council.¹⁶

Besides that, most of the LPAs under these eight states require the preparation of an SIA report, such as ten (10) out of twelve (12) LPAs in Selangor, seven (7) out

¹⁵ Local Government Department “List of Local Authorities”, < <https://jkt.kpkt.gov.my/en/local-government/list/list-local-authorities>> (accessed 3 March, 2023).

¹⁶ Refer to the LPA of Penang at Heading Appendix I.

fifteenth (15) LPAs in Perak, two (2) out of four (4) LPAs in Malacca and five (5) out of eleven (11) LPAs in Kedah. This majority number does not reflect the requirement of SIA approval for those LPAs, as analysed in the table above. It shows that even though the states implement Act A1522 and adopted SIA, the implementation through checklist administration under planning permission is still different according to the states.

Table 5.3 Overall Number of LPAs that Require SIA under Planning Permission Conditions for States that Do Not Apply Act A1522 Table 5.3 below states the overall number of LPA that require the preparation and approval of the SIA report for the states that have not yet implemented Act A1522.

Table 5.3 Overall Number of LPAs that Require SIA under Planning Permission Conditions for States that Do Not Apply Act A1522

State	Preparation of SIA report in the checklist	Approval of the SIA report in the checklist
Kelantan	6/12	3/12
Johor	8/16	8/16
Perlis	0/1	1/1
Federal Territory	1/1	0/1
Total	15/30	12/30

Source: (Checklist planning permission, OSC, LPA of Johor, Kelantan, Perlis and Federal Territory)

Even though Kelantan, Johor, Perlis and Federal Territory do not implement Act A1522 and adopt SIA, in current practice, specific LPAs still requires either the preparation or approval of an SIA report in submitting the planning permission application. Six (6) out of twelve (12) LPAs in Kelantan namely, Kota Bharu, Pasir Puteh, Pasir Mas, Tanah Merah, Bachok and Dabong require SIA preparation in their checklist while only three (3) of them, Pasir Puteh, Tanah Merah and Dabong,¹⁷ require SIA approval in the application. The SIA requirement in the checklist is similar to the states that implement Act A1522.

Furthermore, eight (8) out of sixteen (16) LPAs in Johor require SIA preparation and approval, such as Muar, Segamat, Pengerang, Kota Tinggi, Mersing, Tangkak and Yong Peng.¹⁸ Perlis has merely one LPA, namely Kangar Municipal Council,¹⁹ which requires SIA approval to apply for planning permission. It is the opposite for one LPA in the Federal Territory, namely Kuala Lumpur City Hall,²⁰ which states the requirement for SIA preparation without mentioning its approval.

Generally, all states in Malaysia apply SIA in their development project proposals even though not all states implement Act A1522, like Johor, Perlis and Kelantan. These states have their justifications for not yet implementing it. Since the jurisdiction of Act 172 is within the state list, implementation is based on the states themselves. Every state has the right to implement or not to implement SIA through section 20B of Act 172.

¹⁷ Refer to the LPA of Kelantan at Heading Appendix I.

¹⁸ Refer to the LPA of Johor at Heading Appendix I.

¹⁹ Refer to the LPA of Perlis at Heading Appendix I.

²⁰ Refer to the LPA of Federal Territory at Heading Appendix I.

In addition, each state that has gazetted Act A1522 has its guideline or manual and will follow their manual for SIA implementation. For example, Selangor's guideline is relatively advanced compared to the other states because of several factors including the demands from the stakeholders and agencies due to rapid development in that state.²¹ Hence, it is difficult to achieve uniformity of SIA practice between the states in Malaysia. Even though a state has gazetted Act A1522, it still need further enhancement and clarity towards comprehensive SIA implementation. This matter has been raised during the FGD session with governmental agencies, project proponents and stakeholders.²²

5.3 REQUIREMENT OF SIA PREPARATION IS NOT SPECIFIED UNDER ACT 172

There are three categories of SIA: SIA Category 1, 2 and 3, as discussed in detail in Chapter Four.²³ SIA Category 1 comprises the development project under section 20B of Act 172. The project proponents must submit the development proposal and SIA report to seek advice from the Council. Based on PPA 14,²⁴ item 3 in the application checklist shows that the submission requirement is the SIA report and review of SIA from PLANMalaysia (Federal). It indicates the significance of SIA submission as a condition for application to the Council.

²¹ Yusnaim Abd Rani, "interview by Nur Atheefa Sufeena M Suaree", Selangor, 9 June 2021.

²² Refer to the FGD Finding at Heading 5.8.2.

²³ Refer to the categories of SIA at Heading 4.5.

²⁴ PLANMalaysia (Jabatan Perancangan Bandar dan Desa), Panduan Pelaksanaan Akta 172 (PPA 14), "Permohonan Cadangan Pemajuan di bawah seksyen 20B", (November, 2017), 19.

5.3.1 No Specification of SIA Requirement for Category 2 under Act 172

SIA Category 2 covers development projects such as new townships that exceeds a population of ten thousand and areas of more than a hundred-hectare, construction of significant infrastructure and development that affects hilltops and hillslopes. This type of development has been stated clearly in section 22(2A) of Act 172²⁵ and needs the Council's advice during the planning permission application stage. The projects involved under this category can be considered colossal-scale projects. Thus, it has a significant social impact if the development is near community areas.

According to the Manual and the actual practices, submission of SIA is required for any project within SIA Category 2. However, Act 172 is silent on this requirement. It merely states that the submission related to this development needs to seek advice from the Council, as mentioned above. This provision does not indicate that the SIA report is to be included during the submission. Compared to SIA Category 1, it explicitly states through section 20B (2) the necessity of SIA for that category.²⁶ Table 5.4 compares the SIA categories relating to the requirement of SIA, type of development and members of evaluation panel.

²⁵ Town and Country Planning Act 1976, (Act 172), s 22 (2A) (a), (b), (c).

²⁶ Town and Country Planning Act 1976, (Act 172), s 20B (2).

Table 5.4 Comparison of SIA Requirement, Type of Development and Evaluation Panel between SIA Category 1,2 and 3 based on the Provision of Act 172

SIA category	Provision of SIA requirement	Type of development	Evaluation panel
1	Section 20B	<ul style="list-style-type: none"> • Coastal reclamation • Major national infrastructure • Other infrastructure of national interest 	<ul style="list-style-type: none"> • PLANMalaysia (Federal) • Local government • Malaysians Institute of Planners • Malaysian Association of SIA
2	No provision	<ul style="list-style-type: none"> • New township • Major infrastructure • Development on hilltops and hill slopes 	<ul style="list-style-type: none"> • PLANMalaysia (Federal) • Local government • Malaysians Institute of Planners • Malaysian Association of SIA
3	No provision	Other than SIA Category 1 and 2, determined by the State Authority and LPA	<ul style="list-style-type: none"> • State Authority • LPA

Source: (Researcher's own,2022)

5.3.2 SIA Category 3 is Subjective

SIA Category 3 has a high social impact and comprises projects other than SIA Categories 1 and 2.²⁷ There is no requirement for SIA under this category in Act 172. Based on section 21A (1) (ea), the applicant must submit the development proposal report that contains analysis and mitigation measures of social impact.²⁸ Mujaheed states that this provision relates to SIA Category 3.²⁹ However, in the researcher's opinion, this provision is not related to that category as it focuses on analysing social implications, which differs from the SIA report.

ASI is a component relating to social elements within the development proposal report. A development proposal report has one development impact part: Part C, Description, Analysis and Development Justification. This document must justify all the development impacts, such as physical, economic, social, infrastructure, utility and environmental. ASI is categorised under social implications. ASI is not involved with any project under SIA Categories 1,2 and 3 as those categories will require a standalone SIA report.³⁰ Data from the FGD shows that the state that does not adopt Act A1522 will apply for ASI in DPR.³¹

²⁷ Jabatan Perancangan Bandar dan Desa, Manual Penyediaan Laporan Penilaian Impak Sosial (SIA) bagi Projek Pembangunan.

²⁸ Town and Country Planning (Amendment) Act 2017, (Act A1522), s 21A (1) (ea).

²⁹ Hassan, Social Impact Assessment (SIA): A Review of SIA Procedure in Malaysia.

³⁰ PLANMalaysia Selangor, "Panduan Pelaksanaan Analisis Impak Sosial Dalam LCP Negeri Selangor", (2019),1-23.

³¹ Refer to the first FGD session at Heading 5.8.2.1.

Furthermore, based on section 21(3) (g) of Act 172, the local planning authority can request any additional documents for planning.³² It can be presumed that the SIA report can be included within this interpretation for projects under category 3. Besides that, sections 58 (1) and (1A) of Act 172 state that the State Authority and Council have the power to make rules under this Act.³³ This can be seen in several states, such as Selangor and Negeri Sembilan, which have provided guidelines or manuals for SIA.

The states may gazette the Manual provided by PLANMalaysia (Federal) to be implemented in the states. In the Manual, item 8 of the examples of projects table states that the state authorities or LPA can determine any other project for SIA Category 3 from time to time. This scenario may lead to uncertainty and confusion for many parties like governmental agencies, project proponents, consultants and others.³⁴ Several states have initiated efforts to improve developments under this category. In Selangor for example, a specific list of projects under this category has been provided through its second edition manual. Selangor Planning Committee (No.3/2020) had discussed to amend the list of projects under SIA Category 3 from the previous manual.³⁵ The Penang State Authority has added a new development list under SIA Category 3 to address their local social issues.³⁶

Nevertheless, the subjective issues for SIA Category 3 are still unresolved, especially in states other than Selangor and Penang. The project proponents and

³² Town and Country Planning Act 1976, (Act 172), s 21(3) (g).

³³ Town and Country Planning Act 1976, (Act 172), s 58 (1), (1A).

³⁴ Refer to the first FGD session at Heading 5.8.2.6.

³⁵ During the SPC meeting on 23/10/ 2020, see PLANMalaysia Selangor, Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Peringkat Negeri Selangor.

³⁶ Refer to the first FGD session at Heading 5.8.2.4.

consultants are not clear on preparing the SIA report under this category.³⁷ The determination of projects that require SIA preparation depends on the understanding of local government and State Authority. Consequently, in some situations, LPA needs SIA for development projects while others do not require that assessment, especially for the states that do not provide the guideline or manual. Table 5.5 shows the type of development for SIA Category 3 under the Manual (Federal), Selangor and Negeri Sembilan SIA Manuals.

Table 5.5 Comparison of Type of Developments under SIA Category 3 between the Manual (Federal), Selangor and Negeri Sembilan Manuals

Type of manual	Manual SIA (PLANMalaysia)	Selangor Manual	Negeri Sembilan Manual
Type of development	Night Club / Theme Park Cemetery area/crematorium Mining Main industry area Aquaculture project/livestock with massive scale Oil and gas filtration centre Incinerator and solid waste disposal site Other development determined by State Authority and LPA	Housing Trading/ Commercial Industry Agriculture Society facility Infrastructure and utility Other development determined by local government	Development other than SIA Category 1 and 2, determined by State Authority and LPA

Source: (Federal Manual, Selangor and Negeri Sembilan Manual)

³⁷ Project Proponents, “interview by Nur Atheefa Sufeena M Suaree”, Selangor, 19 August 2021.

It is crucial to have an express provision on the SIA requirement under Act 172 for all categories as such provision would consequently legalise SIA implementation in Malaysia. The procedural details and explanation may be incorporated into the federal or state manual. However, the current Act 172 and Act A1522 are silent on the requirement for SIA Categories 2 and 3.

5.4 THE APPROVAL PROCESS FOR SIA IS NOT STATED UNDER ACT 172

Approval of the SIA report of a development project indicates that the project has a minimal negative impact on the surrounding community. Otherwise, the report will have mitigation measures to ensure a sustainable impact in that area. Thus, the requirement of SIA approval is crucial to achieving the objective of resilient development. Act 172 may address the approval of other applications like planning permission for a proposed development. Section 19 states that no development can be carried out unless planning permission has been granted.³⁸ However, the approval of SIA is not stated in any provision of Act 172. The Manual is also silent on SIA approval for a proposed development.³⁹ Section 20B (2) merely states the submission of SIA with the development proposal report.

PLANMalaysia (Federal) has provided the application submission checklist for development under section 20B within PPA 14.⁴⁰ The project proponents and

³⁸ Town and Country Planning Act 1976, (Act 172), s 19(1).

³⁹ Refer to the first FGD session at Heading 5.8.2.1.

⁴⁰ PLANMalaysia (Jabatan Perancangan Bandar dan Desa), Panduan Pelaksanaan Akta 172 (PPA 14), "Permohonan Cadangan Pemajuan di bawah seksyen 20B", (November, 2017), 19.

consultants can check the necessary documents to be submitted through the checklist. Item three of the list states the requirement for an SIA report and feedback from PLANMalaysia (Federal). This clearly shows the importance of approving the SIA report as a condition of application to the Council.

The evaluation of the SIA report and the application of planning permission are two different things. The approval of SIA does not guarantee the acceptance of planning permission, but it is one of the requirements, as stated in section 22. There is a possible scenario that SIA is approved while planning permission is not approved. Table 5.6 below shows the checklist of planning permission applications for Manjung Municipal Council, Perak. One of the lists states that SIA approval must be attached to the application. Usually, the approval of a development project does not depend on SIA submission only but also focuses on its approval.

Table 5.6 List of the Required Documents by PLANMalaysia for Planning Permission at Manjung Municipal Council

List of required documents
1. Existing and previous Development Plan Approval Document from the relevant authority for the planning permission application for the development stand; <ul style="list-style-type: none"> a) Layout planning permission (C1 Form) and approval plan; b) Approval letter by Exco for planning permission; c) Copy of retrieval application alienated land.
2. SIA approval letter; <ul style="list-style-type: none"> a) Separation for development under section 22(2A) Act 172; b) SIA approval letter for development under section 20B(1) and (2) Act 172.
3. Development charge calculation document.

List of required documents
4. Approval letter by Committee for Development of Environmentally Sensitive Areas.

Sources: (Checklist of Application for Planning Permission, OSC Manjung Municipal Council, Perak)

While Table 5.7 shows the list of required documents for planning permission (coastal reclamation and layout plan) for Malacca. The requirements between these two developments are different because the layout application needs the approval of the SIA report. In contrast, for coastal reclamation applications, the document required is the SIA report. The main concern in this situation is whether it is sufficient to submit the SIA report only or approval for planning permission must be obtained. It is because coastal reclamation is a vast project that eventually has a high impact on the community. Thus, the social aspect must be sufficiently considered for such project.

Table 5.7 Comparison of the List of Required Documents by State Authority of Melaka for Coastal Reclamation and Layout Plan

List of the required documents by PLANMalaysia (coastal reclamation)	List of the required documents by PLANMalaysia (layout plan)
Copy of agreement with state government	Latest search/ copy land title/ offer letter for government land for lot involved
Copy of approval letter State Privatisation Committee	Approval letter or conditions requested by Urban Development and Security Committee (if any)
Complete development proposal report based on its manual, second edition,2011 by PLANMalaysia (Federal)	Latest assessment tax receipt
Approval letter and detailed EIA	CD, site view, project description and component development project

List of the required documents by PLANMalaysia (coastal reclamation)	List of the required documents by PLANMalaysia (layout plan)
SIA report	Approval of the SIA report
Geotechnical report (development at environmentally sensitive area)	Planning report and PDC plan signed by civil, M&E
	Solid waste generation estimate calculation template
	Letter of support from the Network Service Provider
	Approval of the TIA report
	Approval of the HIA report
	Approval of the DEIA report
	Approval of the hydraulics research
	Land survey report
Geotechnical report	

Source: (State Authority of Malacca)

Moreover, the approval process is not new for EIA reports. Based on section 34A of Act 127, any person intending to carry out any of the prescribed activities must submit an EIA report to the Director General.⁴¹ The report must be approved and granted by the Director General before carrying out the development. It has been supported by the case of *Kajing Tubek & Ors v Ekran Bhd & Ors (1996)*,⁴² where the court said that the approval process is compulsory and any decision made by the Director General that does not align with the procedure is against section 34A. If the practice of EIA can be replicated for the SIA process, like the court's decision above, the provision relating to the requirement of SIA approval needs to be inserted under Act 172.

⁴¹ Environmental Quality Act 1974, (Act 127), s 34A.

⁴² *Kajing Tubek & 2 Ors v Ekran Bhd & 4 Ors* [1996] 3 CLJ 96 (High Court).

5.4.1 Requirement of Material Consideration

There is a query about whether it is necessary to include material consideration in the SIA approval process. A material consideration is an essential factor that must be considered in deciding the planning application or appeal of that decision.⁴³ Sometimes there is a lack of policy, and material considerations will fill the gap. It could be so significant in certain situations that they entirely outweigh the intended project's development plan.⁴⁴ It has become a common practice in the United Kingdom. According to section 70(2) of the Town and Country Planning Act 1990 (United Kingdom), the authority shall consider some aspects while determining the planning permission, including material consideration.⁴⁵ Section 38(6) of the Planning and Compulsory Purchases Act 2004 (United Kingdom) states that if referring to the purpose of planning under this Act, the proposed development must be in line with the plan unless material considerations indicate otherwise.⁴⁶ However, this element is not applied to the SIA approval process in Malaysia as it is not stated in Act 172 or the Manual.

In current practice, the SIA report must obtain approval from the evaluation panel. Firstly, the project proponents must submit the report of SIA Categories 1 and 2 to the panelist determined by the State Authority. They will discuss and make decisions

⁴³ *Planning Portal*, "What are material considerations?", <<https://www.planningportal.co.uk/services/help/faq/planning/about-the-planning-system/what-are-material-considerations> > (accessed 24 November, 2022).

⁴⁴ *Strategic Land Group*, "The Essential Guide: How planning decisions are made?", <<https://www.strategiclandgroup.co.uk/insights/planning-decisions-made#:~:text=Material%20considerations%20are%20essentially%20all,decisions%20or%20relevant%20case%20law.> > (accessed 25 November, 2022).

⁴⁵ Town and Country Planning Act 1990, s 70(2).

⁴⁶ Planning and Compulsory Purchases Act 2004, s 38(6).

at the state level within three weeks. Then, PLANMalaysia (Federal) will decide on the approval of the SIA report. If it needs amendment, it will be returned to PLANMalaysia (Federal).⁴⁷

For SIA Category 3, if there is an appeal to exempt the preparation of SIA, the project proponents need to provide justification or an executive report. It will be discussed through the internal department meeting and recommended to the SIA evaluation panel within two weeks.

5.4.2 Requirement of Public Participation Element

SIA is one of the assessments that would heavily involve the local community.⁴⁸ Given that the intended development would impact on the surrounding community, the necessity and transparency for public involvement are essential.⁴⁹ Public participation is one of the statutory processes for the EIA. Section 3(3) of Environmental Quality (Prescribed Activities) (EIA) Order 2015 explicitly states that any activities from the Second Schedule are required for public display and comments.⁵⁰ The EIA report must be accessible to the public for thirty days after its announcement. The public has forty-five (45) days to submit their views to the DOE.⁵¹

⁴⁷ Sanisah Shafie, "interview by Nur Atheefa Sufeena M Suarez", Putrajaya, 9 June 2021.

⁴⁸ Aisyah Abu Bakar and et al, "Social Impact Assessment: How do the Public Help and Why Do They Matter?", *Procedia - Social and Behavioral Sciences*, vol. 170 (2015): 72.

⁴⁹ *Ibid.*, 71.

⁵⁰ Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015, s 3(3).

⁵¹ The Federal Environmental Protection Authority, Environmental Impact Assessment Guideline in Malaysia.

For SIA, there is no provision under Act 172 stating that the element of public participation is one of the SIA approval processes. The Manual has however mentioned the importance of public involvement in the SIA process. Engagement with the public through interaction and dialogue will assist the data collection relating to the intended development. It is vital in the impact analysis process, drafting mitigation strategies and managing the social impact of the SIA study. The Manual states that the effectiveness of SIA depends on community participation. The Manual also states that the existing legal provisions already provide for the required procedures for public participation that can be used as SIA input.⁵² However, it is observed that the existing provisions, namely, sections 9, 12A and 13⁵³ of Act 172 relate to the publicity requirement in preparing the draft structure and local plans and does not explicitly mention the SIA.⁵⁴

In *Kajing Tubek & Ors v Ekran Bhd & Ors*, the High Court asserted that the public participation process is mandatory.⁵⁵ This case is regarding public participation in the EIA report. However, this case through the appeal level also illustrate the discretion of LPA in considering the element of public participation in their decision. The government amended Federal EIA laws, excluding the application of the EIA Order 1987 to the State of Sarawak, thereby removing public participation rights in the EIA approval process. This exemplifies the significant authority held by planning authorities in handling EIA reports, with the courts seemingly supportive of the government's economic development policies.⁵⁶

⁵² Jabatan Perancangan Bandar dan Desa, Manual Penyediaan Laporan Penilaian Impak Sosial (SIA) bagi Projek Pembangunan, 3-1.

⁵³ Refer to public participation details at Heading 4.6.2.

⁵⁴ Town and Country Planning Act 1976, (Act 172), s 9, 12A, 13.

⁵⁵ *Kajing Tubek & Ors V Ekran Bhd & Ors*, [1996] 2 MLJ 388

⁵⁶ Ainul Jaria Maidin, "Environmental Protection in Land Use & Development Control System in Malaysia", *SSRN 2015082* (2012): 1–15.

Furthermore, according to Handbook of Environmental Impact Assessment Guideline, public display and engagement is compulsory⁵⁷ and any decision made by the Director-General without complying with the procedure and guidelines would be contrary to section 34A (2C) of Act A1441.⁵⁸ Section 34A (2C) states that the EIA report must align with the guidelines as the Director-General may prescribe. The report shall contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse effects on the environment.⁵⁹ Therefore, if this legal practice is to be applied to the SIA process, such as the court decision above, then the same provision may need to be replicated in Act 172.

Based on the current scenario and comparison with the EIA implementation through Act 127, the analysis indicates the necessity of inserting a provision requiring public participation for SIA approval under Act 172. Consequently, it will strengthen the SIA implementation and ensure that the community, especially near the proposed development, is well protected.

5.5 NO PROVISION RELATING TO THE ENFORCEMENT OF SIA

In a parliament session on 18 December 2019, YB Tuan Adrian Ranie Lasimbang asked the Minister of Water, Land and Natural Resources whether there was any action that

⁵⁷ Environmental Impact Assessment Guideline in Malaysia, Part 7.1.

⁵⁸ See para 3, the decision of James Foong Judge under Kajing Tubek's case, 6.

⁵⁹ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34(2C).

could be taken against major development projects such as dams that started without carrying out SIA. The Minister stated that Act 172 does not explicitly provide enforcement or actions that can be taken against it.⁶⁰

The power to consider applications for planning permission does not involve SIA as one of the conditions for approval. Section 22(2) of Act 172 states that LPA will consider planning conditions such as provisions of the development plan either under Act 172 or any relevant law related, direction from SPC,⁶¹ development proposal report and the objections arise if any in determining the application for planning permission. These considerations will be the main factor in granting the approval of planning permission by LPA and SPC as stated under section 22(3). However, there is no condition imposed by LPA relating to SIA as a planning condition such as mitigation of social impact.

In addition, section 28 of Act 172 empowers LPA on enforcement for developments that are undertaken contrary to planning permission.⁶² According to section 28(2), the LPA may serve a notice requiring the owner of the land or any person that carries out the development to discontinue the development and restore the land as before the commencement of development.⁶³ LPA may also request them to apply a new planning permission application if LPA does not satisfy the conditions stated in section 28(2).⁶⁴ Sections 28(6) and (9) declare that any person that continues the development after receiving the notice from LPA will be considered committing the

⁶⁰ Parliament Hansard, Session 18 December 2019, Category of Water, Question 54.

⁶¹ Refer to the discussion of SPC at Heading 4.3.2.

⁶² Town and Country Planning Act 1976, (Act 172), s 28(1).

⁶³ Town and Country Planning Act 1976, (Act 172), s 28(2).

⁶⁴ Town and Country Planning Act 1976, (Act 172), s 28(3).

offence and liable on conviction to a fine not exceeding one hundred thousand ringgit or imprisonment not exceeding six months.⁶⁵ Since SIA is not yet considered as a planning condition and material consideration under the Act, no enforcement, as stated under section 28, can be made to any project proponent that abandons the SIA process in the development phase.

The other model from the United Kingdom that can be referred to regarding the implementation of planning conditions and material consideration⁶⁶ is a policy, namely the National Planning Policy Framework. This policy addresses the government's planning policies relating to housing and other development, as well as how these policies should be applied in the United Kingdom.⁶⁷ Paragraph 55 of the National Planning Policy clearly states that planning conditions should be kept to a minimum and only used where they satisfy the following tests;

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development.⁶⁸

In Malaysia, the same principle is seen in the case of *Pengarah Tanah Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn. Bhd.*,⁶⁹ where the Court held that the following principles could be followed:

⁶⁵ Town and Country Planning Act 1976, (Act 172), s 28(6) and (9).

⁶⁶ Refer to the discussion of the requirement of material consideration at Heading 5.4.1.

⁶⁷ National Planning Policy Framework, United Kingdom, Introduction.

⁶⁸ National Planning Policy Framework, United Kingdom, Paragraph 55.

⁶⁹ "Pengaruh Tanah Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn. Bhd". (1979), 1 MLJ 135.

- a) The approving authority does not have uncontrolled discretion to impose whatever condition it likes;
- b) The conditions to be valid must fairly and reasonably relate to the permitted development;
- c) The approving authority must act reasonably and planning conditions must be reasonable;
- d) The approving authority is not at liberty to use its power for an ulterior object, however desirable that object may seem to be in the public interest.

The discretion of the LPA in imposing the planning condition is vital, however, LPA still has the boundaries and its limitations power. The conditions imposed must be reasonable and be validated through a test, namely, *Wednesbury*⁷⁰ unreasonableness.⁷¹ The irrationality of the conditions will lead to the illegality action by the LPA. Therefore, it can safely be assumed that in exercising their discretion, the LPA must have regard to all relevant considerations, disregard all inappropriate reviews and produce a result that does not offend common sense.

5.5.1 Public Objection Using SIA Report

Provisions under Act 172 and a rule under Act 267, namely, Planning (Development) Rules 1970, explicitly mention the right of landowners to the objection to the proposed

⁷⁰ The name of the test derived from a case, namely, *Associated Provincial Picture Houses Limited v Wednesbury Corporation*.

⁷¹ Sharifah Zubaidah Abdul Kader Aljunid, "Challenging Planning Conditions: *Wednesbury* Unreasonableness and the Making of Consequential Orders", *Malayan Law Journal*, vol. 2, no. ccxii (2002): 2.

development. Section 21(6) of Act 172 states that LPA shall serve the written notice to adjoining landowners, informing the right owner to object to the proposed development without a local plan.⁷² Rule 5 of the Planning (Development) Rules 1970 states that the right to object is applicable where the application for planning permission in respect of development involves an increase in residential density or a change of land use.⁷³

However, there is no provision under Act 172 for any objection from the public towards the proposed development using the SIA report. The principle through the case of *Mohamad Yusof Bin A Bakar & Anor V Datuk Bandar Kuala Lumpur*⁷⁴ is where the Court held that members of the public are entitled to obtain a copy of the technical reports as follows;

- e) The proposed development report
- f) Traffic assessment report
- g) Social impact report
- h) Any other related reports.

In this case, the respondent applied for planning permission for a proposed development in Taman Tiara Titiwangsa. As the development involved an increase in residential density, Rule 5 of the Planning (Development) Rules 1970 prescribed that public hearings will be convened where adjoining landowners may make objections to the application. The applicants, adjoining landowners, met with the representatives of the respondent to obtain further particulars and reports of the proposed development as

⁷² Town and Country Planning Act 1976, (Act 172), s 21(6).

⁷³ Planning (Development) Rules 1970, r 5.

⁷⁴ *Mohamad Yusof bin A Bakar & Anor v Datuk Bandar Kuala Lumpur* [2019] MLJU 1098, no. 1 (2021): 0–8.

the proposal was near their properties. The respondent did not furnish the technical reports, including social impact report, as requested. The applicants then applied for judicial review for, inter-alia a declaration that the public inquiry held by the respondent was null and void for failure to provide the technical reports when requested.

The Court of Appeal allowed the appeal and held that the meeting or inquiry to hear the objections of registered owners of properties adjoining the proposed development conducted by the Datuk Bandar Kuala Lumpur (hereafter referred to as ‘DBKL’) was null and void. In coming to this decision, the court observed as follows:

“The failure by the respondent to give full disclosure of the proposed planning and together with the technical report deprived the applicants of a full and impartial hearing. The technical report requested could have assisted to allay any of the appellants’ concerns. The nonchalant attitude of the respondent in failing to furnish the technical report and comment on the photos of the traffic condition left many questions, reservations and concerns of the applicants as residents unanswered.”⁷⁵

This case reflects the importance of assessing social impact as part of the technical reports required for the local planning authority to consider an application for planning permission. While Act 172 only makes provision for the LPA to consider objections by adjoining landowners in the case of a development is to be carried out in an area with no local plans, Act 267, through the Planning (Development) Rules made thereunder, gives broader rights to adjoining landowners to object without making the non-existence of a local plan in the area as a prerequisite for the exercise of this right. Instead, the criteria to object relates to an increase in residential density and a change

⁷⁵ See para. 13 of the decision under Yusof’s case.

in land use, both of which could bring about social impact. The higher residential density indicates that more community members need to be protected. Align with the spirit of SIA, which is a process to identify the effects of intended development that impacted change of people's property and social organisation system. Having a provision relating to the right to object under Act 172 will require the legal and social obligation of the project proponent to consider any objection or concern raised by the community that will be affected by the proposed development.

5.5.2 Monitoring and Auditing Post- SIA

Act 172 is silent on the requirement for SIMP monitoring and auditing. PLANMalaysia (Federal), as a SIMP monitoring agency, has difficulty executing the workforce's duties and responsibilities under this process. The lack of experienced or qualified staff in the evaluation department at most local governments mainly causes this issue.⁷⁶ This issue was discussed in detail by the stakeholders in the FGD session. They are facing this difficulty in implementing SIA.⁷⁷ DOE also states that EIA has a similar challenge with SIA in the early days of its implementation. Factors such as the system of changing officers and lack of experience as well as expertise of the officers will adversely affect the assessment process, especially in evaluation, monitoring and auditing of the report.⁷⁸

⁷⁶ Raja Nor Wafiah Binti Raja Abdullah, "Penambahbaikan Pengurusan Penyemakan Semula Senarai Nilai Pihak Berkuasa Tempatan", (Ph.D. thesis, Universiti Teknologi Malaysia, 2009).

⁷⁷ Refer to the FGD Finding at Heading 5.8.2.1.

⁷⁸ Refer to the FGD Finding at Heading 5.8.2.3.

LPA face growing challenges due to population growth because of continuing urbanisation. The rise in living standards has put a tremendous demand on local governments to provide more and better urban infrastructure and amenities. Some argued that since its existence, local authorities in Malaysia have been given critical roles but limited power. This phenomenon hampers its capability to provide efficient services.⁷⁹

The LPA needs to focus on developing knowledge workers to manage current issues that are getting more complex. To enhance the capacity and management capabilities of the local authorities, measures will be undertaken through capacity-building efforts and reviewing systems and procedures. In this regard, efforts will continue to enhance human capital development and increase employees' awareness of their roles and responsibilities in serving the public.⁸⁰ The capacity issue is one of the main issues impacting the local authority in Malaysia.⁸¹

Process and rules of monitoring and auditing are also not specified under the Manual and will affect the efficiency of this management plan as mentioned above. The stakeholders and governmental agencies also confuse the qualified person to monitor and audit the SIA.⁸² Therefore, improvement in monitoring and auditing the SIMP in terms of legislation, penalty, compound, period of monitoring, specifying the criteria of

⁷⁹ Raja Ariffin and et al, "Local Government in Malaysia: Issues and Challenges" in Readings in Malaysian Urban and Regional Planning, edited by Mariana Mohamed Osman, Mansor Ibrahim and Syahriah Bachok (Kuala Lumpur: IIUM, 2011), 90-99.

⁸⁰ Ngah Kamaruddin and et al, "The Challenges of Local Authorities: A Case Study in Malaysia". Cross-Cultural Communication, vol.7, no.3 (2011): 145-149.

⁸¹ Tun Mohd Izlizam Bahardin, Zuraini Alias and Mokhtar Abdullah, "A Systematic Review of the Issues Affecting Local Government in Malaysia" *Journal of Advanced Research in Business and Management Studies*, vol. 15, no.1 (2019): 33-40.

⁸² Refer to the FGD Finding at Heading 5.8.2.

a qualified person involved in preparing SIA, among others are necessary so as not to burden the governmental agencies.

SIA enforcement is crucial to ensure good governance of its implementation. The benefits and advantages of SIA is undeniable, as explained in the previous chapters. Thus, any intended development incredibly near to the community area should obtain SIA approval and be subjected to continuous monitoring, as well as auditing. The government should resolve issues like lack of capacity and staff capabilities to carry out SIA and other challenges effectively.

5.6 CRITERIA OF A QUALIFIED PERSON TO PREPARE THE SIA

There is no explicit provision regarding the type of profession and qualified person for the SIA report preparation under Act 172. Section 20 of the Town Planners Act 1995 states that individual persons that are qualified to prepare layout and development proposals are those who are registered Town Planners.⁸³ However, this is not reflected in the SIA.

Based on a letter dated 13th March 2020 from the Director-General PLANMalaysia (Federal) to the President of MSIA, as a result of the internal discussions (dated 20 February 2020). The internal discussion was made due to an inquiry of MSIA to PLANMalaysia (Federal) relating to the qualification of a

⁸³ Town Planners Act 1995, (Act 538), s 20.

submitting person for purposes of the SIA. Individuals who are qualified to prepare the SIA report are: (1) a registered town planner with the Board of Town Planners Malaysia (hereafter referred to as 'BTPM') or (2) a registered member with the MSIA or (3) a registered member with the MIP. The Director-General, through this letter, also recommended PLANMalaysia (Federal) organise an SIA course and provide registration of qualified persons. A person who has passed the SIA course and has sufficient experience can register as a qualified person. However, these recommendations have not been enforced until the further amendment of Act 172.

Prior to this, there was no criteria prescribed by PLANMalaysia (Federal) regarding the eligibility of individuals preparing the SIA report. Many project proponents are concerned about difficulties in obtaining the list of qualified consultants to prepare the SIA. Although they may reach the consultant, other issues, such as capability, arise when they find that the way the report is prepared differs between the consultants. This situation has led to confusion on how to prepare the detailed report as required, especially when it is to be presented to the evaluation panel.⁸⁴ This will affect the duration of each construction project. However, on 22 June 2022, PLANMalaysia (Federal) updated the list of consultants preparing SIA according to the type of development.⁸⁵ Even though the project proponents may refer to that list, they still feel insufficient and what is most needed are clear criteria defining a 'qualified person' under Act 172 or Rules made thereunder to determine the preparation of the report for their proposed development.

⁸⁴ Project Proponents, "interview by Nur Atheefa Sufeena M Suaree", Selangor, 16 August 2021.

⁸⁵ Official Portal PLANMalaysia, "Social Impact Assessment (SIA) Panel Meeting for Development Projects", < <http://103.42.207.1/index.php/en/help/14-umum/658-social-impact-assessment-sia> > (accessed 9 August, 2022).

Furthermore, section 21C of Act 172 states that all plans, particulars, layout plans and other documents required to be submitted shall be prepared by a person whose qualifications are prescribed under section 58(2) (h) and a person who is entitled to do so under any other written law.⁸⁶ Unfortunately, the criteria are still not specified under this provision as no rules have been made under this provision to lay down the criteria for a ‘qualified person’ to prepare the SIA.

In contrast, in regard to the preparation of the EIA, the provision for a qualified person to prepare the report is clearly stated under section 34A (2) of Act A1441.⁸⁷ A competent person must be a consultant registered with the Department of Environment (hereafter referred to as ‘DOE’) through the EIA Consultant Registration Scheme.⁸⁸ DOE released a Guidance Document on EIA Consultant Registration Scheme in 2019 to assist the applicant in assessing their eligibility for completing the necessary registration requirements.⁸⁹ DOE also states that the objective of this scheme is essential to monitor and ensure that the consultant fulfills the criteria of a qualified person in terms of understanding, knowledge and experience.⁹⁰ DOE provides the requirement of qualified persons for preparing EIA through Act 127 and specifies criterion in the guidelines. Any report prepared by a non-registered person will be void.⁹¹

Legislation and guidelines on the criteria of a qualified person preparing SIA are essential to improve the standards of professionalism among the consultants by

⁸⁶ Town and Country Planning Act 1976, (Act 172), s 21C(a).

⁸⁷ Environmental Quality (Amendment) Act 2012, (Act A1441), s 34A (2).

⁸⁸ Department of Environment, Guidance Document on EIA Consultant Registration Scheme.

⁸⁹ Ibid.,1.

⁹⁰ Refer to the FGD Finding at Heading 5.8.2.4

⁹¹ Department of Environment, Guidance Document on EIA Consultant Registration Scheme.

guaranteeing that they possess the minimal training and expertise needed to carry out a SIA study. Additionally, it is a quick medium to assist potential clients in determining competent, experienced, and professionally trained consultants for their proposed development projects.

5.7 QUESTIONNAIRE SURVEY ANALYSIS

5.7.1 Respondent Profile

The researcher applied SPSS to analyse the questionnaire survey from the representatives of agencies (PLANMalaysia (Federal), State Authority and related agencies) involved in the preparation, evaluation and monitoring of SIA in Malaysia. The objective of the study is aligning with the second research objective as stated in Chapter One which to identify issues and gaps in implementing SIA by governmental agencies.

A total of 29 respondents responded to this study. These 29 respondents comprise 51.7% representing PLANMalaysia (Federal), with the highest number of representatives from the Federal Territory of Kuala Lumpur (17.2%), followed by representatives from State Authorities of Perak, Selangor and Terengganu, each with 13.8%. Respondents representing local authorities (34.5%) and other government agencies (13.8%) also provided feedback in this field study. A summary of the total number of respondents based on the type of agency and state is described in Table 5.8 below.

Table 5.8 Respondent Profile based on States and Agencies

State	Type of agency			Total
	Local authorities	Government agency	PLANMalaysia	
Johor	0	0	1	1
	0.00%	0.00%	3.4%	3.4%
Kedah	2	0	1	3
	6.9%	0.00%	3.4%	10.3%
Pahang	2	0	1	3
	6.9%	0.00%	3.4%	10.3%
Perak	0	0	4	4
	0.00%	0.00%	13.8%	13.8%
Perlis	0	0	1	1
	0.00%	0.00%	3.4%	3.4%
Penang	1	0	0	1
	3.4%	0.00%	0.00%	3.4%
Selangor	3	0	1	4
	10.3%	0.00%	3.4%	13.79%
Terengganu	2	1	1	4
	6.9%	3.4%	3.4%	13.7%
Kuala Lumpur Federal Territory	0	3	2	5
	0.00%	10.3%	6.9%	17.2%
Putrajaya Federal Territory	0	0	3	3
	0.00%	0.00%	10.3%	10.3%
Total	10	4	15	29
	34.5%	13.7%	51.7%	100.00%

5.7.2 Analysis of Knowledge, Skill and Capacities for SIA Implementation

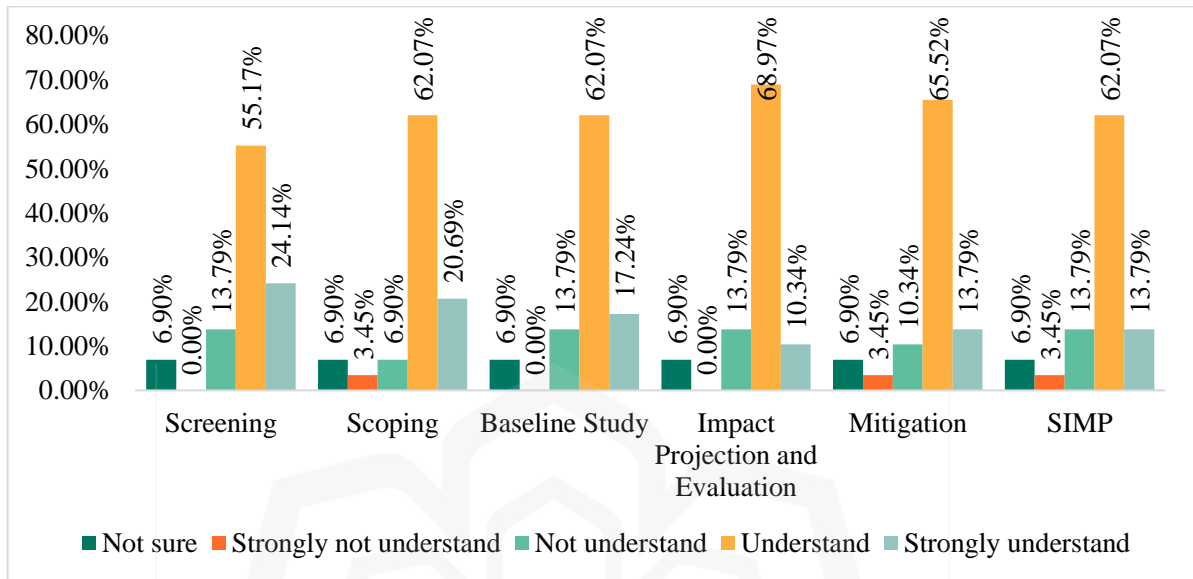


Figure 5.1 The Respondents' Feedback on Their Level of Understanding regarding the Stages of the SIA Preparation Process

Based on Figure 5.1, 82.8% of respondents said they understand the scoping stage, which involves determining the issue to be addressed. This was followed by 79.3% of respondents who stated that they understand the screening stage that requires respondents to assess the SIA category. However, 17.2% of respondents also say that they do not understand the baseline study, which involves collecting primary data on the social issues of an existing community, whether through qualitative or quantitative methodology. 13.7% of the respondents did not understand the level of the SIMP for monitoring the implementation of mitigation strategies and impact management.

Based on the respondents' feedback on their level of understanding regarding the stages of the SIA preparation process, the Relative Importance Index (hereafter

referred to as ‘RII’) was calculated. As shown in Table 5.9, the screening stage, which involves the process of determining the SIA category, has the highest RII value of RII 0.72, placing this stage in the first rank, followed by RII 0.71 by stage 5, which is mitigation which involves the process of identifying strategies to overcome or reduce the negative impact of the development project.

The results of the RII also show that stage 3, baseline study, which involves the process of collecting primary data on the social issues of an existing community, whether qualitative or quantitative, has the lowest RII index of 0.68, while stage 6, SIMP, which involves the preparation of a plan for monitoring the implementation of mitigation strategies with an RII of 0.69 in the second lowest rank. The results of this measurement show that respondents view the third and sixth stages as the stages they least understand throughout their involvement in the SIA preparation process.

Table 5.9 Level of Understanding regarding the Stages of the SIA Preparation Process

Level of understanding	Not sure– 0		Strongly not understand - 1		Not understand - 2		Understand - 3		Strongly understand - 4		RII Index	Ranking
	No.	%	No.	%	No.	%	No.	%	No.	%		
Screening	2	6.90	0	0.00	4	13.79	16	55.17	7	24.14	0.72	1
Mitigation	2	6.90	1	3.45	2	6.90	18	62.07	6	20.69	0.71	2
Scoping	2	6.90	0	0.00	4	13.79	18	62.07	5	17.24	0.70	3
Impact Projection and Evaluation	2	6.90	0	0.00	4	13.79	20	68.97	3	10.34	0.69	4
SIMP	2	6.90	1	3.45	3	10.34	19	65.52	4	13.79	0.69	4
Baseline Study	2	6.90	1	3.45	4	13.79	18	62.07	4	13.79	0.68	5

Survey questions about challenges in the SIA preparation processes were also asked in this study. Respondents were asked to indicate their level of agreement based on a scale of 0= not sure, 1= strongly disagree, 2= not agree, 3= agree and 4= strongly

agree for each challenge listed. The RII was calculated based on the responses given. The results of this study are shown in Table 5.10 below.

Referring to the RII value as in Table 5.10, the main challenge identified based on the respondents' feedback is the lack of involvement of the local community and the risk assessment provided is insufficient, with each having an RII value of 0.73. Public participation is an essential component that assists the evaluator panel in collecting quantitative data on the variables utilised during the SIA process.⁹² However, the absence of a provision under Act 172 regulating this component has weakened the SIA implementation. The community has not been exposed to the proposed development details within their area compared to the EIA report displayed to the public.⁹³ The finding of FGD with DOE also determines that EIA has improved a lot to ensure the effectiveness of engagement sessions with the public, such as online mode of public display. DOE also keep improving by researching and updating the guideline for that matter.⁹⁴

Then, the second highest rank, with an RII value of 0.72, shows the problem of the consultant's collection and analysis of information. At the same time, the third rank, with an RII value of 0.71, is the lack of skills of consultants who prepare SIA reports. Both ranks indicate the challenge among consultants and qualified persons in preparing SIA reports. The data collection approach is essential in the SIA process⁹⁵ to ensure that

⁹² Rabel J. Burdge and Robert A. Robertson, "Social Impact Assessment and the Public Involvement Process", *Environmental Impact Assessment Review*, vol. 10, nos. 1–2 (1990): 81.

⁹³ *Official Portal DOE*, "EIA Reports", < <https://www.doe.gov.my/en/category/eia-report/> > (accessed 7 March, 2023).

⁹⁴ Refer to the FGD finding session with DOE at Heading 5.8.2.3.

⁹⁵ Department of Planning and Environment, Technical Supplement Social Impact Assessment Guideline for State Significant Projects,20.

the best alternative strategy can be made for the intended development. These issues have been determined in several FGD sessions with stakeholders. The difficulty in finding an expert and qualified person was similarly experienced by the DOE in the process of preparing the EIA report in its early stages.⁹⁶ The State Authority of Penang mentions that it faced challenges in preparing for the SIA Category 3 report due to the lack of capability of staff.⁹⁷

In addition, the challenge regarding the unsystematic report preparation process (RII 0.63) and local authorities not adopting the SIA Report (RII 0.52) are in the bottom rank, with each having the lowest RII value. This result shows no issues regarding the acceptance of SIA reports at the local authority's level and that the existing SIA process is already systematic and can be adopted by every related agency.

Table 5.10 Level of Agreement on the Challenge of the Current SIA Preparation Process

Challenge	Not sure - 0		Strongly disagree - 1		Not agree- 2		Agree - 3		Strongly agree - 4		RII Index	Ranking
	No.	%	No.	%	No.	%	No.	%	No.	%		
Lack of local community involvement	2	6.90	1	3.45	2	6.90	16	55.17	8	27.59	0.73	1
The risk assessment provided is insufficient and not comprehensive	2	6.90	0	0.00	3	10.34	17	58.62	7	24.14	0.73	1
Problems in the collection and analysis of information by consultants	2	6.90	0	0.00	5	17.24	14	48.28	8	27.59	0.72	2

⁹⁶ Refer to the FGD finding session with DOE at Heading 5.8.2.3.

⁹⁷ Refer to the FGD finding session with DOE at Heading 5.8.2.4.

Lack of skills of consultants who prepare SIA reports	2	6.90	0	0.00	5	17.24	15	51.72	7	24.14	0.71	3
Presentation techniques of SIA research that can still be improved	2	6.90	2	6.90	2	6.90	16	55.17	7	24.14	0.70	4
Local authorities do not have the expert skills to manage SIA reports internally	2	6.90	2	6.90	2	6.90	17	58.62	6	20.69	0.69	5
The poor-quality report provided	3	10.34	1	3.45	3	10.34	16	55.17	6	20.69	0.68	6
The sincerity of the developer's supply of information in the report	2	6.90	2	6.90	6	20.69	13	44.83	6	20.69	0.66	7
The report preparation process is not systematic	2	6.90	2	6.90	7	24.14	14	48.28	4	13.79	0.63	8
Local authorities do not adopt the SIA report	2	6.90	5	17.24	13	44.83	6	20.69	3	10.34	0.52	9

Table 5.11 Level of Agreement on the Challenge of the Current Evaluation Process

Challenge	Not sure - 0		Strongly disagree - 1		Not agree- 2		Agree - 3		Strongly agree - 4		RII Index	Ranking
	No.	%	No.	%	No.	%	No.	%	No.	%		
Requirement of establishing a particular unit (committee) for SIA evaluation	3	10.34	1	3.45	1	3.45	11	37.93	13	44.83	0.75	1
Lack of agency knowledge on evaluation SIA process	3	10.34	1	3.45	3	10.34	12	41.38	10	34.48	0.71	2
The SIA committee also hold the position on other department/unit	5	17.24	0	0.00	3	10.34	10	34.48	11	37.93	0.68	3

at the same time												
Lack of manpower among the SIA committee	5	17.24	1	3.45	2	6.90	11	37.93	10	34.48	0.67	4
Lack of skill among SIA committee	5	17.24	1	3.45	3	10.34	11	37.93	9	31.03	0.65	5
Difficult to have a qualified evaluation panel	4	13.79	1	3.45	4	13.79	13	44.83	7	24.14	0.65	5
Difficult to have a skilled evaluation panel	4	13.79	1	3.45	5	17.24	12	41.38	7	24.14	0.64	6
Comment and evaluation from the panel focus on a specific issue without an overall impact	4	13.79	3	10.34	2	6.90	14	48.28	6	20.69	0.62	7

Based on Table 5.11, the feedback from respondents indicates the requirement of establishing a particular unit to evaluate SIA as the main challenge in the evaluation process, with an RII of 0.75. It is followed by second rank (RII 0.71), the lack of knowledge among agencies involved in evaluating SIA. While the third rank (RII 0.68) is the challenge on the SIA committee and simultaneously holds the position on other departments/units. This survey determined some challenges among the evaluation panel, such as the difficulty of having a qualified evaluation panel (RII 0.65) and a skilled evaluation panel (RII 0.64). The challenge of comment and evaluation from the panel focuses on a specific issue without overall impact is the lowest RII (RII 0.62). It shows that the evaluation panel is not the main issue in evaluating the SIA report.

Table 5.12 Level of Agreement on the Challenge of the Current Monitoring Process

Challenge	Not sure - 0		Strongly disagree - 1		Not agree- 2		Agree - 3		Strongly agree - 4		RII Index	Ranking
	No.	%	No.	%	No.	%	No.	%	No.	%		
Lack of agency staff to monitor	3	10.34	0	0.00	1	3.45	12	41.38	13	44.83	0.78	1
The requirement to establish a particular unit (committee) to monitor SIA	3	10.34	0	0.00	0	0.00	14	48.28	12	41.38	0.78	1
Lack of skill among the SIA committee to monitor mitigation measures as suggested and approved in the SIA report	3	10.34	2	6.90	1	3.45	14	48.28	9	31.03	0.71	2
Lack of commitment among the monitoring agency	4	13.79	0	0.00	2	6.90	14	48.28	9	31.03	0.71	2
Difficult to have a qualified monitoring panel	4	13.79	0	0.00	3	10.34	12	41.38	10	34.48	0.71	2
Difficult to have a skilled monitoring panel	4	13.79	0	0.00	3	10.34	13	44.83	9	31.03	0.69	3
Comment and evaluation from the monitoring panel focus on a specific issue without an overall impact	5	17.24	0	0.00	3	10.34	13	44.83	8	27.59	0.66	4

The feedback and value of RII calculated in Table 5.12 indicates that the main challenges are the small and insufficient number of agency staff to monitor and the requirement to establish a particular unit (committee) to monitor SIA, with an RII of 0.78. However, the challenge of difficulty of having a skilled monitoring panel (RII 0.69) and comment and evaluation from the monitoring panel focusing on a specific issue without an overall impact (RII 0.66) are in the lowest ranking, which indicates that the respondents do not consider these as the main challenge in monitoring SIA process.

Generally, the lack of staff and qualified person is the main issue in preparing, evaluating or monitoring SIA report phases. Most stakeholders from the State Authority of Selangor, DOE, State Authority of Penang, project proponents and governmental agencies also state the same challenge they faced in implementing SIA.⁹⁸

5.8 FOCUS GROUP DISCUSSION

5.8.1 Introduction

Seven FGD sessions were organised involving federal and state stakeholders with jurisdiction to provide the framework, evaluate and approve the SIA report. The session's objective is to seek feedback and opinion relating to the SIA report's existing preparation and approval process. The other purpose of FGD was to identify the issues and challenges faced by the agencies or individuals according to the work scope and locality.

⁹⁸ Refer to the FGD Finding at Heading 5.8.2.

Table 5.13 Focus Group Discussion Session

Focus group session	Agency	Date
First session	PLANMalaysia (Federal): Legal and Regulatory Planning Division & National Physical Planning Division	9 June 2021
Second session	State Authority of Selangor	14 June 2021
Third session	Department of Environment-Assessment Division	30 June 2021
Fourth session	State Authority of Penang	8 July 2021
Fifth session	Malaysian Association of Social Impact Assessment	5 August 2021
Sixth session	Project proponents	16 August 2021
Seventh session	Governmental Agencies & Malaysian Institute of Planners	19 August 2021

Source: (Focus group discussion, 2021)

5.8.2 Findings of FGD

5.8.2.1 First Session: PLANMalaysia: Legal and Regulatory Planning Division & National Physical Planning Division

The main discussion topics were the Council, planning permission, ASI, development proposal report and implementation of Act A1522 by the states.

Submission of the SIA report to the Council is not subject to Act 172. There is no explicit provision mentioning it; therefore, the implementation of SIA is flexible. The Director of the Legal and Regulatory Planning Division, which is a former director of the Research and Development Division, explained that there are three scenarios of SIA at the Council level as follows:

- i. **First scenario:** Submission of project application to Council without SIA report. The project proponents are advised to prepare first the SIA report. Examples of the projects are Perlis Inland, Jeniang Dam and Kulim Airport.
- ii. **Second scenario:** Submission of SIA report to Council and no approval is granted. Advice will be given relating to the essential elements in the existing report.
- iii. **Third scenario:** Submission and approval of SIA report. Council will briefly review and advise on the SIMP implementation.

The head Assistant Director of the National Physical Planning Division states that three clauses under Act 172 allow the application to Council based on the Council process chart.

- i. Section 22(2A): Application involving the new township, infrastructure projects and development affecting hill slopes.
- ii. Section 20B: Submission of application through planning permission process.

- iii. Section 2A(2)(b): The general function of Council is advising federal and state governments relating to town and country planning matters. Most submission through this process is a conceptual plans, even though it is not encouraged.

The head Assistant Director of the National Physical Planning Division also insists that:

“Council is not an authority that approves project proposals. The function of Council is to advise the federal and state government regarding town and country planning matters, such as advising mega projects that impact the country. The members of Council consist of all chief ministers in Peninsular Malaysia and ministers in-country development and planning portfolios. The advice made by this Council collectively and high persuasive value in consideration of approval for the development plan.”

The discussion proceeded with ASI in DPR, which has been initiated due to the lack of emphasis on social impact. The inclusion of ASI in the DPR depends on whether the state adopted Act A1522. For states that implement Act A1522, the process already complies with SIA Category 3. While states that have not yet implemented Act A1522 and projects outside of SIA Category 3 are required to provide ASI in DPR. Madam Sanisah Shafie, Director of Regional Planning Division states that the ideal preparation for ASI should consist of ASI and mitigation measures.

The other issue discussed was the implementation of Act A1522 at the state level. As analysed before, Johor and Kelantan do not adopt Act A1522, hence there is no implementation of SIA in those states. The authority also has the power to gazette all or part of the eight types of development under SIA Category 3, as stated in the Manual.

5.8.2.2 Second Session: State Authority of Selangor

The State Authority of Selangor is the first state to adopt Act A1522 and it has received many SIA Category 3 applications. The main discussion topics are related to the preparation of ASI in the development proposal report, Selangor Manual of SIA Category 3 and capabilities at the state level.

Preparation of ASI is one of the requirements for every development project according to the planning permission condition and ASI is not as lengthy as the preparation for SIA Category 3. Submission of ASI in development proposals by certain project proponents indicates the acceptance and understanding of preparation for ASI.

The Selangor State Authority has produced a manual on SIA Category 3 which is made available for the public through its official portal.⁹⁹ The manual specifies the type of development under that category and requires a stand-alone SIA report. The preparation of SIA at the state level is more flexible:

- i. **Situation 1:** Reference for preparing the report directly through the existing manual.
- ii. **Situation 2:** Application for planning permission first and will accept advice to prepare SIA in One Stop Centre (hereafter referred to as ‘OSC’).

⁹⁹ *Official Portal PLANMalaysia@Selangor*, “Laporan Penilaian Impak Sosial (SIA) Negeri Selangor”, < <https://www.jpbdselangor.gov.my/perkhidmatan-plansel/kawalan-perancangan/laporan-penilaian-impak-sosial-sia-negeri-selangor>> (accessed 3 May, 2023).

In Selangor, SIA implementation is under the Planning Control Division of Selangor State Authority. This division consists of five to eight staff involved in supervising the SIA process, formatting and others. The Deputy Director of this division states that even though Selangor was among the earliest states to implement Act A1522, the officers in charge of SIA are still in the learning phase.

5.8.2.3 Third Session: Department of Environment- Assessment Division

The purpose of the discussion with the Assessment Division of DOE is to learn about the experience from the maturity implementation of EIA compared to SIA in Malaysia. There is much continuous improvement from EIA perspectives that SIA can replicate. The main topics discussed within this session were challenges, qualified persons, lessons learnt and plans.

1. Challenge of Assessment Division

DOE has shared some challenges faced during the EIA implementation within thirty years. EIA has the same challenges as SIA in the early phase of its implementation as follows:

- a) DOE started with a brief prescribed activity schedule and improved from time to time based on the direction provided by the headquarters office.
- b) Decentralisation process of EIA at the state level in stages.
- c) The headquarters office is still processing EIA for the state development projects in the earlier phase of decentralisation (for states that do not have an evaluation officer) and if there is any objection from the community.

In terms of the administrative framework, DOE explained that the Assessment Division has five sections with a total of twenty-two (22) staff at the headquarters office. While at the state level, in the beginning, each state only had one assigned officer to evaluate and look at monitoring. Significant structuring additions will be made when more EIA reports are received. However, at the headquarters office level, there are still constraints for its staff to evaluate the growing number of EIA reports. This is added with other duties such as monitoring the implementation of assessment, coordinating standard EIA approval conditions, preparing Standard Operating Procedures (hereafter referred to as 'SOP') for approved projects, being involved in ministry policy preparation committee meetings, regulatory and technical authority meetings and others.

The other challenges are:

- a) Change of officers through the process of exchange and promotion, which results in officers in charge not having the have expertise in evaluating and hence requires hands-on training on the job.
- b) Having to handle additional numbers of EIA submissions due to no limitation in quantum provided in the guideline, such as for hill slope developments.
- c) Low awareness from NGOs and the public about the EIA implementation process.
- d) Training of new officers through online mode in the new norm.

2. Qualified Person to Prepare EIA

DOE states that a qualified person to prepare the EIA must register under EIA Consultant Registration Scheme. The purpose of the registration is one of the DG's control measures to monitor and ensure that the consultant fulfills the criteria of a qualified person in terms of understanding, knowledge and experience. DOE may also file any legal action against any registered consultant giving false information in preparing the EIA report. No action can be taken against unregistered consultants under DOE's scheme.

The registration condition in area of expertise will be referred to that person's registration in a professional body. For example, a person keen to register under DOE as an expert in geology must register under the Board of Geologists Malaysia. DOE state that the situation also applies to registered SIA consultants under PLANMalaysia (Federal) for registration under DOE's scheme as a social expert. Besides that, due to the heavy workload, DOE insists that this department will establish a professional body through the amendment of Act 127, which may regulate the consultant registration scheme in 2025.

In the discussion, a legal expert consultant asks if registering members from the professional bodies registered under boards such as the Town Planning Board Malaysia and the Malaysian Board of Engineers is more manageable to regulate than under PLANMalaysia (Federal). This should be seen from a different angle because social experts worldwide consist of various fields (multidisciplinary) and are not only experts in subjects under the humanities, such as sociology, anthropology and socioeconomics.

Currently, most consultants who prepare SIA reports come from urban planning, economics, humanities, sociology, psychology and others.

3. Plan for EIA

DOE is improving the process relating to EIA in three stages: immediate, midterm and long-term. A committee has been established to monitor the progress of improvement. The committee members consist of the Director-General, DOE officers, international and local experts and consultants registered under DOE.

The immediate improvement process started in September 2020, when the DOE modified the executive summary's design for public display. It can be accessed online through a Quick Response (hereafter referred to as 'QR') code. The midterm process of improvement has also started, where DOE has appointed a research team to study the modifications of procedures and guidelines under EIA. Among the aspects that will be looked into is the necessity of public display held before the submission of EIA to DOE.

Regarding the increment of engagement sessions, the team is also asked to see the requirements of the guidelines for holding engagement sessions in line with the 12th Malaysia Plan.

The improvement process for the long-term stage is more focused on the legislation and establishing a professional body to regulate qualified persons. Among the regulations that will be examined is the public display requirement held before the EIA report is submitted to the DOE. The consultant stated that there is a similar

improvement process between EIA and SIA, especially in reviewing the procedures and guidelines. The initiatives to improve the assessment are as follows:

- a) Empower existing Acts under other agencies. For example, Act 172 stipulates the requirement of DPR.
- b) Having a Subject Matter Expert (hereafter referred to as ‘SME’) under the Public Service Department.
- c) Issuing guidelines that establish the essential matters that need to be discussed in the economic impact section of the EIA report.
- d) Establishment of an organisation under Environmental Quality.

4. Lesson learnt from EIA

In the third FGD session, the DOE shared a lot of experiences from the earlier establishment until now. Two main lessons are relevant to be referred to in regard to the SIA, firstly, that the DOE are dependent on experts outside of DOE. DOE still does not have great expertise in a particular area. Consequently, DOE will appoint an international expert or Appointed Individual (hereafter referred to as ‘AI’) among experienced and qualified persons such as Professors. AI appointment is limited among individuals registered under the DOE scheme based on journals and previous EIA reports submission.

Section 51 of Act 127 states that the Director-General has the power to appoint experienced AI to assist the Director-General in making decisions. The role of AI is to advise on the technical aspects in their respective fields of expertise and the Director-General will make a decision based on the comments given. DOE is currently reviewing

the AI payment system to avoid other issues. This differs from the SIA implementation, where the SIA expert assessment panel provides comments and recommendations on whether the SIA report is approved.

The second point is related to the readiness to implement the law which has been gazetted. DOE shares experiences where they are not ready to carry out the order that has been gazetted because the guidelines mentioned in the law have not yet been provided. Besides that, DOE also reminded the participants of the FGD that there is a need to set a grace period for each rule or source of authority. The lesson learned by DOE is that the 1995 order issued does not provide for an EIA report approval process grace period.

5.8.2.4 Fourth Session: State Authority of Penang

The main discussion within this session relates to the type of development under SIA, the skill and capabilities of the officer in charge of SIA report, SIMP and monitoring, as well as submission of SIA during the planning permission application at the Penang state level.

State Authority of Penang still refers to the Manual for SIA implementation at the state level. However, there are some additions to the types of development projects under SIA Category 3, specifically addressing local social issues. The Head of Corporate Planning and Appellate Board Division states the high rate of complaints received by the Appeals Board, especially for housing development projects for workers' quarters and a low-cost housing and strata developments which are high

density. The social issues are also often associated with neighbour lot problems because Penang still practices rezoning and does not have a Local Plan gazetted.

From the point of view of ability and skills, the Deputy Director of the Corporate Division opines that the scope of SIA Category 3 needs to be reviewed because it involves many states and worries that the high range of SIA Category 3 will challenge the capability of the staff. He also states that the state has constraints on the low level of SIA's expertise and the team is still at the learning stage of the SIA process.

During the two years that Act A1522 was implemented, the State Authority of Penang only received four (4) SIA report applications for Category 3. Besides attending training in SIA skills, the State Authority of Penang also refers to other states, such as Selangor, by looking at the content and comments in a report. Mr Rozaimi¹⁰⁰ suggested that proper training should also be given to other technical departments involved in the panel meeting because the secretariat depends on the panel's comments.

Penang's SIMP and monitoring process is linear, where the state hands over complete responsibility to the LPA. State Authority acts as a secretariat from the beginning of processing the reports at the state level until it goes to the planning permission meeting. This limited involvement is due to staff constraints faced at the state level. However, the Head of Corporate Planning and Appellate Board Division states that there are also recorded complaints and protests received for further attention by the State Authority of Penang.

¹⁰⁰ Mr Rozaimi is a Deputy Director of the Town and Country Planning Department of Penang.

SIA's position in planning permission was briefly discussed within this session, where SIA preparation is flexible and SIA requirements are still possible before or after planning permission.

5.8.2.5 Fifth Session: Malaysian Association of Social Impact Assessment

Eleven (11) members of MSIA from various backgrounds and experiences in preparing SIA report at the state and federal level attended this session. Among the main topics discussed are SIA in planning permission, scoping, SIMP and monitoring, as well as the qualified person to prepare the SIA report.

The lack of clarity in the processing of SIA in planning permission application causes increased costs borne by the project proponents and addition of time to the project development to the point of causing the planning permission application to be rejected. There are some views among the meeting members regarding the sequence of SIA in planning:

- a) SIA is made at the feasibility study stage to ascertain feasibility in terms of economy and social impact in the policy-making stage, Structural Plan and Local Plan stages.
- b) SIA is encouraged to be submitted first, in fulfilling the client charter that imposes conditions of approved planning permission within a certain period and SIA approval can be used within two years.
- c) The preparation of SIA and planning permission is done simultaneously as a part of the planning process and design for value-added to the project.

- d) SIA, TIA, HIA and EIA are required to be submitted simultaneously as a material consideration to assist the decision-making process in approving the planning permission at the local government level.
- e) Planning permission can be submitted first if the land belongs to the project proponents. This is because some additional procedures for development projects require a report to be sent to the state level for feasibility study, state planning unit and others.

There are also complaints related to disputes on the requirement of SIA. This is due to the lack of awareness among the project proponents and the general public. The meeting members suggested that SIA guidelines should be amended to become more transparent and to ensure that it is easy to understand (user-friendly) to be used as a general reference, including to project proponents and the state Ministry of Local Government Development.

Scoping is among the main problems faced in preparing SIA during the COVID-19 pandemic when the main study of SIA's data collection methodology comprises fieldwork research such as FGD and questionnaires survey. The consultants have taken various initiatives to ensure that the implementation and timeline of the SIA process does not affect that scenario.

Among the initiatives the MSIA members took were distributing questionnaires via Google Forms and conducting online FGD using the Zoom application. The online data collection process has its accompanying challenges. Among the challenges discussed in this session were as follows:

- a) The inquiry on the reliability of the information received through Google Forms to represent the study area because of how the spreading of links cannot be controlled.
- b) Did not get an efficient response, although several follow-ups and reminders through phone, email and WhatsApp messages have been made.
- c) Not all residents in the study area can participate online by filling out the questionnaire and using a video-conferencing application.

The meeting members also hope that the new Manual can incorporate efficient and relevant methods in the endemic situation as well as current changes. Matters concerning the methodology in scoping are also linked as one of the reasons for an SIA report not being approved at the panel meeting level. The scoping process is in the early stages of SIA implementation, where changes to the methodology section will affect the report's writing. Thus, some meeting members recommend a brief scoping report at the initial approval stage, similar to the preparation of TOR for EIA Table 2. It will be a framework that can assist in an excellent direction for the whole project. It also depends on the acceptance and capacity of PLANMalaysia (Federal) staff and State Authorities, as well as the client charter provided.

Regarding SIMP and monitoring, MSIA members expressed that the challenges faced in the preparation of SIMP are as follows:

- a) Difficulty in issuing Key Performance Indicators (hereafter referred to as 'KPI') because there is no standard of social issues that can be used

as benchmarks compared to the preparation of EIA and Environmental Management Plan (hereafter referred to as ‘EMP’).

- b) Difficulty in providing mitigation recommendations at the operational level. This is also an enquiry from the project proponents regarding the requirements and the period related to the mitigation phase.
- c) Confusion about which LPA should be involved in preparing the SIMP when development projects involve state borders.

Some members of the meeting think that the current SIA does not emphasise the monitoring and Grievance Management Mechanism (hereafter referred to as ‘GMM’) because LPA does not have a specific monitoring body. Consequently, it causes instability relations between agencies. They suggested that the GMM framework is proposed to be a source of power and should be emphasised more in the SIA report.

Another recommendation regarding SIMP is inserting audit and monitoring as part of EIA or planning permission because not all SIA require a monitoring committee. It depends on the nature of the development. In addition, when it comes to qualified persons, there are suggestions from meeting members to make MSIA members automatically registered as a consultant for preparing SIA. They inquire which membership status is higher between DOE and MSIA membership. This is because the preparation of the SIA report is more detailed than the preparation of the socio-economic section in the EIA report.

The automatic membership is a good recommendation, but the registration scheme with PLANMalaysia (Federal) is still in the planning stage. Since DOE already

has its registration system, adjustments need to be made. The president of the MSIA organisation states that MSIA members do not have membership weight compared to SIA consultants' membership in PLANMalaysia (Federal). The president opines that registration of SIA consultants with PLANMalaysia (Federal) is essential as SIA is a professional career and PLANMalaysia (Federal) is a body responsible for maintaining the quality of SIA. The president also explained that the qualified person to prepare SIA is not limited to town planners only. The criteria of eligible persons are general and open to all fields, such as human science, anthropology, sociology and others.

Another recommendation that needs to be highlighted is that PLANMalaysia (Federal) has a library or repository, such as DOE, to allow consultants to refer to the reports that have been approved. It will help the consultants or project proponents prepare an SIA report by examining the cumulative impact in a study area.

5.8.2.6 Sixth Session: Project Proponents

The discussion with project proponents is to identify issues and challenges in SIA implementation. The project proponents undertake various types of developments. They have experience in the SIA process until the status decision of the SIA report, whether the report is approved or passed with amendments or rejected.

Table 5.14 Attendance List of Project Proponent in the Sixth Session

No	Project proponent	Type of development	Attendance
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1.	Malaysian Public Works Department – Environmental & Energy Efficiency Branch	Linear project - Highway/ Expressway	Attend
2.	Sime Darby Property Berhad	Housing	Attend
3.	Mass Rapid Transit Corporation Sdn Bhd	Linear project -Rail	Absent
4.	Worldwide Holdings Berhad	Solid waste disposal site / Power station	Attend
5.	Tenaga Nasional Berhad	Electric power station	Attend
6.	Malaysia Rail Link Sdn Bhd	Linear project - Rail	Attend
7.	Gamuda Engineering Sdn Bhd / SRS Consortium Sdn Bhd	Linear project – Rail (Penang)	Attend
8.	Linggi Base Sdn Bhd	Port/Reclamation	Attend
9.	KXP Airportcity Holdings Sdn Bhd	Airport	Attend
10.	Trivillion Development Sdn Bhd	Columbarium	Absent
11.	Biopolis Resources Sdn Bhd	-	Attend
12.	Harbour Home Sdn Bhd	Industry	Absent
13.	Seriemas Development Sdn Bhd	-	Absent
14.	Lion Tin Sdn Bhd	Mining	Absent

Several topics were discussed in this session with the project proponents.

Briefly, among the issues that have been discussed are:

- a) **SIA Category 3:** Confusion and difficulties in implementing SIA, especially for development projects at state level. For example, the Manual has seven (7) types of development; however, State Authority of Negeri Sembilan only imposes one kind of development: garbage disposal site.
- b) **SIA Coordination:** Proposed coordination of SIA reports with the ESG and EIA enables the sharing of processes and information to reduce duplication of research work.
- c) **Monitoring:** Who is the enforcement officer who executes the monitoring phase and if there is, who is the auditor who qualifies to conduct the audit in reviewing the implementation of SIMP?
- d) **SIMP:** Proposal to use the social impact index for replacing intangible KPIs in tabulating SIMP.
- e) **Evaluation Panel:** Propose an expert evaluation panel from the industry development sector besides the committee of technical agencies and academicians who can provide comments from the industrial area.
- f) **Client Charter:** Recommendation that SIA should have a client charter similar to EIA implementation.

5.8.2.7 Seventh Session: Governmental Agencies & Malaysian Institute of Planners

Seventy (70) attendees from various governmental agencies at the state, federal and LPA levels participated in this session. Three main topics discussed in the session are the implementation process, legislation and SIA Category 3.

i. Implementation process

Malaysian Public Works Department asked about the list of registered consultants with PLANMalaysia (Federal) to appoint a trusted SIA consultant for the proposed development projects. There are different views on the implementation process among the consultants. The school of thought are as follows:

- a) SIA need to be implemented in the early phase to determine the optimum project design in minimising the social impact.
- b) SIA will be implemented after submission of the design concept and preliminary design, such as the specific zone of impact, including the proposed mitigation within SIMP.

The department recommends that the SIA process be initiated in the early phase of planning to assist the governmental agency or project proponents in determining the status of a viable project. If there is any objection from the community, it will affect the project's continuity.

ii. Law and legislation

Representatives from MIP state that cautious interpretation of provisions under Act A1522 must be done mainly to avoid conflict in SIA implementation. As

the general duty of the planner is as a submitting person and preparing the report, the planner has difficulty with unclear provisions relating to the social impact under section 20B, section 22(2A) and section 21A.

iii. SIA Category 3

PLANMalaysia (Federal) has already instructed State Authorities to implement Act A1522 at the state level. The Manual has given seven (7) examples of development projects for SIA Category 3, where item eight (8) states that the state and LPA are given opportunities to determine development projects for SIA Category 3 from time to time. Only a few states in Peninsular Malaysia have adopted and issued their guidelines or manuals.

Selangor, Malacca, Terengganu, Perak, Kedah and Negeri Sembilan are the states with guidelines or manuals. Penang does not have gazetted manual, but the State Authority of Penang already lists and implements the development type under such category. All the states mentioned above have a different development list for SIA Category 3 except for Malacca that implements the development project as stated in the Manual from PLANMalaysia (Federal).

Regarding the non-uniformity of SIA Category 3 at state level, the State Authority of Selangor states there is a preliminary consultation regarding SIA requirements. Initial negotiations under Section 20A are made through value assessment for the Malaysian Public Works Department. State Authority of Selangor says that SIA does not apply to projects not listed in the Manual. For the listed projects, the state will look at the scale of development and social

impact; SIA requirements are not placed on the development extensions that are too large and do not involve relocation.

iv. SIMP and monitoring

State Authority of Selangor posed several questions relating to the monitoring process, as follows:

- a) Do the social monitoring and audit reports need to be evaluated?
- b) Who will prepare the social audit report?
- c) Do the project proponents need to appoint a consultant to evaluate the social monitoring and audit report?

Besides that, the Malaysian Public Works Department states that the process of preparing the SIMP throughout the project is unclear in regards to the timeline and approval. The department also faces difficulty determining mitigation measures in the operation and decommissioning phases. This clarification is essential as it affects the cost borne by the government agencies.

5.8.2.8 Overall Analysis of FGD

Seven (7) engagement sessions with several identified stakeholders have been held to identify issues and challenges faced by agencies or individuals accordingly, the scope of work and the locality. These stakeholders consist of bodies with source of authority,

the body that evaluates and approves and the body or individual that prepares the SIA report.

Many similarities and connections can be made between the issues and challenges that have been highlighted in the engagement sessions, which is related to confusion in the implementation of SIA Category 3 at state level which are not uniform, the sequence of SIA implementation in planning permission is not precise, the constraints faced by the PLANMalaysia (Federal) and State Authorities from the aspect of skills and personnel, lack of clarity in the part of monitoring and others. Table 5.15 lists the summary of issues and challenges identified and discussed during the engagement sessions.

Table 5.15 Overall Finding of FGD

No	Agency	Role in SIA process	Issue/Discussion
	PLANMalaysia (Federal): Legal and Regulatory Planning Division & National Physical Planning Division	<ul style="list-style-type: none"> • Body that has power and jurisdiction • Body that evaluates and approve 	<ul style="list-style-type: none"> • Council • Planning permission • ASI • Development proposal report
	State Authority of Selangor	<ul style="list-style-type: none"> • Body that evaluates and approve 	<ul style="list-style-type: none"> • Preparation of ASI in the development proposal report • Manual of SIA Category 3 • Skill and capabilities
	Department of Environment- Assessment Division	<ul style="list-style-type: none"> • Body that has power and jurisdiction of EIA • Body that evaluates and approves EIA 	<ul style="list-style-type: none"> • Challenges • Qualified person • Future plan • Lesson learnt

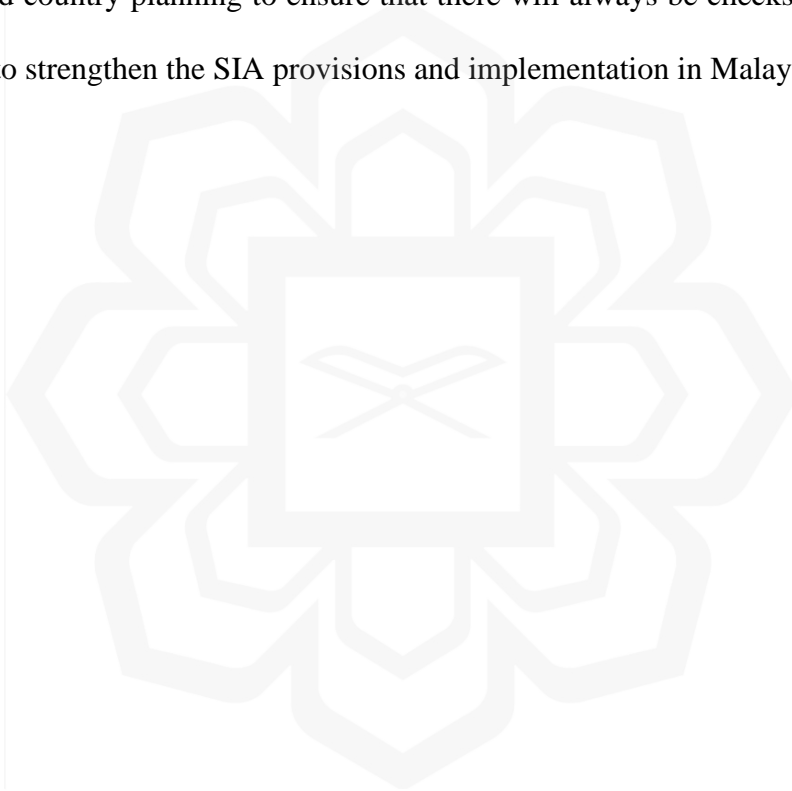
	State Authority of Penang	<ul style="list-style-type: none"> • Body that evaluates and approve 	<ul style="list-style-type: none"> • Type of development project • Skill and capabilities • SIMP and monitoring • SIA in planning permission
	Malaysian Association of Social Impact Assessment	<ul style="list-style-type: none"> • Prepare the SIA report 	<ul style="list-style-type: none"> • SIA in planning permission • Scoping • SIMP and monitoring • Qualified person
	Project proponents	<ul style="list-style-type: none"> • Prepare the SIA report 	<ul style="list-style-type: none"> • SIA Category 3 • SIA standardisation • Monitoring • SIMP • Evaluation panel • Client Charter
	Governmental Agencies & Malaysian Institute of Planners	<ul style="list-style-type: none"> • Body that has power and jurisdiction • Body that evaluates and approve • Prepare the SIA report 	<ul style="list-style-type: none"> • Implementation process • SIA Category 3 • SIMP and monitoring

5.9 CONCLUSION

All issues discussed above are the challenges faced by the project proponents and governmental agencies, from the preparation stage to the approval phase. The data analysis from a survey and FGDs has also been inserted to verify the issues in SIA implementation. The discussion has achieved this thesis's primary research objective:

to analyse the legal issues and gaps related to the implementation, enforcement and monitoring of SIA under Act 172.

To balance the power of federal and state governments on the development planning issues related to the community, it is decided that Act 172 must be reviewed. The next chapter looks into actions that need to be taken to amend the Act and new provisions are being recommended to enhance the role of the federal government in town and country planning to ensure that there will always be checks and balances as well as to strengthen the SIA provisions and implementation in Malaysia.



CHAPTER 6:

RECOMMENDATIONS AND CONCLUSION

6.1 INTRODUCTION

An analysis of the SIA implementation by governmental agencies and project proponents in Chapter Five has provided an understanding on the nature of SIA dispute faced in Malaysia and the issues often faced by the stakeholders in the process. It has been found that issues such as lack of provision under Act 172 and explicit guidelines in the Manual regarding the SIA implementation have limited their ability to amicably contribute to a resilient development environment. Further, it will lead to higher costs, especially to the consultants and project proponents, while having doubt on the procedures to prepare SIA reports.

To formulate the best way forward, this chapter addresses the third research objective, recommending improvement under Act 172 and the Manual regarding the SIA implementation for development projects. The proposed amendment of the Act may address the issues and gaps. This is also the final chapter that concludes this thesis by summarising the research findings and discussing its contribution to address the research objectives.

6.2 PROPOSED RECOMMENDATIONS

Issues arising that are mainly caused by the legal framework and policy loopholes would require revision of the current provisions of Act 172 and related guidelines. Following the analysis in the previous chapter, the proposed recommendations are divided into three parts.

The first part of the recommendations relates to the amendment of the existing provisions of Act 172 and the second is the new proposed provisions of the Act. As discussed in Chapter Four, the requirement of SIA was established in 2017 through insertion of section 20B of Act A1522. However, it is silent about the other aspects, as Chapter Five reveals. Therefore, the proposed amendment and new provisions proposed to be inserted into Act 172 are crucial to accommodate the gaps in SIA implementation.

Furthermore, since the Manual is the primary reference and practice for project proponents and governmental agencies, its content shall be revised accordingly. As Act 172 may not provide lengthy details for SIA guidelines, hence the Manual will address this specifically.

6.3 AMENDMENT OF PROVISIONS UNDER ACT 172

According to the analysis of the law and issues in SIA preparation, evaluation and monitoring, several recommendations under Act 172 are suggested to resolve the issues that have been identified.

6.3.1 Interpretation of SIA

The statutory definition plays a significant role in contributing to the standardisation of understanding among the parties. It is also crucial to prevent them from being able to make their own decisions in cases. If they stumble into a conflict, they cannot modify the law, which prevents them from halting the administration of justice. It enables Parliament to serve as the legislative branch, with the courts enforcing statutes as needed.¹

Given that the requirement of SIA in Malaysia is still new, there has been no statutory definition of SIA yet in Act 172. Putting in place a statutory definition of SIA in the Act will strengthen its implementation for all stakeholders. The legal framework in India defines SIA through Rule 2014. Rule 2 states that SIA is an assessment carried

¹ LawTeacher, “The Interpretation of Statutes”, <<https://www.lawteacher.net/free-law-essays/constitutional-law/the-interpretation-of-statute-constitutional-law-essay.php#:~:text=Statutory%20interpretation%20is%20important%20so,will%20then%20apply%20the%20law.>> (accessed 15 December, 2022).

out in accordance with section 4(1) of RFCTLARR.² It is an explicit provision to interpret SIA in other provisions and practises. Thus, the proposed interpretation is tabulated in Table 6.1 below to describe SIA under Act 172.

6.3.2 Requirement of SIA

SIA Category 1 already has an existing provision relating to the requirement of SIA through section 20B (2) of Act 172. However, no provision explicitly requires project proponents for proposed developments under SIA Category 2 and 3 to submit the SIA report. The rationale for stating the requirement in the Act is to standardise the legal practice and monitoring process for SIA in the proposed development.

Section 22(2A) of Act 172 states the development projects for SIA Category 2. The proposed amendment under this provision outlines the requirement for submitting an SIA report to the Council in planning permission applications for intended development related to this category. The report mentioned here refers to the proposed definition of SIA under section 2.

For SIA Category 3, it is also proposed to substitute a provision under section 21A(1A), which inserts the SIA requirement to be submitted to the State Authority. Initially, this provision seeks to submit an analysis of social implications for any development subject to the planning permission. However, it was repealed in 2017

² Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014, Rule 2(c).

through Act A1522.³ It has been replaced with section 21A (1) (ea) for ASI.⁴ Since ASI and SIA are different assessments, it is more comprehensive if the proposed provision section 21A(1A) is reinserted but focuses on SIA Category 3.

6.3.3 Approval of SIA

It is insufficient if the legal framework is silent about the approval of the assessment. It needs to be included in the provision of the Act to strengthen the SIA implementation. All the project proponents and stakeholders will comply with the procedure to proceed with the development projects. The panel responsible for approving the assessment is the SIA Report Evaluation Panel at the federal and state levels.⁵ The Director-General of PLANMalaysia (Federal) will chair the panel meeting at the federal level, while the Director of State Authorities will chair the panel meeting at the state level. The panel membership at the federal level consists of several agencies, such as the Ministry of Women, Family and Community Development, Economic Planning Unit (hereafter referred to as 'EPU'), Implementation Coordination Unit (hereafter referred to as 'ICU'), State Economic Planning Unit (hereafter referred to as 'SEPU'), State Authorities as well as representatives of MIP, MSIA and academician.⁶

³ Town and Country Planning (Amendment) Act 2017, (Act A1522), Amendment of s 21A.

⁴ Refer to the SIA Category 3 at Heading 5.3.2.

⁵ SIA Report Evaluation Panel at the federal level will assess the proposed development projects under SIA Categories 1 and 2 while SIA Report Evaluation Panel at the state level will assess the proposed development projects under SIA Category 3.

⁶ Jabatan Perancangan Bandar dan Desa, Manual Penyediaan Laporan Penilaian Impak Sosial (SIA) bagi Projek Pembangunan, 5-1-2.

At the state level, the panel membership consists of the State Economic Planning Unit (hereafter referred to as 'SEPU'), State Development Office (hereafter referred to as 'SDO'), Department of Social Welfare, State Authorities, experts and other relevant agencies. Among the panel functions is approving the SIA report, whether it be a full approval, approval with amendments or rejection.⁷ The project proponents and consultants must obtain the approval of the SIA report from this panel meeting.⁸ However, as stated above, the approval of SIA is merely mentioned in the Manual and is not expressed under Act 172. Therefore, it is proposed that the requirement for approval of the SIA report by the Director General be inserted under section 20B (2) of Act 172 for development under SIA Category 1. It significantly ensures that PLANMalaysia (Federal) has reviewed the report submitted.

The same approval has been proposed for SIA Categories 2 and 3. However, the slight difference for SIA Category 3 is that the approving authority is the State Director, as all the state's land development is under the purview of the State Director. The State Director has been interpreted under section 2, representing the Director of State Authorities.⁹

Furthermore, the current PPA14 states the requirement of SIA and review from PLANMalaysia (Federal) for any application for project development under section 20B.¹⁰ PPA13 also requires SIA submission and approval from PLANMalaysia

⁷ Ibid.,5-2-3.

⁸ Ibid.,5-3.

⁹ Town and Country Planning Act 1976, (Act 172), s 2.

¹⁰ PLANMalaysia, *Panduan Pelaksanaan Akta 172, Ppa 14, Permohonan Cadangan Pemajuan Di Bawah Sesksyen 20B*, (2017).

(Federal) for any project under SIA Category 2.¹¹ It indicates the importance of SIA approval by PLANMalaysia (Federal). However, as stated above, the element of SIA approval is not explicitly mentioned in the Act. Therefore, having this proposed provision will not merely guarantee the responsibility of project proponents in regard to the proposed project but the primary initiative is to protect the community.

Additionally, a crucial aspect of approving the content of the SIA report is taking into account the feedback from the affected community. The inclusion of public participation for SIA approval under Act 172 will consequently strengthen the implementation of SIA, ensuring active involvement of the community, particularly those near the proposed development, in the decision-making process. Table 6.1 below shows the proposed amendment to Act 172, including SIA’s interpretation, requirement and approval.

Table 6.1 Proposal of Amendments

Section under Act 172	Proposed provision	Issues related
Section 2	“ Social impact assessment ” means a report made under section XX for the purpose of seeking advice from the Council under section 20B and section 22(2A) or for the purpose under section 21A (1A).	<ul style="list-style-type: none"> • Execution of SIA is not comprehensive among the states in Malaysia.
Section 22(2A)	For the purpose of seeking the advice from the Council under subsection (2A) (a), (b), (c), the Federal Government and State	<ul style="list-style-type: none"> • Execution of SIA is not comprehensive among the states in Malaysia.

¹¹ PLANMalaysia, *Panduan Pelaksanaan Akta 172, PPA 13, Permohonan Cadangan Pemajuan di Bawah Perenggan 22 (2 A) (c)*, (2017).

	Government department or agency shall submit to the Council the development proposal together with a social impact assessment report approved by the Director General and other reports as determined by the Council.	<ul style="list-style-type: none"> • Requirement of SIA preparation is not specified under Act 172. • The approval process is not clear under Act 172.
Section 21A(1A)	The State Authority may specify that the development proposal report submitted under subsection (1) in respect of certain categories of development shall include a social impact assessment report approved by State Director which is the subject of the application for planning permission.	<ul style="list-style-type: none"> • Execution of SIA is not comprehensive among the states in Malaysia. • Requirement of SIA preparation is not specified under Act 172. • The approval process is not clear under Act 172.
Section 20B (2)	For the purpose of seeking the advice from the Council under subsection (1), the Federal Government and State Government department or agency shall submit to the Council the development proposal together with a social impact assessment report approved by Director General and other reports as determined by the Council.	<ul style="list-style-type: none"> • Execution of SIA is not comprehensive among the states in Malaysia. • Requirement of SIA preparation is not specified under Act 172. • The approval process is not clear under Act 172.

6.4 PROPOSAL OF NEW PROVISIONS UNDER ACT 172

Several models in various countries have good governance for SIA implementation. For instance, the legal framework and guidelines in India and Australia have been analysed in Chapter Three to observe their best practices for SIA. The model framework of EIA in Malaysia also provides comprehensive provisions through section 34A of Act 127 and section 34AA of Act A1441. It comprises four (4) elements, namely, qualified, assessment evaluation, authority approval and monitoring process.

6.4.1 Qualified Person

A qualified person to prepare SIA is essential to assist the project proponents in their development application and ensure that a report of excellent quality is produced. Chapter Five has addressed the critical impact of this qualification from the EIA perspective.¹² SIA should replicate the same to ensure resilient development in the community area.

In addition, according to the NSW Guideline (Australia), the eligible person that can prepare the SIA report comprises members from professional organisations like IAIA, Environmental Institute of Planning Australia and New Zealand, Planning Institute of Australia and Australasian Evaluation Society.¹³ While in India, RFCTLARR 2013 and Rule 2014 specifically regulates the procedure of execution and the qualified person to prepare the report.

Furthermore, it is suggested that the individual who submits the SIA report is a qualified individual registered under written law and regulated by one Board. This can ensure that any failure, negligence and irregularities in preparing the report can be reported to the relevant professional Disciplinary Board for disciplinary action. This new proposed provision requires the person submitting the SIA report to be a person qualified under the law. This will also strengthen the enforcement of SIA in Malaysia. However, this will not prevent other individuals (who are not registered) from

¹² Refer to the Criteria of Qualified Person at Heading 5.6.

¹³ Department of Planning and Environment State of New South Wales, Social Impact Assessment Guideline,33.

cooperating in preparing the report. Therefore, one specific provision relating to eligible persons must be inserted in Act 172 as a mandate to carry out the assessment.

6.4.2 Assessment Evaluation

The assessment evaluation includes the evaluation, mitigation, monitoring and auditing phases. All these processes are significant in tracing the continuity of resilient development in Malaysia. It is proposed to insert a particular provision relating to SIA implementation that compromises these procedures under Act 172. Section 34A from Act 127 and Act A1441 are referred to within this proposal.

The evaluation of the report must ensure that the content of the report is aligned with the proposed provision and complies with the guidelines prescribed by the DG. The approval granted for the report may be void if there exists non-compliance with the policy.¹⁴ In addition, the other proposed provision authorises the DG or the State Director to approve the SIA report where they are satisfied that the report complies with the requirements of the proposed subsection 2. The DG or the State Director is empowered to impose conditions for approval of the report. They are also responsible to justify the approval status and conditions (if any).

Furthermore, the proposal of subsection (4) is to allow the DG or the State Director not to grant approval of the SIA report if the report does not meet the

¹⁴ *Kajing Tubek & 2 Ors v Ekran Bhd & 4 Ors* [1996] 3 CLJ 96 (High Court).

requirements of subsection (2) or if the person intends to carry out activities that do not take into consideration prevention and reduction of the effects of development on the local community. If the approval is still granted even where the requirements of subsection (2) are not met, the approval can be contested in court. If the report is not approved, it does not prevent the person intending to carry out the activity from reviewing and resubmitting the revised report to the DG for evaluation and approval. However, if the person still proceeds with the development even though the report has not been approved, it is proposed that this act should be declared as an offence. It should be penalised for being contrary to the proposed provision.

The proposed provision also allows the DG or State Director to monitor compliance with the conditions given for the approval of the SIA report. The responsibility is placed on the person intending to carry out the activity to provide evidence of compliance. The monitoring process by the DG or the State Director will not be specified under this Act because it intends to give flexibility for implementation by the state.

Table 6.2 Proposal of Provision

Section under Act 172	Proposed provision	Issues related
Section XX (1)	Any person intending to carry out any of the prescribed activities under section 20B (1) and (2), section 22 (2A) and section 21A, shall, before any approval for the carrying out of such activity is granted by the relevant approving authority,	<ul style="list-style-type: none"> • Requirement of SIA preparation is not specified under Act 172. • The SIA approval is not clear under Act 172.

	<p>submit a social impact assessment report to the Director General or State Director of Town and Country Planning for his evaluation.</p>	
Section XX (2)	<p>A social impact assessment report shall be in accordance with the guidelines as the Director General may prescribe and shall contain the following:</p> <p>(a) the development concept and justification;</p> <p>(b) a location map and a site plan;</p> <p>(c) assessment of the impact such activity will have or is likely to have on the social; and</p> <p>(d) the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the social.</p>	<ul style="list-style-type: none"> • Requirement of guideline compliance is not specified under Act 172. • The SIA approval is not clear under Act 172.
Section XX (3)	<p>A report required to be submitted under this section shall be prepared by a person whose qualifications are registered under any written law relating to the profession.</p>	<ul style="list-style-type: none"> • No provision related to the criteria of a qualified person to prepare SIA. • No provision related to the enforcement of SIA.
Section XX (4)	<p>If the Director General, on examining the report and after making such inquiries as he considers necessary, is of the opinion that;</p> <p>(a) the report is not in accordance with the development plan or physical plan approved by the relevant approving authority; or</p> <p>(b) the report does not satisfy the requirements under subsection (2),</p>	<ul style="list-style-type: none"> • No DG or State Director power to evaluate, examine, or monitor under Act 172. • The SIA approval is not clear under Act 172.

	<p>he shall not approve the report, giving reasons for not approving, and shall inform the person and the relevant approving authority accordingly.</p>	
Section XX (5)	<p>Any person who contravenes this section shall be guilty of an offence and shall be liable to fine not exceeding five hundred thousand ringgit or to imprisonment for a period not exceeding five years or to both and to a further fine of five thousand ringgit for every day that the offence is continued after a notice by the Director General requiring him to comply with the act specified therein has been served upon him.</p>	<p>No provision related to the enforcement of SIA.</p>

6.4.3 Overall Analysis

The legal framework of SIA is crucial to give the mandate to the qualified person, DG, State Director and other relevant stakeholders to carry out the SIA study and evaluation. However, not all specific provisions need to be inserted under Act 172. It is sufficient to have essential general governance to enforce SIA. The advantages of particular provisions, as illustrated in Table 6.3 below.

Table 6.3 Advantages of Specific Provisions in Act 172

Advantage
Uniformity of practices between the states from a legal point of view.

Clarity of the following matters to ensure the standard of SIA:

- a) Developments that require SIA;
- b) Qualified person to prepare SIA;
- c) Approval of SIA.

Guarantee accountability and transparency.

(Source: Researcher's own, 2022)

6.5 AMENDMENT OF MANUAL PREPARATION FOR SOCIAL IMPACT ASSESSMENT FOR PROJECT DEVELOPMENT EDITION 2; 2018

Generally, provisions under the Act are brief and not too specific compared to the guideline or manual. The same goes for Act 172, which does not cover SIA in detail as the wordings are relatively minimal. Thus, the details of SIA, such as process and qualified persons, should be highlighted in the proposed new edition of the Manual. Due to the feedback from the project proponents and governmental agencies, the current Manual is insufficient and needs improvement. It should be updated to incorporate issues relating to implementation in regard to the preparation of SIA as the primary reference.

6.5.1 Process of SIA

The SIA process is very crucial in planning projects and development. It needs to be implemented effectively to ensure the stability of the community. The current Manual

has provided the SIA process; however, it is still inadequate as certain confusion still arises among the practitioners.¹⁵ The new Manual should explain the many stages of SIA in detail, from screening, scoping, data collection, impact evaluation, mitigation and social impact management plan.

6.5.2 Qualified Person

The success of the SIA process depends on the parties involved, like governmental agencies, project proponents and SIA consultants. The consultants are responsible to determine the impact, to amend the mitigation measures, to guide the project proponents and other related matters. Therefore, a qualified and expert person is eligible to prepare the SIA report.

The consultant should generally have professional skills in community negotiations and a high knowledge of the development proposal process and impact assessment studies. Most of them are registered with the BTPM, the Board of Architect Malaysia (hereafter referred to as ‘BAM’), the Board of Engineers Malaysia (hereafter referred to as ‘BEM’) and the MSIA.

Given that the consultants come from various professions, a competency course must be implemented to improve the standard of professionalism with the specified qualifications and skills required to conduct SIA studies. Up until 2022, there is no legal

¹⁵ Project Proponents, “interview by Nur Atheefa Sufeena M Suaree”, Selangor, 19 August 2021.

provision regarding the scheme of consultant registration that will confer eligibility as a qualified person. In order to ensure that SIA reports that are comprehensive and of high quality are prepared by professional, qualified, trained and experienced individuals, the researcher proposes that PLANMalaysia (Federal) should create a mechanism such as registration of the SIA consultants. EIA has implemented this earlier to secure a qualified person to prepare the report.¹⁶ The new Manual should address clear criteria for a qualified person.

Australia and India have used their legal framework (Acts and guidelines) to resolve the SIA implementation issues. However, Act 172 and the Manual in Malaysia are not being entirely utilised to address implementation issues, as discussed in Chapter Five. Comprehensive governance is vital for the social life cycle.

From this chapter, it is observed that the proposed amendments, new provisions and manual amendments would be able to address the legal issues that arise. As seen in Table 6.1 and Table 6.2, the proposal for recommendations comes in the form of a proposal for legal reform and improvement in SIA implementation in Malaysia. It has fulfilled the last research objective, recommending improvement in Act 172 and the Manual regarding SIA implementation, enforcement and monitoring. The improvement of the SIA framework contributes to a balance between the social negative impacts and economic benefits of a project. Not only will the community gain protection, but stakeholders will also prevent unnecessary costs, time, and energy in preparing the SIA report. This situation promotes good governance in sustainable development, seeking

¹⁶ Department of Environment, Guidance Document on EIA Consultant Registration Scheme.

to help communities establish an efficient public administration system within a democratic framework. It is hoped that the proposed recommendations can be executed to reform the legal framework of SIA in Malaysia.

6.6 THESIS CONCLUSION

This thesis was prepared based on the problem statement surrounding the implementation of SIA under Act 172 and unclear guidelines in the existing Manual which have resulted in disputes between the project proponents, consultants, governmental agencies and other related stakeholders.

Since the amendment of Act 172 through Act A1522 in 2017, several SIA reports have been produced. Within a span of five (5) years, stakeholders are already facing difficulties in its implementation. For instance, they have enquired about qualified persons who can prepare the SIA report and clarifications are needed on many processes related to the SIA. As such, this research was carried out to resolve these problems.

This thesis summarises the SIA legal framework and practise findings in Malaysia, Australia and India from Chapters Three and Four. Then, it identifies legal issues regarding the implementation, enforcement and monitoring of SIA under Act 172 as well as the Manual in Chapter Five. All the views and feedback from the stakeholders through interview sessions, FGD and surveys are included to ascertain the actual practices relating to SIA in Malaysia.

This chapter further summarises the formulated recommendations to improve Act 172 and the Manual itself. These discussions contribute much to the evolution of the SIA legal framework in Malaysia. All three research objectives have been discussed throughout the chapters. Table 6.4 below summarises this thesis's research objectives, corresponding questions and chapters.

Table 6.4 Chapters that Address the Corresponding Research Objectives and Research Questions

Research Objective	Research Question	Chapter
1. To identify the current law and practice on the implementation of Social Impact Assessment in Malaysia, Australia and India.	What is the position of the current law and practice regarding SIA implementation by related governmental bodies and project proponents in Malaysia, Australia and India?	Chapter Three and Chapter Four
2. To analyse the legal issues and gaps related to the implementation, enforcement and monitoring of SIA under the Town and Country Planning Act 1976 (Act 172).	What are the legal issues and gaps regarding implementation, enforcement and monitoring of SIA under the Town and Country Planning Act 1976 (Act 172)?	Chapter Two and Chapter Five

Research Objective	Research Question	Chapter
3. To recommend improvement under the Town and Country Planning Act 1976 (Act 172) and Manual for Social Impact Assessment for Project Development regarding implementation, enforcement and monitoring of SIA.	What are the most suitable recommendations for improvement under the Town and Country Planning Act 1976 (Act 172) and Manual for Social Impact Assessment for Project Development in regard to implementation, enforcement, and monitoring of SIA?	Chapter Six

6.7 FINDINGS

A summation of the essential findings and arguments based on the research objectives and questions discussed in the previous chapters are provided below.

6.7.1 Examination of Current Law and Practice in the Implementation of SIA in Malaysia, Australia and India

This examination is related to the first research objective and question, which is the position of the current law and practice regarding SIA implementation by related governmental bodies and project proponents in Australia, India and Malaysia. The analysis of Chapter Three reveals that the implementation in Australia is included within the EIA report component, while in India and Malaysia, the SIA report is

standalone. The scenario may be illustrated through the process of SIA in these countries.

For Australia, the best practice of SIA is in New South Wales, which has the most comprehensive framework compared to the other states. Social Impact Assessment Guideline for State Significant Mining, Petroleum Production and Extractive Industry Development was replaced with NSW Guideline in July 2021. It has been supported by the Technical Supplement to assist the project proponents in preparing the SIA report. Both guidelines comprise all the necessary element of SIA.¹ For example, it covers the specific stages of the SIA process, the criteria for submitting person to prepare the SIA report, the best methodology to carry out the study and others.

While for the framework in India, SIA is highlighted clearly in the RFCTLARR and 2014 Rules.² The Government of India strictly regulates SIA through land acquisition and addresses complaints raised regarding to uncompensated land and the risk of displacement due to the intended development. Even though there are some concerns of the citizens that the SIA process will delay the development, however, community protection prevails.

Malaysia has implemented SIA through Act A1522 in requiring the SIA report for SIA Category 1. PLANMalaysia (Federal) has published the second edition of the Manual in 2018 to improve the implementation of SIA. Stakeholders refer to the Manual as the main reference to prepare SIA. However, the provision under Act 172 relating to

¹ Refer to the discussion of the NSW Guideline and Technical Supplement at Heading 3.2.1.2.

² Refer to the discussion of the RFCTLARR and 2014 Rules at Heading 3.3.2.

SIA implementation is still inadequate, and the content of the Manual still requires improvement to better assist the stakeholders.³ All three countries, Australia, India and Malaysia do not abandon the principle of public involvement in SIA implementation.

6.7.2 Examination of Legal Issues and Gaps Related to the Implementation, Enforcement and Monitoring of SIA under the Town and Country Planning Act 1976 (Act 172)

This examination is related to the second research objective and question, which is the analysis of the legal issues and gaps related to the implementation, enforcement and monitoring of SIA under Act 172. Overall, there are numerous issues relating to the implementation of SIA under Act 172 as well as the Manual. The absence of legal provisions causes difficulties in the implementation of SIA. There are five (5) main issues derived from Act 172, which are as follows:

1. Execution of SIA is not comprehensive among the states in Malaysia.
2. The requirement of SIA preparation is not specified under Act 172.
3. The approval process for SIA is not stated under Act 172.
4. No provision related to the enforcement of SIA.
5. No provision related to the criteria of qualified person to prepare SIA.

³ Refer to the discussion of SIA under Act 172 at Heading 4.3.3.3.

Chapter Five has explained in detail each issue relating to SIA implementation in Malaysia. All perspectives have been examined in regard to the legal framework within Act 172 and the Manual, as well as the findings from the questionnaire survey and FGD. Findings from the survey and FGD have verified the legal issues analysed within that chapter. For example, among the core issues discussed is the staff's capacity to prepare, evaluate and monitor SIA. This issue arises not only in PLANMalaysia (Federal) but also at the state level. This situation is similar to the implementation in India, which affects the quality of the SIA report. The discussion has achieved this thesis's primary research objective as stated above.

6.7.3 Examination of Recommendations for Improvement of the Town and Country Planning Act 1976 (Act 172) and Manual for Social Impact Assessment for Project Development Regarding Implementation, Enforcement and Monitoring of SIA

The last research objective and question examines the recommendation for improvement under Act 172 and the Manual. The analysis in Chapter Five reveals that Act 172, and the Manual in Malaysia are not being entirely utilised to address implementation issues. All these issues must be resolved to protect the interests of governmental agencies, stakeholders, and the public. The alternatives that can be applied to counter the issues are the amendment of Act 172 and the revision of the current Manual.

The proposals for the amendment are as follows:

1. The interpretation of SIA under section 2.
2. The requirement of SIA for SIA Categories 2 and 3.
3. The approval of SIA report by the DG and State Director.
4. To align the SIA with the Manual or guidelines.
5. The clarification of the criteria for a qualified person.
6. Enforcement of SIA.

As seen in this Chapter, the proposal for recommendations fulfills the final research objective, which is to recommend improvements in Act 172 and the Manual regarding SIA implementation, enforcement, and monitoring. It is hoped that the proposed recommendations can be executed to reform the legal framework of SIA in Malaysia

6.8 DIRECTION OF FUTURE RESEARCH

This thesis will contribute to a more robust research spirit to study the legal implementation of SIA as a comprehensive framework in Malaysia. Since this research lays more emphasis on analysing legal issues and gaps under Act 172 and the Manual, the research recommendations would open areas for further exploration and research.

Moreover, if the proposed amendments to Act 172 and the Manual are made, further research study are required in regard to the several factors as follows:

- i) Implications post-amendment of SIA implementation, especially the practice by the states.
- ii) Capacity of PLANMalaysia (Federal) and State government staff to execute duties and responsibilities related to SIA.
- iii) The monitoring and auditing mechanisms must also be looked at in advance for continuous improvement.
- iv) SIA enforcement under Act 172 and the Manual.
- v) Reforming the SIA legal framework in Sabah, Sarawak and Federal Territories.

6.9 CONCLUSION

SIA may serve the future advancement of development in Malaysia. Thus, efforts to effectively manage the legal issues and gaps need to be taken seriously for resilient development. The nature of SIA in Malaysia has developed through the passing of time. Amendments to current laws and policies have continuously transformed the legal issues on implementation of SIA. Due to the lack of provisions under Act 172 as well as the Manual itself relating to requirements and recommendations, the SIA implementation become more complicated over time. The public engagement process must be encouraged and guided to prevent any potential conflict. However, since legal challenges are unavoidable, initiatives must also be taken to guarantee that any conflicts are managed efficiently and in the best interest of stakeholders and the community. When addressing these difficulties, PLANMalaysia (Federal) must take a proactive and innovative approach.

Neglecting these problems will only have a detrimental effect on how SIA develops in Malaysia since it will affect the perception relating to the implementation of SIA. In order to lessen and mitigate the problems that have been identified, alternatives based on efficient legislative reforms and frameworks have been put forth. The recommendations made in this study is anticipated to improve the framework and implementation of SIA in Malaysia.



REFERENCE

a. Books

- Asmah Ahmad, Dahlia Rosly, Kamalruddin Shamsuddin and Susheel Kaur. (2009). *Social impact assessment in Malaysia*. Malaysian Association of Social Impact Assessment Publishers.
- Ainul Jaria Maidin. (2012). Malaysian town and country planning, law and procedure. Malaysian Current Law Journal Publishers.
- C.J. Barrow. (2000). *Social impact assessment: An introduction*. Oxford University Press Publishers.
- Henk A. Becker and Frank Vanclay. (2003). *The International handbook of social impact assessment: conceptual and methodological advances*. Edward Elgar Publishers.
- Rasyikah Md Khalid and Ainul Jaria Maidin. (2022). *Good governance and the sustainable development goals in Southeast Asia*. Routledge Publishers.
- Salim Momtaz and Zobaidul Kabir. (2018). *Evaluating Environmental and Social Impact Assessment in Developing Countries*. Elsevier Publishers.

b. Chapter in Edited Book

- Halimah Hassan (2009). Social Impact Assessment (SIA) in the Context of Environmental Impact Assessment (EIA): Malaysian Practice. In Asmah Ahmad, Dahlia Rosly, Kamalruddin Shamsudin and Susheel Kaur, *Social Impact Assessment in Malaysia*, (36) Malaysian Association of Social Impact Assessment (MSIA).
- Raja Ariffin and et al (2011). Local Government in Malaysia: Issues and Challenges. In Mariana Mohamed Osman, Mansor Ibrahim and Syahriah Bachok, *Readings in Malaysian Urban and Regional Planning*, (90-99) IIUM Press.
- Taylor N. (2009). Development in Social Impact Assessment (SIA)- An International Perspective. In Asmah Ahmad, Dahlia Rosly, Kamalruddin Shamsudin and Susheel Kaur, *Social Impact Assessment in Malaysia*, (1) Malaysian Association of Social Impact Assessment (MSIA).
- Zainudin and Mohamad Zahir (2021). Social Policy Implementation in Malaysia and Its Impact on the Community. In Ali Akbar Tajmazinani, *Social Policy in the Islamic World*, (263-278) Palgrave Macmillan Cham.

c. Journal Article

- Abdul Ghani, N., Wan Chik, W.M.Y., Abd. Wahab, M.A., & Mohd. Ghazalli, F.S. (2022). Social deprivation and its threats to social well-being according to the perspective of maqasid, *International Journal of Academic Research in Business and Social Sciences* vol. 12, no. 1. pp.1942–1955.
- Ahmad, F., Mohd, I., Maidin, S.L., Zainol, R., Norzailawati, &, & Noor, M. (2013). Malaysian development plan system: issues and problems, *Planning Malaysia Journal* vol. XI. pp.1–20.
- Ainul Jaria Maidin. (2012). Environmental protection in land use & development control system in Malaysia, *SSRN 2015082*, pp.1–15.
- Alomoto, W., Niñerola, A., & Pié, L. (2022). Social impact assessment: A systematic review of literature, *Social Indicators Research*, vol. 161, no. 1. pp.225–250.
- Ansari, A.H. (2006). Towards a sustainable land use planning: An appraisal with special reference to Malaysia, *The Malayan Law Journal*, vol. 6, no. March. pp.1–21.
- Atheefa, N., Suaree, S.M., Zubaidah, S., Abdul, S., Osman, M.M., Ilham, Z., Manaf, A., Khubaib, W., & Ibrahim, A. (2023). A comparative analysis of the legal frameworks for SIA and EIA in Malaysia, *Planning Malaysia Journal*, vol. 21, no. 6. pp.87–99.
- Awangku Effendy Pg Mahmud. (2016). (Social impact assessment) Pelaksanaan strategi konservasi camp fmu10.
- Bakar, A.A., Osman, M.M., Bachok, S., & Zen, I. (2015). Social impact assessment: How do the public help and why do they matter? *Procedia - Social and Behavioral Sciences*, vol. 170. pp.70–77.
- Beckwith, J.A. (1994). Social impact assessment in Western Australia at a crossroads, *Impact Assessment*, vol. 12, no. 2. pp.199–213.
- Bill Hopwood, M.M. and G.O. (2005). Sustainable development: Mapping different approaches, *Wiley InterScience*, no. 13. pp.38–52.
- Burdge, R.J. & Robertson, R.A. (1990). Social impact assessment and the public involvement process, *Environmental Impact Assessment Review*, vol. 10, nos. 1–2. pp.81–90.
- Catherine Macombe and Denis Loeillet. (2017). Instruments to Assess the Social Impacts of Value Chains Catherine, Sustainable Development and Tropical Agri-chains pp.1–353.
- Corvo, L., Pastore, L., Manti, A., & Iannaci, D. (2021). Mapping social impact assessment models: A literature overview for a future research Agenda, *Sustainability (Switzerland)* vol. 13, no. 9. pp.1–16.

- Couch, W.J., Herity, J.F., & Munn, R.E. (1983). Environmental impact assessment in Canada., *Environmental impact assessment no. 2*. pp.41–59.
- Craig, D. (1990). *Social Impact Assessment: Politically Oriented Approaches and Applications*.
- Dernbach, J.C. & Cheever, F. (2015). Sustainable development and its discontents, *Transnational Environmental Law*, vol. 4, no. 2. pp.247–287.
- Dr. Kusuma, A. and Prof.Sivasankar, P.R. (2018). Application of social impact assessment in India: a comprehensive overview, *International Journal of Current Research*, vol. 10, no. 02. pp.65889–65895.
- Duguri, U.S., Salleh, M.A., Hassan, I., & Latiff Azmi, M.N. (2021). The application of maqasid al-shari'ah in the foreign policy of islamic states, *International Journal of Academic Research in Business and Social Sciences*, vol. 11, no. 3. pp.88–96.
- Dutta, B.K. & Bandyopadhyay, S. (2010). Environmental impact assessment and social impact assessment - decision making tools for project appraisal in India, *International Journal of Human and Social Sciences*, vol. 5, no. 6, pp.350–355.
- Franks, D.M. & Vanclay, F. (2013). Social impact management plans: Innovation in corporate and public policy, *Environmental Impact Assessment Review*, vol. 43, no. December 2010. pp.40–48.
- Hassan, M.M. (2018). Social impact assessment (SIA): A review of SIA procedure in Malaysia, *The International Journal of Social Sciences and Humanities Invention*, vol. 5, no. 4. pp.4550–4557.
- Hoe, L.I., Kamarudin, M.K.A., Lian, C.J., Umar, R., & Yii, L.C. (2023). Public participation in environmental impact assessment (EIA) law in Malaysia: A critical analysis, *Planning Malaysia Journal*, vol. 21, no. 1. pp.101–115.
- Ivankova, N. V., Creswell, J.W., & Stick, S.L. (2006). Using mixed-methods sequential explanatory design: From theory to practice, *Field Methods*, vol. 18, no. 1. pp.3–20.
- Johnston, C. (1999). Social impact assessment of microeconomic reform: Australian hesitations, *Impact Assessment and Project Appraisal*, vol. 17, no. 1. pp.9–20.
- Kassem, M.A., Khoiry, M.A., & Hamzah, N. (2020). Using relative importance index method for developing risk map in oil and gas construction projects, *Jurnal Kejuruteraan*, vol. 32, no. 3. pp.441–453.
- Khalid, R.M., Rahman, S.A., & Mokhtar, M. bin. (2013). Legal perspective on development policies for sustainability of water in Malaysia, *Sustainable Development*, vol. 21, no. 3. pp.144–151.

- Kruger, L. & Sandham, L.A. (2018). Social impact assessment: Practitioner perspectives of the neglected status in South African SIA, *South African Geographical Journal*, vol. 100, no. 3. pp.394–411.
- Lee, L.M. (2014). The boundaries of discretionary town planning powers, *Malayan Law Journal*, vol. 3, no. March. pp.1–22.
- M Suaree, N.A.S., Syed Abdul Kader, S.Z., Mohamed Osman, M., & Abdul Manaf, Z.I. (2022). The Development of Policy and Legal Framework for Social Impact Assessment in Malaysia, *Planning Malaysia Journal*, vol. 20, no. 3. pp.295–305.
- Maidin, A.J., O.O. (2011). "Islamic Principles on Sustainable Land Use Planning and Development", *Journal of Islamic Law Review*, pp.57.
- Maidin, A.J. (2016). The Dispute Resolution Mechanism in the Town and Country Planning System in Malaysia: An Analysis and Suggestions for Reform, pp.1–16.
- Maidin, A.J. & Mobarak Ali, B.B. (2009). Powers of the Local Authority in Regulating Land Planning and Development Control: Whither Control, *Planning Malaysia Journal*, vol. 7, no. 1. pp.133–147.
- Mohd Yusoff, Y.E.A. (2010). Pembangunan warisan di Malaysia: Tinjauan umum tentang dasar, *Jurnal Melayu*, (5) no. 5. pp.277–283.
- Mottee, L.K. & Howitt, R. (2018). Follow-up and social impact assessment (SIA) in urban transport-infrastructure projects: Insights from the parramatta rail link, *Australian Planner*, vol. 55, no. 1. pp.46–56.
- Parsons, R., Everingham, J.A., & Kemp, D. (2019). Developing social impact assessment guidelines in a pre-existing policy context, *Impact Assessment and Project Appraisal*, vol. 37, no. 2. pp.114–123.
- Rasool, M.S.A., Yusof, M.A.M., & Ali, S.M. (2020). Wellbeing of the society: A Maqāṣid Al-sharī‘ah approach, *Afkar*, vol. 2020, no. Special Issue 1. pp.25–46.
- Rogers, A.P. (2017). Built heritage and development: Heritage impact assessment of change in Asia, *Built Heritage*, vol. 1, no. 2. pp.16–28.
- S. Yusoff, R.H. (1996). A case study on an environmental impact assessment in Malaysia, *Transactions on Ecology and the Environment*, vol. 11. pp.160–169.
- Sarkawi, A.A., Osman, M.M., Bachok, S., & suzilawati Rabe, N. (2011). Development Control in Sabah within a Context of Planning System in Malaysia, *APSA 2011 / 11th International Congress of Asian Planning Schools Association*, pp.1–12.

- Sharifah Zubaidah Abdul Kader Aljunid. (2002). Challenging planning conditions: Wednesbury unreasonableness and the making of consequential orders, *Malayan Law Journal*, vol. 2, no. ccxii. pp.1–9.
- Sharma, S. & Ruud, A. (2003). On the path to sustainability: integrating social dimensions into the research and practice of environmental management, *Business Strategy and the Environment*, vol. 12, no. 4. pp.205–214.
- Sherren, K., Parkins, J.R., Smit, M., Holmlund, M., & Chen, Y. (2017). Digital archives, big data and image-based culturomics for social impact assessment: Opportunities and challenges, *Environmental Impact Assessment Review*, vol. 67, no. August. pp.23–30.
- Singh, S. (2016). Turning policy into law: A new initiative on social impact assessment in India, *Advances in Asian Human-Environmental Research*, no. 9783319191164. pp.63–74.
- Specialist, S.I.A. (2022). Integrating SIA in regulatory processes for major development projects, no. June.
- Surina Suhaimi. (2013). The quest for sustainability: A case of differential treatment for post- colonial Malaysia [2013] 2 MLJ cxc, *Malayan Law Journal*, Articles no. November. pp.0–23.
- Tholibon, D.A., Md Nujid, M., Mokhtar, H., Rahim, J.A., Aziz, N.F.A., & Tarmizi, A.A.A. (2021). Relative importance index (RII) in ranking the factors of employer satisfaction towards industrial training students, *International Journal of Asian Education*, vol. 2, no. 4. pp.493–503.
- Taye, L. (2002). Key features of the town and country planning (amendment) Act 2001: An analysis of the impact of the recent key amendments to the Town and Country Planning Act 1976, *Malayan Law Journal* vol. 4, no. ixv. pp.1–19.
- Vanclay, F. (2002). Conceptualising Social Impacts, *Environmental Impact Assessment Review*, vol. 22, no. 3. pp.183–211.
- Vanclay, F. (2003). International principles for social impact assessment, *Impact Assessment and Project Appraisal*, vol. 21, no. 1 (2003): 8.
- Vanclay, F. (2006). Principles for social impact assessment: A critical comparison between the international and US documents, *Environmental Impact Assessment Review*, vol. 26, no. 1. pp.3–14.
- Vanclay, F. (2020). Reflections on Social Impact Assessment in the 21st century, *Impact Assessment and Project Appraisal*, vol. 38, no. 2. pp.126–131.
- Vanclay, F., Esteves, A.M., Group, C.I., Aucamp, I., Services, C., & Franks, D.M. (2015). International association for impact assessment, no. April.

- Williams, K. & Grant, J. (2018). A comparative review of how the policy and procedures to assess research impact evolved in Australia and the UK, *Research Evaluation*, vol. 27, no. 2. pp.93–105.
- Yaakup, A., Johar, F., Sulaiman, S., Hassan, R., & Ibrahim, A.R. (2003). GIS and development control system for a local authority in Malaysia, *Habitat International*, vol. 27, no. 4. pp.683–696.
- Yusof, S.A., Budiman, M.A., Amin, R.M., & Abideen, A. (2019). Holistic development and wellbeing based on Maqasid Al- Shari'ah: The case of South Kalimantan, Indonesia, *Journal of Economic Cooperation and Development*, vol. 40, no. 4. pp.1–21.
- Yusup, M., Arshad, A.F., Marzukhi, M.A., & Abdullah, Y.A. (2018). Temporary planning permission in development control system for urban development, *Planning Malaysia Journal*, vol. 16, no. 3. pp.143–155.

d. Legislation/Guideline

- Department of Environment, M. (2019). Guidance document on EIA consultant registration scheme, pp.1–56.
- Department of Planning and Environment. (2021). Technical supplement social impact assessment guideline for state significant projects, no. November.
- Department of Planning and Environment State of New South Wales. (2017). Social impact assessment guidelines for state significant mining, petroleum production and extractive industry development.
- Department of Planning and Environment State of New South Wales. (2021). Social impact assessment guideline, no. July. pp.1–55.
- Department, P.M. (2021). Executive summary twelfth Malaysia plan 2021-2025.
- Development, M. of W.F. and C. (2002). Social Impact Assessment Handbook of Malaysia, p.27.
- Federal Department of Town and Country Planning. (2010). Safe City.
- Franks, D. (2012). Social impact assessment of resource projects International Mining for Development Centre Mining for Development: Guide to Australian Practice, p.16.
- India, G. of. (2013). The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- Jabatan Perancangan Bandar dan Desa. (2018). Manual Penyediaan Laporan Penilaian Impak Sosial (SIA) bagi Projek Pembangunan, vol. 2.

- KPKT. (2019). National Community Policy.
- MHLG_Malaysia. (2022). Malaysia National Report New Urban Agenda 2022.
- Munday, J. (2020). Guide to Social Impact Assessment October 2020 | ©, no. October.
- NSW Government. (2011). State Environmental Planning Policy.
- NT EPA. (2013). Guideline for the Preparation of an Economic and Social Impact Assessment, Version 2, no. November.
- Office, H.R. (2018). Review Document for Social Impact Assessment, no. March.
- PINTAS, B.P. dan P. (2003). Dasar Sosial Negara.
- PLANMalaysia@Penang. (2019). Senarai Projek Pembangunan Bagi SIA Kategori 3 Peringkat Negeri Pulau Pinang.
- PLANMalaysia@Selangor. (2019). Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Di Peringkat Negeri Selangor Akta Perancangan Bandar Dan Desa 1976 (Akta 172) (Pindaan) 2017 [Akta A1522], vol. 1, no. April. pp.1–27.
- PLANMalaysia. (2017). Panduan Pelaksanaan Akta 172, PPA 14, Permohonan Cadangan Pemajuan di Bawah Seksyen 20b.
- PLANMalaysia. (2017). Panduan Pelaksanaan Akta 172, PPA 13, Permohonan Cadangan Pemajuan di Bawah Perenggan 22 (2A) (c).
- PLANMalaysia. (2021). Fourth National Physical Plan (RFN4), Executive Summary.
- PLANMalaysia Selangor. (2019). Panduan Pelaksanaan Analisis Impak Sosial Dalam LCP Negeri Selangor.
- PLANMalaysia Selangor. (2020). Tatacara Pemprosesan Laporan Penilaian Impak Sosial (SIA) Peringkat Negeri Selangor, no. November.
- Planning, D. of & Environment, I. and. (2019). Community Participation Plan.
- Prime Minister's Department, E.P.U. (2021). Malaysian Voluntary National Review (VNR) 2021.
- Queensland_Government. (2008). Sustainable Resource Communities Policy: Social impact assessment in the mining and petroleum industries, no. September.
- Resources, D. of L. (2007). The National Rehabilitation and Resettlement Policy 2007.

Significant, S. & Guide, I. (2021). Declaration of SSI and CSSI.

The Department of State Development, Manufacturing, I. and P. (2018). Social Impact Assessment Guideline.

The Federal Environmental Protection Authority. (2016). Environmental Impact Assessment Guideline in Malaysia.

United Nations. (2017). New Urban Agenda.

World Bank. (2002). Handbook for Preparing a Resettlement Action Plan.

Dept of State Development (Queensland Government), Draft Social Impact Assessment Guideline. (2016).

New South Wales Government, Social Impact Assessment Guideline for State Significant Projects Acknowledgement of country Title: Social Impact Assessment Guideline for State Significant Projects. (2021).

e. Proceedings of Seminar/Conference

Burdge, R.J. & Taylor, C.N. (2012, May). *When and Where is Social Impact Assessment Required?* [Conference presentation]. in the International Association for Impact Assessment Annual Conference, Portugal, pp.1.

Zhao, Y. & Yao, Y. (2011). Lagging Social Impact Assessment for Public Project Management in China: Inappropriate Method or Lack of Interest, Proceedings - 2011 4th International Conference on Business Intelligence and Financial Engineering, BIFE 2011 pp.508–511.

f. Report

Chemsain Konsultant Sdn Bhd. Environmental and Social Impact Assessment (ESIA) Study for the Proposed Baleh – Mapai 500 kV Transmission Line Project.

Consortium, M., Consultant, G., Line, M.M., & Line, M.M. (2020). Updated Social Impact Assessment Report (Volume – I).

360 environmental. (2019). Fabrication Facility Social Impact Assessment, no. May.

Joint WHO-China Study. (2021). WHO-convened Global Study of Origins of SARS-CoV-2.

World Wildlife Fund. Social Impact Assessment of Implementing Green Economy Concepts at Logging and Oil Palm Operations within the Song-Katibas Area WWF-Malaysia Project Report (Project Code : BM010201-907-INTL), pp.1–256.

g. Thesis/ Dissertation

- Mohammad Yusup (2013). *Statutory Procedure and Planning Machinery for Urban Development in Sarawak* (Master thesis). Malaysia: Universiti Teknologi Mara
- Madlome S.F. (2016). *Evaluation of the effectiveness of Environmental Impact Assessment in promoting sustainable development in the energy sector of South Africa* (Master thesis). South Africa: University of the Witwatersrand
- Nur Shafawaty Abd Rahman (2009). *Social Impact Assessment in Urban Development in Malaysia* (Ph.D. thesis) Malaysia: Universiti Malaysia Pahang
- Raja Nor Wafiah Raja Abdullah (2009). *Penambahbaikan Pengurusan Penyemakan Semula Senarai Nilai Pihak Berkuasa Tempatan* (Ph.D. thesis). Malaysia: Universiti Teknologi Malaysia
- Svensson, J. (2011). *Social Impact Assessment in Finland, Norway And Sweden: A Descriptive and Comparative Study* (Master thesis). Stockholm: KTH Royal Institute of Technology
- Tiwary, S. (2019). *Doctrinal and Non-Doctrinal Methods of Legal Research* (Research Paper). India: Amity University

APPENDIX I: SPECIFIC NUMBER OF LOCAL GOVERNMENTS FOR STATES APPLYING AND NOT APPLYING ACT A1522

Specific Number of Local Governments that Require SIA under Planning Permission
Conditions for States that Apply Act A1522 and Public Service Delivery to Manage
Development

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 Plus
Selangor	Shah Alam City Council	/	X	X	/
	Petaling Jaya City Council	/	X	X	/
	Subang Jaya City Council	/	X	X	/
	Kajang Municipal Council	/	/	X	/
	Selayang Municipal Council	/	X	X	/
	Ampang Jaya Municipal Council	/	X	X	/
	Sepang Municipal Council	/	/	X	/
	Kuala Langat Municipal Council	X	X	/	X

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 Plus
	Klang Municipal Council	/	/	X	/
	Kuala Selangor Municipal Council	/	X	X	/
	Sabak Bernam District Council	/	X	/	X
	Hulu Selangor District Council	X	X	X	/
	Total	10	3	2	10
Perak	Ipoh City Council	/	X	X	/
	Manjung Municipal Council	/	/	X	/
	Taiping Municipal Council	/	X	X	/
	Teluk Intan Municipal Council	X	X	X	/
	Kuala Kangsar Municipal Council	/	X	X	/
	Kampar District Council	X	X	X	/
	Gerik District Council	/	/	/	X

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 Plus
	Kerian District Council	/	X	-	-
	Batu Gajah District Council	X	X	X	/
	Lenggong District Council	X	X	X	/
	Pengkalan Hulu District Council	X	X	/	X
	Perak Tengah District Council	X	X	/	X
	Selama District Council	/	X	X	/
	Tanjong Malim District Council	X	X	/	X
	Tapah District Council)	X	X	/	X
	Total	7	2	5	9
Malacca	Melaka Bersejarah City Council	X	X	/	X
	Alor Gajah Municipal Council	/	X	X	/

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 Plus
	Jasin Municipal Council	X	X	X	/
	Hang Tuah Jaya Municipal Council	/	X	/	X
Total		2	0	2	2
Penang	Penang City Council	/	/	X	/
	Seberang Perai City Council	/	X	X	/
Total		2	1	0	2
Terengganu	Kuala Terengganu City Council	X	X	X	/
	Dungun Municipal Council	/	/	X	/
	Kemaman Municipal Council	X	X	X	/
	Setiu District Council	X	X	/	X
	Besut District Council	/	/	X	/
	Hulu Terengganu District Council	X	X	X	/

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 Plus
	Marang District Council	/	/	X	/
Total		3	3	1	6
Kedah	Alor Setar City Council	-	-	X	/
	Kulim Municipal Council	/	/	X	/
	Sungai Petani Municipal Council	/	/	-	-
	Langkawi Municipal Council Tourism City	/	/	X	/
	Kubang Pasu Municipal Council	X	X	/	X
	Baling District Council	-	-	X	/
	Bandar Baharu District Council	X	X	/	X
	Padang Terap District Council	-	-	/	X
Pendang District Council	/	/	X	/	

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 Plus
	Sik District Council	/	/	/	X
	Yan District Council	X	X	/	X
Total		5	5	5	5
Pahang	Kuantan City Council	/	/	X	/
	Temerloh Municipal Council	/	/	X	/
	Bentong Municipal Council	/	/	X	/
	Pekan District Council	/	/	X	/
	Lipis District Council	/	/	X	/
	Maran District Council	/	/	X	/
	Bera District Council	/	/	X	/
	Raub District Council	/	/	X	/

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 Plus
	Jerantut District Council	/	/	X	/
	Rompin District Council	/	/	X	/
	Cameron Highlands District Council	/	/	X	/
	Total	11	11	0	11
Negeri Sembilan	Seremban City Council	X	X	X	/
	Port Dickson Municipal Council	/	/	X	/
	Jempol Municipal Council	/	/	X	/
	Rembau District Council	X	X	X	/
	Jelebu District Council	/	/	X	/
	Kuala Pilah District Council	X	X	X	/
	Tampin District Council	X	X	X	/

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 Plus
Total		3	3	0	7
Overall total		43	28	16	51

Sources: (Checklist for planning permission OSC, Local Government of Selangor, Perak, Malacca, Penang, Terengganu, Kedah, Pahang and Negeri Sembilan,2022)



Specific Number of Local Governments that Require SIA under Planning Permission
Conditions for States that Do Not Apply Act A1522 and Public Service Delivery to
Manage Development

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 plus
Kelantan	Kota Bharu Municipal Council	/	X	X	/
	Ketereh District Council	X	X	/	X
	Gua Musang District Council	X	X	X	/
	Pasir Puteh District Council	/	/	X	/
	Pasir Mas District Council	/	X	/	X
	Tanah Merah District Council	/	X	X	/
	Kuala Krai District Council	X	X	X	/
	Machang District Council	X	X	-	-

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 plus
	Tumpat District Council	X	X	X	/
	Bachok District Council	/	/	/	X
	Jeli District Council	X	X	/	X
	Dabong District Council	/	/	X	/
Total		6	3	4	7
Johor	Johor Bahru City Council	X	/	X	/
	Iskandar Puteri City Council	X	X	/	X
	Pasir Gudang City Council	X	X	X	/
	Batu Pahat Municipal Council	/	X	X	/
	Kluang Municipal Council	X	X	X	/

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 plus
	Kulai Municipal Council	X	X	X	/
	Muar Municipal Council	/	/	X	/
	Segamat Municipal Council	/	/	X	/
	Pengerang Municipal Council	/	/	X	/
	Kota Tinggi District Council	/	/	X	/
	Labis District Council	X	X	/	X
	Mersing District Council	/	/	X	/
	Pontian District Council	X	X	/	X
	Simpang Renggam District Council	X	X	/	X

State	Local government	Requirement of SIA in the checklist for planning permission		Public service delivery	
		SIA preparation	SIA approval	New model OSC 3.0	OSC 3.0 plus
	Tangkak District Council	/	/	X	/
	Yong Peng District Council	/	/	-	-
Total		8	8	4	11
Perlis	Kangar Municipal Council	0	/	X	/
Total		0	1	0	1
Federal Territory	Kuala Lumpur City Hall	/	X	/	X
Total		1	0	1	0
Overall total		15	12	9	19

Sources: (Checklist Planning Permission OSC Local Government of Kelantan, Johor, Perlis and Kuala Lumpur Federal Territory,2022)

APPENDIX II: QUESTIONNAIRE

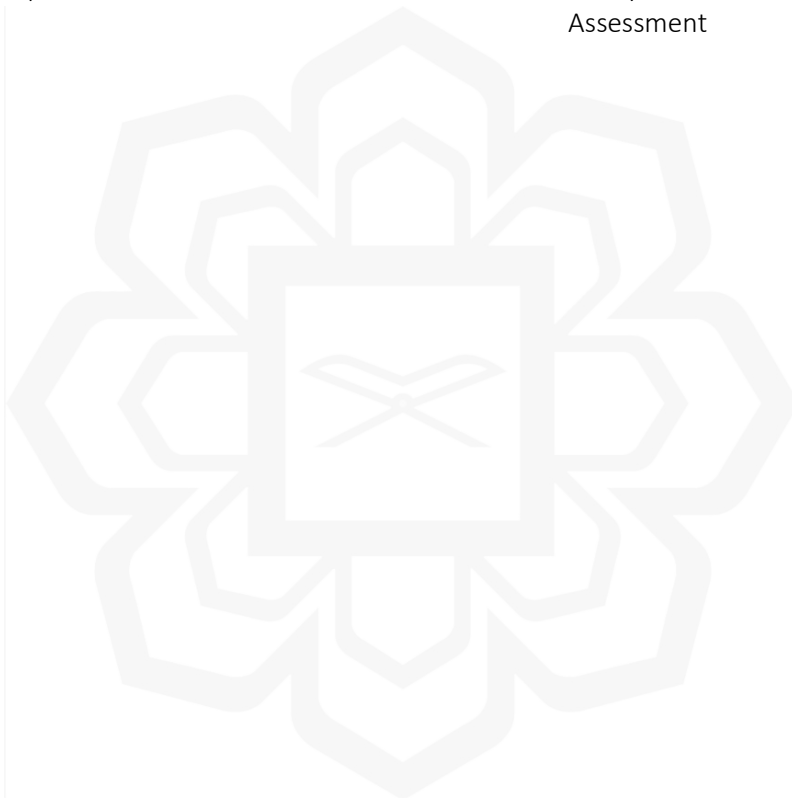
SECTION A: RESPONDENT PROFILE				
Agency / Company :		Dept / Division :	State :	
Latest position :		Grade :	Employment tenure :	Year, Month
Gender :	Male/ Female	Age :	Email :	
Highest education level and area : (Tick for any relevant)	<input type="checkbox"/> Diploma (_____) <input type="checkbox"/> Degree (_____) <input type="checkbox"/> Master (_____) <input type="checkbox"/> PhD (_____)	Duration of work experience :	Year, Month	
Role and application number of SIA reports that you are involved (Tick for any relevant. You are allowed to tick more than one) :		Role	Number of applications	
		<input type="checkbox"/> Committee	<input type="text"/>	
		<input type="checkbox"/> Evaluation panel	<input type="text"/>	
		<input type="checkbox"/> Implementation agency	<input type="text"/>	
		<input type="checkbox"/> Monitor	<input type="text"/>	
Do you have experience in monitoring SIMP? : (Tick for any relevant. You are allowed to tick more than one)		<input type="checkbox"/> YES	<input type="checkbox"/> NO	
	1. If yes, frequency in a year :		
	2. Monitoring under:	<input type="checkbox"/> MIP		
		<input type="checkbox"/> MSIA		
		<input type="checkbox"/> PLANMalaysia		
		Other, please state:		
Do you have experience attending any courses/programmes related to SIA? (Tick for any relevant)	<input type="checkbox"/> YES <input type="checkbox"/> NO	Do you have experience attending SIA evaluation courses? (Tick for any relevant)		
If 'Yes':		If 'Yes':		
1. Frequency in a year :	1. Frequency in a year :		
2. Latest year attend courses :	2. Latest year attend courses :		
			

<p>3. Organiser <input type="checkbox"/> MIP <input type="checkbox"/> MSIA : <input type="checkbox"/> PLANMalaysia Other, please state: </p> <p>4. Level of training <input type="checkbox"/> Introduction : <input type="checkbox"/> Medium <input type="checkbox"/> Professional</p>	<p>3. Organiser <input type="checkbox"/> MIP <input type="checkbox"/> MSIA <input type="checkbox"/> PLANMalaysia : Other, please state: </p> <p>4. Level of training <input type="checkbox"/> Introduction : <input type="checkbox"/> Medium <input type="checkbox"/> Professional</p>
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GLOSSARY

SIMP : Social Impact Management Plan
SIA : Social Impact Assessment

MIP : Malaysia Institute of Planners
MSIA : Malaysian Association of Social Impact Assessment



SECTION B: SIA PREPARATION PROCESS

1. State your **LEVEL OF UNDERSTANDING** towards the SIA preparation process in the stages below.
(Scale code: 0 = Not sure / 1 = Strongly not understand / 2 = Not understand / 3 = Understand / 4 = Strongly understand)

Peringkat Penyediaan		0	1	2	3	4
Stage 1	Screening: Determine SIA category	[]	[]	[]	[]	[]
Stage 2	Scoping: Determine the scope of the issue	[]	[]	[]	[]	[]
Stage 3	Baseline Study: The collection of basic data on the social issue area of an existing community, either qualitative or quantitative	[]	[]	[]	[]	[]
Stage 4	Impact Projection and Evaluation Make impact projections from the development projects	[]	[]	[]	[]	[]
Stage 5	Mitigation: Identification of strategies and measures to reduce the negative impact of development projects	[]	[]	[]	[]	[]
Stage 6	SIMP: Plan that monitors the implementation of mitigation strategies and impact management	[]	[]	[]	[]	[]

2. Based on your experience, state the **LEVEL OF AGREEMENT** towards the main challenge in the SIA preparation, evaluation and monitoring process.
(Scale code: 0 = Not sure / 1 = Strongly not agree / 2 = Not agree / 3 = Agree / 4 = Strongly agree)

Challenge (PREPARATION process)	0	1	2	3	4
a) Lack of skills of consultants who prepare SIA reports	[]	[]	[]	[]	[]
b) The poor-quality report provided	[]	[]	[]	[]	[]
c) Problems in the collection and analysis of information by consultants	[]	[]	[]	[]	[]
d) Local authorities do not adopt the SIA report	[]	[]	[]	[]	[]
e) Lack of local community involvement	[]	[]	[]	[]	[]
f) The risk assessment provided is insufficient and not comprehensive	[]	[]	[]	[]	[]
g) The sincerity of the developer's supply of information in the report	[]	[]	[]	[]	[]
h) Local authorities do not have the expert skills to manage SIA reports internally	[]	[]	[]	[]	[]
i) The report preparation process is not systematic	[]	[]	[]	[]	[]

j) Presentation techniques of SIA research that can still be improved [] [] [] [] []

k) Other. Please state:

Challenge (EVALUATION process)		0	1	2	3	4
a)	Lack of manpower among the SIA committee : Please state the number of current manpower [] person : SIA processed/evaluated application number [] : Current SIA process/evaluate application number []	[]	[]	[]	[]	[]
b)	The SIA committee also hold the position on other department/unit at the same time	[]	[]	[]	[]	[]
c)	Lack of skill among SIA committee In your opinion, an SIA committee can be a skilled committee if; :After processing and evaluating at least [] SIA report, AND/OR : After attending at least [] SIA course :Other aspect (if any), please state:	[]	[]	[]	[]	[]
d)	Lack of agency knowledge on evaluation SIA process	[]	[]	[]	[]	[]
e)	Difficult to have a skilled evaluation panel	[]	[]	[]	[]	[]
f)	Difficult to have a qualified evaluation panel	[]	[]	[]	[]	[]
g)	Comment and evaluation from the panel focus on a specific issue without an overall impact	[]	[]	[]	[]	[]
h)	Requirement of establishing a particular unit (committee) for SIA evaluation	[]	[]	[]	[]	[]
i)	Other. Please state:					

Challenge (MONITORING process)		0	1	2	3	4
a)	Lack of skill among the SIA committee to monitor mitigation measures as suggested and approved in the SIA report	[]	[]	[]	[]	[]
b)	Lack of agency staff to monitor	[]	[]	[]	[]	[]
c)	Difficult to have a skilled monitoring panel	[]	[]	[]	[]	[]
d)	Lack of commitment among the monitoring agency	[]	[]	[]	[]	[]
e)	Difficult to have a qualified monitoring panel	[]	[]	[]	[]	[]
f)	Comment and evaluation from the monitoring panel focus on a specific issue without an overall impact	[]	[]	[]	[]	[]
g)	The requirement to establish a particular unit (committee) to monitor SIA	[]	[]	[]	[]	[]
h)	Other. Please state:.....					

APPENDIX III: LIST OF FGD SESSIONS

Focus group session	Agency	Date
First session	PLANMalaysia: Legal and Regulatory Planning Division & National Physical Planning Division	9 June 2021
Second session	PLANMalaysia@Selangor	14 June 2021
Third session	Department of Environment-Assessment Division	30 June 2021
Fourth session	PLANMalaysia@Penang	8 July 2021
Fifth session	Malaysian Association of Social Impact Assessment	5 August 2021
Sixth session	Project proponents	16 August 2021
Seventh session	Governmental Agencies & Malaysian Institute of Planners	19 August 2021

GLOSSARY

<i>Shariah</i>	Islamic Law
<i>Maqasid al-Shariah</i>	Objective of Shariah
<i>Al Quran</i>	Holy Book of Islam
<i>Sunnah</i>	Tradition of Prophet Muhammad (pbuh)

