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Planning system creates a high regulatory burden without commensurate policy gains.

- The overall planning system is 'high footprint and low impact'. The Victorian planning system creates quite a large regulatory burden while not being very effective at achieving policy goals.
- Key governance weaknesses are:
 - o out-of-date planning instruments
 - o excessive discretion in development standards
 - o wind-back of third-party notice and review rights (which provided public scrutiny of proposals and decisions)
 - o a general lack of transparency around Ministerial decisions and DELWP-initiated major planning changes.

Discretion is appropriate in the planning system but must be coupled with clear policy guidance.

- Main concern with discretion is that guidance in the scheme is often not clear enough, leaving the scope of plausibly 'correct' decisions too wide. Routine variation of discretionary standards is an integrity risk.

Complexity of the system is not the issue.

- Procedural checks and balances are a form of complexity, but are very important in protecting the integrity of the system.
- Corruption risks could be mitigated by ensuring:
 - o policy is clearly expressed, evidence-based and well explained
 - o decision-making processes are clearly aligned with policy, and reasons for variations from the policy are clearly explained
 - o there is scrutiny and transparency throughout the process of policy-setting and decision-making, especially through public notice and appeal rights
 - o adequate governance arrangements are in place throughout the process.

There are greater governance issues with planning at the state level than at the local level.

- There is a lack of transparency at the state government level in relation to major reviews, advisory reports, rezonings or changes to the Victorian Planning Provisions.

Community groups do not carry particular corruption risks.

- Third party review rights including the community consultation process seek to increase integrity in the process.
- 'Astroturfing' is less likely to occur where community engagement involves transparent information sharing and ample time to make submissions.
- The risk of astroturfing may be heightened in newly established communities where groups are still coalescing, or where communities may be less engaged or organised.

- Stronger strategic justification would weaken the impact of such strategies. Where the decision-making is sound and evidence-based, the participation of mischievous groups in the process should not in itself pose a grave risk to the integrity of the system.

Elected officials should determine rezoning decisions.

- Because planning schemes are a form of subordinate legislation, it is appropriate that the power to amend them (including rezoning decisions) is vested in government. However, there are considerable risks associated with this, not least because rezoning gives rise to significant financial windfalls.
- Value capture does not solve the vulnerability of the amendment process because it simply reduces the windfall, it does not eliminate it.

Lack of strategic justification for amendments.

- There is frequently little attempt to quantify environmental, social and economic impacts in a rigorous way, making amendment decisions harder to oversight.
- Protocols around delegation are under the control of individual councils and so it is possible for councils to insist against delegation on particular planning permit amendments, when this may be the most appropriate course of action.

Issues with Precinct Structure Plans (PSPs)

- Amendments to PSPs are initiated when a planning authority (council, Minister or public authority) requests authorisation from the Minister to proceed. Third parties can also request amendments.
- If a council declines the requested amendment, there is no recourse, other than to seek to persuade the Minister.
- The jurisdictional distinction between DELWP and VPA is not clear enough: PSPs are core implementation measures for the state and regional policy led by DELWP, but it is unclear what the VPA's role is once the PSP has been introduced.

Dr Cameron Murray, Post-Doctoral Researcher, University of Sydney

Lobbyists do not have a legitimate role to play in planning matters. Lobbyists do not bring any technical skills or knowledge to planning decisions.

- The only 'value' lobbyists bring to planning matters is political connections.
- Lobbyist registers can 'legitimise' certain activities, or be used by lobbyists to promote their skills.
- The transparency that registers seek to provide can be circumvented by directly employing the lobbyist as an in-house lobbyist.
- Broadly applicable cooling-off periods for elected officials and senior decision makers before they can take up third-party or in-house lobbyist roles could help mitigate the risk of corruption associated with lobbying activities.
- There is no value in enforcing disclosure obligations on Ministers or other decision-makers who have contact with lobbyists. Lobbyists can use this type of information to advertise their talents and level of access to politicians.

Donations are made to signal loyalty to a group. Loyalty is the basis on which favours are traded.

- Donations are not just about financial support for a particular party.
- Capping donations will not address the issue of signalling loyalty to a group.
- Anonymising donations through a clearinghouse could reduce the effectiveness of donations as an indication of loyalty, but not necessarily lead to better planning outcomes.
- Any system that regulates donations should be consistent across local and state levels of government.
- Banning donations from property developers would not be effective because some developers who receive the most valuable favours do not make any donations at all. Banning donations from companies or trusts could however be useful, as donations from these sources are usually from those who have other reasons not to attract public attention.
- If donations are to be disclosed, then do so in real time.

Councillors should not be able to intervene in planning decisions.

- There are two main interventions to stop councillors using discretionary decisions to give away high-value property rights to favoured developers:
 - Use of a 'jury system' of randomly drawn citizens to decide proposals that are not consistent with codes and to periodically revise local plans. This system would be cumbersome and expensive, but this is desirable because it would encourage developers to buy sites that are already zoned for the types of buildings they would like to sell, and propose developments that comply with planned uses.
 - Implement a 'betterment tax' (or 'sale of community development rights') to remove the economic value of planning decision/payout for landowners or developers, reducing the corruption risk.

Professor Roberta Ryan, Global Chair – Professor of Local Government, University of Newcastle

The key to fraud and corruption prevention lies in the establishment of clear roles for councillors, mayors and CEOs, and clear boundaries between them.

- Clarity in the CEO/councillor relationship enables each to hold the other to account.
 - o councillors should focus on strategic direction setting
 - o CEOs should focus on operational leadership and performance
 - o framing the CEO/councillor relationship so that day-to-day operations are at arm's length from councillors, reinforced with strong probity, risk and assurance systems can help guard against corruption.
- Councillors are elected as 'representatives' of communities, responsible for the strategic direction of the organisation (which reflects the aspirations of those they represent), but they are not responsible for the means by which that strategy is delivered.

Council should be formally responsible for employing the CEO but the CEO's performance review should be delegated to a panel.

- A CEO's employment is at the discretion of councillors. This can create significant barriers for CEOs in terms of managing the actions of councillors that are inappropriate or simply incompetent. Conversely it is important that mechanisms exist for mayors/councillors to manage inappropriate CEO behaviour. To address this, a CEO's employment contract should:
 - o include performance review criteria
 - o clearly outline the process and grounds for termination within the contract, and
 - o be approved by absolute majority of council to safeguard against inappropriate dismissal by a council.
- Councils should delegate CEO performance review to a panel (e.g. comprising certain council members and an independent) with a duty to gather as much evidence as possible upon which to base their assessments.

Independent planning panels can help reduce corruption risks associated with planning decisions.

- In NSW the role of a Local Planning Panel is to determine certain types of development applications (DAs) on behalf of councils and provide expert advice on planning proposals.
- Main objectives of Local Planning Panels in NSW are to:
 - o minimise corruption risk for local planning
 - o promote better planning outcomes through greater expertise, independence, and probity in decision-making
 - o ensure people with expertise have a determinative role on DAs
 - o promote consistent decision-making and enable faster decisions, and
 - o improve capacity for councils to undertake strategic planning functions.
- Panels help prevent corruption by depoliticising local planning decisions and providing more consistent, transparent decision making.

Councillors have three main roles in planning which can create conflicting responsibilities for councillors.

- The three main roles are to:

- **establish** strategic development standards by preparing local environment plans
 - **consider** development and rezoning applications
 - **represent** constituents.
- The combination of these roles can be problematic because the absence of a 'separation of powers' allows councillors to *establish* development standards (i.e. setting the rules) and *assess* applications against those standards (i.e. making determinations against those rules). This has been frequently criticised.
- When elected councillors vote to adopt plans that rezone land or deliver infrastructure, they decide who may financially benefit from these public decisions. They are, in effect, 'setting the rules'.

Professionals with expertise in planning should make determinations in relation to specific applications according to the rules set by the council.

Dr Yee-Fui Ng, Senior Lecturer, Monash University, Law School

Lobbying is a legitimate part of the democratic process, as such lobbyists may have a role to play in planning decisions.

- Making representations to government on matters affecting the public, including planning matters, is valid in a democracy. But there are concerns regarding the secrecy and unfair influence of professional lobbyists.
- Property developers are a higher risk industry in the context of lobbying.
- Key elements of effective lobbying regulation:
 - o adequate coverage of the lobbyist register
 - o adequate disclosure of lobbying activity
 - o integration of data from various sources including donations, lobbyist registers and ministerial diaries
 - o an independent regulator with adequate enforcement powers.
- Bans on the following could help manage corruption risks associated with lobbying activities:
 - o bans on receipt of success fees
 - o bans on lobbyists giving gifts to government officials
 - o post-separation employment requirements for government officials in Australia and overseas.

Need to implement mechanisms to hold ministerial advisers to account.

- No evident mechanisms of accountability for ministerial advisers in Victoria.
- Codes of conduct for ministerial staff are only effective if breaches are handled independently.
- Independent commissioners enforce the codes of conduct for ministerial staff in Canada.
- Codes need to be supplemented with training for ministerial advisers on how to deal with the public service.
- The code for Commonwealth ministerial staff is inadequate because breaches are handled within the executive, without transparency.
- The principles of responsible government should apply to ministerial advisers because they are an entrenched part of the executive and exercise significant powers.
 - o advisers have thus far been excluded from the accountability framework, and this has protected them
 - o it is a systemic error when ministers can use advisers to avoid their own responsibility to Parliament.

Regulation of donations must balance the right to express political preferences with the pernicious influence of money in politics.

- Donations should be capped at \$1,000 per annum for individuals, unions and corporations.
- Donations should not be anonymised because disclosure of the identity of donors adds to transparency.
- Any system that regulates donations should be consistent at all levels of government (Commonwealth, State and Local). There is no principled reason why these should differ.

- Donations from property developers should be banned. The commercial interests of property developers are directly influenced by the exercise of public power and so pose a higher risk than other sectors of the economy.
- Donation disclosures should be published in real time.

Philip Shanahan, Former Council CEO

The primary role of a councillor is to govern.

- Many councillors do not fully understand the nature of their role, which is to set the strategic direction of the organisation, not day-to-day decisions. In relation to planning, councillors should focus on making the rules, namely the planning scheme and associated work. Someone else, such as the Chief Planning Officer within a council (who currently assesses the vast majority of applications), should determine the planning applications.
- Councillors can better represent and protect community interests by having a stronger focus on preparing and maintaining their Municipal Planning Scheme.

Today's councillors often lack a track record in community leadership.

- Councillors need to have stronger community leadership and technical skills.
- Councillor capability could be improved through attracting more capable candidates and better training (focused on the key role played by councillors, namely direction setting, describing a preferred future, and creating a plan to get there).

CEOs should provide council with 'frank and fearless' advice but current arrangements do little to support CEOs in that role.

- Dysfunction can emerge when a dominant group of councillors regularly ignores good governance practices for its own purposes and is not held to account by a CEO who cares more about his or her own tenure than good governance.
- Do not think CEOs' employment arrangement (ie. employed by Council) poses unusual risks for the integrity or effective operation of the Council.
- However legislation should require councils to establish a 'CEO Employment Matters Committee', using the structure of mandatory audit and risk committees as the model. That committee should have:
 - o a majority of external, skilled members, including the Chair
 - o responsibility for all matters dealing with CEO employment
 - o (possibly) with decision making powers.
- Legislation should also provide clarity around the CEO's powers and responsibilities.
- The sector should explore a role for a legislated 'integrity officer' which would provide a stronger focus on integrity and could lift the CEO out of a perceived, and sometimes real, role of enforcer.

The obligation to declare a conflict of interest must rest with the councillor concerned.

- Councillors frequently fail to 'spell out' the exact nature of their conflict of interest, and/or understand exactly what a conflict of interest is.
- Under the *Local Government Act 1989*, it was clear that a councillor was required to identify the type or class of the conflict and to describe the nature of the interest.
- Under the *Local Government Act 2020*, a councillor who has a conflict of interest in a matter is to disclose the conflict 'in a manner required by the council's governance rules'. Regulations should specify that a Council's Governance Rules:
 - o require disclosure of the exact nature of the conflict

- prohibit any conversations between a councillor declaring a conflict of interest and other councillors on the matter subject to the conflict.
- Measures to help councillors meet their conflict of interest obligations could include: access to legal advice, training, clear and regular information, details of court or conduct panel cases dealing with conflict of interest, as well as strong punitive measures for those not meeting their obligations.

En bloc voting, in which several unrelated proposals are adopted in a single resolution without debate is a particularly poor governance practice.

- The practice is so prevalent in some councils it is regulated by meeting procedure rules.
- If a proposal is so unimportant or so clear that it does not warrant debate, it should not appear on a council agenda. Council meetings are held to determine significant matters. Debate on important matters is necessary for transparency.

Issues with councillor involvement in land use and development planning.

- The Planning Scheme is an important piece of policy for the Council and the role of councillors in Planning Schemes is fundamental. It is an essential tool to realise the Council's preferred future.
- In relation to decisions about specific land uses and developments (permit applications): Too often, councillors ignore the advice of the planning officers and make a decision which supports the objector's position – without demonstrating how the proposal complies with the provisions of the planning scheme.