

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

GOOD PRACTICES IN PREVENTING CORRUPTION IN PLANNING AND ZONING AT THE LOCAL LEVEL

QUERY

We are developing a national integrity index, based on a set of 35 to 40 indicators, to assess and rank local authorities. We need to find information on corruption in planning and zoning at the local level. This is a high-risk area in our country, but more information is required in terms of best practices to prevent corruption.

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SUMMARY

Corruption, and bribery in particular, is widely reported in the land-use market and construction industry, both of which are, in theory at least, subject to local authorities' planning and zoning schemes. As such, the planning and zoning process is acutely vulnerable to corrupt behaviour. Planning and zoning decision-makers are required to carefully balance competing interests and are often afforded a level of discretion in their decisions. In light of rising land values and an often discretionary, complex and opaque process, it is acknowledged that the planning system can incentivise corruption.

Although there is a paucity of research into best practices in preventing corruption in planning and zoning at the local level, this paper identifies some best practices from research in the land-use sector and construction industry.



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1 CORRUPTION CHALLENGES IN PLANNING AND ZONING AT THE LOCAL LEVEL

Definition of planning and zoning at the local level

Planning and zoning schemes regulate the use and development of land within a particular jurisdiction (State Government of Victoria 2015). In practice, this is undertaken largely by local government planning authorities through: planning regulations and policy instruments; the issuance of building permits; and compliance measures.

A core objective of planning policy is to balance competing interests of various stakeholders by placing limits on landowners' rights on urban land use as well as their discretion to construct buildings. This restriction is based on the premise that the public interest of municipal town planning should prevail over the private interests of landowners (Jiménez 2009).

Planning instruments

A land-use statute is typically the key enabling legislation for the planning process. Based on this are a range of planning instruments such as provincial, state, regional and municipal development plans through to zoning, subdivision and building by-laws. In developing planning instruments, local government officers generally consider environmental, social and economic factors and the management of population growth.

Zoning designates permitted uses of certain parcels of land, for example, for residential, industrial, commercial or business development. It is also frequently used to designate the types of buildings that can be erected in a particular area, such as high-density housing, and may impose maximum height restrictions. In addition, some planning schemes use overlays which indicate a special feature of the land, such as heritage buildings, significant vegetation or flood risk.

Building permits

The mechanism afforded to planning authorities to prevent uncontrolled land-use development is the

obligation for any land developers to obtain a building permit (also known as, for example, development approvals; construction permits). A building permit is a legal document that allows a certain use or development to proceed on a specified parcel of land. Without such a permit, any development is prohibited.

The authority responsible for issuing building permits acts as a gatekeeper, ensuring that permits are issued only when applicants comply with applicable laws and regulations.

Compliance measures

Finally, compliance inspections are usually carried out at various stages of a development to ensure that the development meets the conditions on which the approval was granted and any applicable laws and regulations that apply.

Forms of corruption in planning and zoning

Allegations of bribery, conflicts of interest, abuse of public office and other similar offences are recognised as the most common forms of corruption in the planning and zoning sector. In Minneapolis, USA, concerns were raised about conflicts of interests in the city planning commission (Boros 2013), while in Australia, members of the Wollongong City Council were found to have engaged in corrupt conduct in relation to planning and development (ICAC 2008). In Ireland, a government barrister was recently appointed to investigate allegations of corruption in the city council of Donegal in relation to planning irregularities (O'Connor 2015).

Research suggests that corruption, in particular bribery, is endemic to the land-use sector. Findings from Transparency International suggest that "the government bodies which oversee the land sector are one of the public entities most plagued by ... bribery" (Transparency International 2011a). In 2011, Transparency International released a report on land use that found "[a]round the world more than one out of 10 people reported paying bribes when dealing with ordinary land issues" (Transparency International 2011b), while the 2013 Global Corruption Barometer

found that “around the world, one in five people report that they had paid a bribe for land services” (Transparency International 2013).

It should be noted that the incidence of corruption may differ markedly by sub-sector or location. For example, it may be that corruption is more prevalent in building permits than in labour inspection in some places; or that bribery may be the main issue in residential areas, while abuse of public office may be the main risk in commercial developments. This indicates the problem in assuming a single model will have a similar or significant impact on corruption across different localities, as well as the need for a range of targeted and flexible responses (Kenny 2007).

Impact of corruption

There are a number of significant examples of corruption having an adverse impact on planning outcomes.

Non-compliance and informal buildings

The damage caused by natural disasters, such as earthquakes, is magnified in places where inspectors have been bribed to ignore building and planning regulations. In Turkey, corruption was blamed for more than half of all buildings failing to comply with construction regulations. One result of this evasion was a considerable number of fatalities in the 1999 earthquake in which 11,000 people died (Kenny 2007). Similar findings were made in Haiti after the 2010 earthquake (World Bank 2010: 12).

Increased economic cost

Corruption, and bribery in particular, adds additional costs to a transaction and can result in substantial economic costs for a country. For example, one of Germany’s largest infrastructure projects – the Berlin Brandenburg Airport – has yet to be opened, costing Berlin, the state of Brandenburg and the federal government €17 million each month in maintenance costs for the empty terminal building alone. The delay has been attributed to recurrent difficulties as the result of incompetence and corruption (The Economist 2017).

Integrity of the planning system

Opacity and perceived corruption, whereby certain public interest objectives are seen to have been disregarded or given undue weight – can lead to perceptions of bias and corruption, which undermines the integrity of, and citizen trust in, the planning system, which can result in official procedures being bypassed (ICAC 2012).

2 DRIVERS OF CORRUPTION

There are a number of factors that can explain the real or perceived prevalence of corruption in planning and zoning at the local level. This corruption stems broadly from two sources.

Planning system

The planning system may incentivise corrupt behaviour (Chiodelli and Moroni 2015). Decision-making processes within local government are usually highly discretionary with decision-makers granted a high degree of autonomy to make subjective decisions on competing interests. In addition, over-regulation can cause delay and complexities, providing multiple opportunities for corrupt behaviour.

Balancing interests

Planning necessarily involves a balancing of competing interests. A conflict of interest exists when there is a conflict between public official’s duty to serve the public interest and the private interests of a public official or his/her family and friends. Having a conflict of interest does not in itself amount to corruption. However, when decision-making lacks transparency, or the rules governing conflicts of interest are not readily understood, the promotion of private interests and the corruption of proper administration are possible consequences (Victoria Ombudsman 2008). Not only can this create a perception of bias, it can also contribute to reduced public confidence in the planning process.

Regulatory capture

A decision-making process falling entirely within the remit of a single public agency may create

opportunities for private interests to influence decisions, as well as for this influence to be concealed. Where enormous sums of money are involved, as is often the case in large-scale real estate developments, this has the potential to lead to “regulatory capture”. Regulatory capture can, for example, occur when a decision-maker assessing an application for a building permit inappropriately identifies with the interests of the applicant. This can lead to perceived or actual favouritism, exhibiting in a reluctance to ensure compliance or to impose certain conditions on the development. Land-use projects related to the extractive industries are often alleged to involve a high degree of regulatory capture (Facione 2017).

Discretion

Various elements of a planning system are highly discretionary. Excessive discretion creates uncertainty about planning rules and how decision-makers apply such rules when determining development and planning proposals (ICAC 2012).

Although decision-making in local government, and the legislation that governs it, requires a discretionary element to be independent and responsive to local needs and demands, it can be misused by public officials through corrupt conduct (Bardhan 1997; IBAC 2013). Improper use of discretion arises when the extent of discretion available in reaching a decision is not known, or where conflicts of interest affect the decision-maker's judgement.

Legislation, policies and guidelines that do not compel a decision-maker to act in a particular way, or lack adequate guidance on the exercise of discretion, can lead to potentially ambiguous rulings, perceived corrupt conduct and reduced public confidence (ICAC 2012).

In addition, land-use planning personnel are often given great power over individual decisions without much oversight (Beach 2017). Inadequate accountability measures, coupled with a high level of discretion in decision-making, further increases the corruption risk.

Complexity

Zoning and other land-use decisions involve a convoluted mix of law and bureaucracy. The World Bank's Doing Business project suggests that the number of procedures required to obtain permission to build a warehouse varies considerably between countries. The World Bank observes that in some countries obtaining a construction permit requires up to 30 different procedures. Further, in some countries it can take over a year to comply with these (World Bank 2017: 166).

Such drawn-out processes provide additional opportunities for bribes or quid pro quo exchanges at each step of the process (Beach 2017). The World Bank notes that an extended and complex process is often little more than a way in which to extract rents, while Australia's New South Wales Independent Commission Against Corruption (2012) found that complexity can encourage the development of parallel, alternative systems as a way to manipulate and “workaround” official procedures.

Moreover, it is difficult to detect corrupt activities in a complex system, as lack of clarity in a system provides an opportunity for corrupt actions. Further, the resulting inconsistent decision-making from a complex system makes it difficult to determine that correct processes are being followed (ICAC 2012).

Further, perceptions of undue influence by lobbyists may arise where they have been engaged by applicants to navigate a more complex system (ICAC 2010b:9).

Delay

Delays are a by-product of complex systems and can incentivise corruption. Individuals needing to access a service in which delays are common may be tempted to bribe the official involved to move up the queue (ICAC 2012).

Delays in obtaining a building permit can create adverse effects on a building project. Builders may therefore choose to bribe officials to obtain a quick permit or may resort to building informally (World Bank 2010).

Opacity

A lack of transparency in the planning system fuels adverse perceptions. Failure to provide transparency in any process involving government decision-making is conducive to corruption as it creates a low threat of detection and can conceal corrupt conduct. The corruption risk is exacerbated when secrecy surrounding the process is allied with secrecy surrounding the basis on which a decision has been made (ICAC 2010a).

As discussed above, the discretionary nature of planning decisions means that a corrupt decision may appear valid. Combined with a lack of transparency, it also means that it may not be easy to detect when government officials have been subject to inappropriate pressure over the content of planning advice, as differing views can still be contained within the spectrum of what is “reasonable” (ICAC 2012).

Additionally, a corrupt decision-maker may feel a level of comfort in that the extent of their influence and involvement in a decision is hidden.

Nature of the building and construction industry

Planning and zoning authorities interact frequently with representatives of real estate and construction industries – reportedly one of the most corrupt sectors in the world (Shan, Chan and Hu 2014). The World Bank Enterprise Survey data shows that the share of firms expecting to give gifts in exchange for construction approvals is correlated with the level of complexity and cost of dealing with building permits (World Bank 2010).

Budgetary and time pressures may incentivise corrupt behaviour, while a rapid increase in the rate and scale of construction in an area makes compliance monitoring and enforcement difficult. In Transparency International’s Global Corruption Report, Neill Stansbury identifies 13 reasons why this industry is so prone to corruption, including the number of phases within a project which makes oversight difficult, and the complexity involved (Transparency International 2005: 38).

More recently, increased land value has been identified as a factor which can incentivise bribery (Jeong 2016).

Land value

Increased land value, and/or access to cheap finance can amplify developers’ incentives to offer bribes and the opportunity for corruption. Developers’ need for government services, such as building permits and rezoning of land, generates opportunities for corruption and decision-makers may succumb to bribery. The amounts of money at stake in switching parcels of land from one zone to another contributes to the likelihood of a corrupt system. Further, more intense lobbying is likely when high levels of discretion on the part of public official are combined with high-value decisions (ICAC 2012).

In many countries, real estate price cycles – that is, rises and falls in land and real estate value – are regarded as the product of “speculation”, in addition to forces of supply and demand (Malpezzi and Wachter 2002). In the recent housing boom, which eventually triggered the financial crisis of 2008, federal states in the United States which experienced the most severe “bust” were characterised by widespread housing speculation driven by real estate investments in a wave of non-owner occupied home purchases (Gao et al. 2017).

Such housing bubbles are ripe environments for corruption because, as land values rise rapidly, developers can capitalise on this appreciation through new development. This makes the development of valuable land competitive and time-sensitive, meaning there is often a positive correlation between high growth in house prices and illicit practices in planning and zoning.

For example, one study concluded that the housing bubbles experienced by Greece and Spain prior to the 2008 recession amplified developers’ incentives to offer bribes for illicit construction projects. Corruption in zoning became widespread in both countries, typically in the form of granting illegal building permits in Greece and the rezoning of land for residential and commercial use in Spain (Koumpias et al. 2015:4,5).

Compliance

To meet strict time frames, inspectors and builders have incentives to engage in bribery schemes. Construction firms may feel pressure to compromise in the quality of their materials or building work, thereby placing greater responsibility and power on compliance inspectors, as their sign-offs can “make or break” the success of a given project (Jeong 2016). Moreover, pressures in rapidly developing areas might spur the enactment of policies counterproductive to addressing the increased risks of corruption (Jeong 2016).

3 GOOD PRACTICES IN PREVENTING CORRUPTION

While there are some studies that examine the drivers of corruption in the planning and zoning sector, there is a paucity of research on strategies for preventing corruption in the sector. However, from what little information is available, it is possible to identify measures to limit the opportunity for corrupt behaviour. In addition, overall efforts to improve governance more broadly are likely to be an important tool in reducing the impact of corruption in the planning and zoning sector (Kenny 2007). Providing guidance to decision-makers, harnessing the use of information and communication technologies (ICT) and adopting measures to ensure compliance are some policies which may be adopted to prevent corruption in the sector.

Managing competing interests

Proper decision-making requires an official to consider and weigh up all interests that are relevant to a decision. This can be a subjective exercise. Planning legislation may address this issue by recognising and providing guidance on the weight to be given to competing interests. Disregarding or placing undue weight on relevant public interest objectives leads to perceptions of bias and corruption, which undermine the integrity of the planning system (ICAC 2010b).

The Organisation for Economic Cooperation and Development’s Guidelines on Managing Conflicts of Interest in the Public Sector sets out four core principles for public officials to follow when dealing

with conflict of interest situations in order to maintain trust in public institutions: (1) serving the public interest; (2) supporting transparency and scrutiny; (3) promoting individual responsibility and personal example; and (4) creating an organisational culture that does not tolerate conflict of interest (OECD 2003).

To address concerns of a regulatory capture, formal meetings involving more than one officer may lessen the scope for inappropriate dealings and regulatory capture. For example, in New South Wales, Australia, development approval panel members are rotated to avoid regulatory capture (Stone 2014).

Legal certainty

In planning, there is a recognised conflict between legal certainty and a desire for flexibility to adapt to unusual or unforeseen circumstances. Flexibility has typically been delivered by providing greater discretionary powers to decision-makers. Such discretion is often not subject to a clear set of criteria. Conversely, a pillar of the rule of law is that the law should not be arbitrary and that the law should be certain, general and equal in its operation. Legal certainty arises from the regular, open and predictable application of the rule of law according to these principles and, in doing so, delivers confidence to society. Under the rule of law, even discretion must be exercised rationally.

Limitations on discretion are usually established by governing legislation, the powers of delegation and, more generally, the principles of administrative law. Constraining discretion to the extent possible, through clear standards of decision-making, would limit opportunities for corruption. However, where discretion is unavoidable, an even greater premium should be placed on transparency and accountability.

Simplified and expedited procedures

Easing the process of regulatory compliance is likely to have a role in reducing corruption. For example, introducing time limits to issue licences (that is, if a licence is not issued or denied within a certain period, it is automatically granted) may reduce corruption, though it demands that public agencies are equipped with sufficient capacity to rigorously assess

applications to ensure that permits are not issued by default simply due to the planning body being overwhelmed.

The Hong Kong Independent Commission Against Corruption identified a three-year timeframe to issue restaurant licences as a cause of corruption. It examined and simplified the process for granting restaurant licences in order to shorten the time involved so that people would be less tempted to bribe officials or break the rules in some way (ICAC 2012).

The World Bank advocates the use of ICT for triggering compliance inspections (World Bank 2010: 21). Risk-based inspections that occur at the completion of work but prior to the next stage – as opposed to time-based inspections – may reduce corruption (Kenny 2007).

Information and communications technology

A smooth process for obtaining building permits is usually associated with a lower level of corruption.

The World Bank highlights that, more than ever, ICT elements should be introduced into the processes for generating building permits (World Bank 2010: 21). An e-permits system automates the process for issuing building permits by managing all the required steps, documents and inter-institutional communication, thereby enhancing compliance with the active regulations and timely service delivery (Posfai 2017).

CORENET, Singapore's e-permitting system, is currently one of the world's leading references for efficient, web-based platforms for processing building permits (World Bank 2010: 20). In Macedonia and Serbia, the introduction of e-permitting resulted in a significantly improved ranking in the World Bank's Doing Business report (Posfai 2017).

In Vienna, land-use plans, including zoning and infrastructure information as well as official plans for the future growth and development policies of the city, are all available online. The zoning map allows the user to zoom in on particular areas of the city to determine the current zoning and relevant land-use policies. Legal reforms have created a predetermined

“right to build” for projects complying with planning and zoning requirements (World Bank 2010).

Access to information and participation

The provision of information is fundamental to ensuring transparency. A transparent planning system requires the provision of publicly available information so that members of the public understand what is being proposed, why decisions have been made, what has influenced those decisions, and the processes involved in making a decision.

The most notable and successful reforms focus on introducing ICT to provide users and professionals with access to planning information as well as land registries (World Bank 2010).

Community participation and consultation requirements can also act as a counterbalance to corrupt influences. The erosion of these requirements reduces scrutiny of planning decisions and makes it easier to facilitate a corrupt decision. Conversely, meaningful community participation in planning decisions may increase public confidence in the integrity of the system. Such community involvement in planning may include publicising planning instruments and development proposals, and planning authorities placing adequate weight to submissions received as from the community (ICAC 2012).

The way in which participation and consultation is conducted is important. A study on the impact of community participation on corruption in Indonesia demonstrated that individuals are more likely to contribute to project monitoring when they benefit personally; and any community participation process can be captured by local elites, thereby reducing the impact of “grassroots” participation (Olken 2007). Where decision-making affects indigenous communities, the principle of free, prior and informed consent is especially important (Tamang 2005).

Improving compliance

The World Bank identifies three strategies that reformers have used to meet the challenge of improving compliance by shifting from traditional control-and-command regulations to more effective

measures. These strategies involve: seeking new collaboration with private sector building professionals; focusing on risk-management; and leveraging ICT solutions (World Bank 2010: 14).

The World Bank notes that best practice countries have all introduced some measure of private sector solutions, such as engaging third party accredited inspectors to improve compliance (World Bank 2010: 15). However, it is important to note that private sector solutions are by no means risk-free either as private providers may be subject to different kinds of conflicts of interest. In India, for example, environmental impact assessments are commissioned to private consultants and funded by the very companies seeking licences. In the mining sector, this has contributed to a situation in which fewer than 3 per cent of environmental impact assessment applications are refused (Human Rights Watch, 2012:9).

The World Bank recommends implementing innovative risk-management policies to reduce bureaucratic steps and increase transparency (World Bank 2010: 18). Macedonia is cited as an example where a risk system was created that combined a building classification with a building professionals' classification. Under these amendments, all buildings are required to be designed by a designer or contractor licensed in one of two categories: class A for buildings in category 1 and class B for buildings in category 2. All licences, whether for design, construction, review, or construction supervision, reflect this classification: a person with a class A licence cannot do work requiring a class B licence. This approach has reduced excessive state controls and bureaucratic steps and increased transparency (World Bank 2010: 18).

In addition, most European countries, including Austria and Germany, have assigned their building authorities the task, integrated into a review of the building permit application, of verifying that a project complies with zoning requirements (World Bank 2010).

Criminal liability

Ensuring that construction companies and their management teams as well as building owners are

liable and held accountable for regulatory violations and any ensuing problems may ensure compliance and reduce the development impact of corruption. For example, the United Kingdom allows for the conviction of senior company officials in cases where gross negligence leads to death (Salkin and Ince 2014).

Process for reform

A successful reform strategy should not rely on cherry-picking elements nor on a one-size-fit-all approach. Rather, any reform plan should be based on an understanding of the current regulatory system and its history and on factors such as the level of skills in the building industry, climatic and seismic conditions, the growth rate of building stocks, architectural and cultural traditions, the use of specific building regulatory materials, the degree of compliance and concerns raised by stakeholders (World Bank 2010).

Any reform process is best accomplished when supported by factual analysis, preferably with early and sustained consultations with and the engagement of stakeholders, and guided by a coherent set of priorities. Initial reform consultations should include a wide range of parties, including participants in the building process (World Bank 2010: 44).

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