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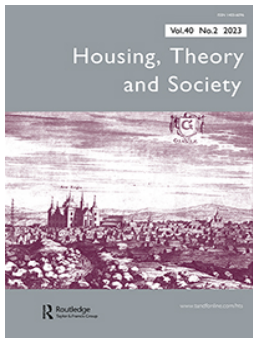
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The Importance of Institutional Capacity and Negotiation Capacity in Affordable Housing Agreements: The Potential for Collective Action in Melbourne, Australia

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ABSTRACT

New legislation was introduced in 2018 in Victoria, Australia to encourage the negotiation of affordable housing agreements. This change resulted in the expansion of formal and informal mechanisms for cross-sectoral affordable housing delivery. In this paper we draw on 20 interviews with housing stakeholders, focusing on the process of negotiation. We propose a novel theoretical framework to interpret capacity for collective action in a loosely regulated policy area, combining insights from negotiation theory and Institutional Capacity Development (ICD) literature. We find widespread concerns about the opaque, inefficient and potentially exploitative nature of outcomes. We also find that agreements varied across projects based on levels of trust; access to information; political capital; capacity for mutual gain; and the presence of shared rules for interacting. We conclude that competition-based negotiations may lead to increased institutional capacity while also highlighting the challenges of housing delivery in the context of institutional uncertainty.

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Institutional capacity development; negotiation; affordable housing; affordable housing agreements; planning gain

1. Introduction

The provision of social and affordable housing, in Australia and elsewhere, has followed a decades-long transition from government-owned public housing to increasingly complex housing models delivered through cross-sectoral arrangements (Gurran, Austin, and Whitehead 2014; Raynor and Whitzman 2020). This transition is associated with a movement from top-down government to partnership-based governance, generating both positive and negative outcomes (Geddes 2006). Cross-sectoral partnerships facilitate access to resources, ideas and skills distributed across sectors (Andrews and Entwistle 2010) while securing community benefits in the context of fiscal austerity (Brunick, Goldberg, and Levine 2004). Conversely, market-based solutions have resulted in increased inequality, opaque decision-making and the prioritization of profit over social

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welfare (Raynor and Whitzman 2020). Further, in contrast to the efficiency mantra often associated with private sector competition, private sector delivery and financing of social housing is often less cost-effective (Davies and Engels 2021; Lawson et al. 2019), riskier and more convoluted (Reeves 2013).

Despite this critique, the use of market-based solutions to affordable housing delivery has grown substantially since the 1980s (Austin, Gurran, and Whitehead 2014). Approaches include planning instruments or planning gain agreements to extract community benefits from private development processes (Biggar and Siemiatycki 2020; Fox-Rogers and Murphy 2015). Mechanisms may be highly codified, like mandatory inclusionary zoning, schedules of development contributions or impact fees. Alternatively, as is the focus of this paper, they may be highly discretionary, drawing on case-by-case negotiations to generate a range of community benefits in return for development approval or up-zoning of sites (Kim 2020). Especially where agreements are voluntary, contributions may vary substantially based on differing market and planning contexts, individual behaviours and the formal and informal institutions that shape housing markets and planning contexts (Biggar and Siemiatycki 2020).

Understanding how these negotiated agreements are decided and the institutional arrangements that emerge to allow for their implementation is essential to discerning the often-invisible politics of affordable housing delivery. These arrangements shape individual sites and, over time, fundamentally change access to resources and services across neighbourhoods and cities. They may become sites of institutional transformation as new forms of knowledge, new relationships and new formal and informal rules emerge to encourage or inhibit collective, cross-sectoral action. Especially in the context of nascent policy changes, examining institutional capacity (or lack thereof) may highlight the likelihood of effective affordable housing delivery. Despite this, these negotiations are an understudied phenomenon (Biggar and Siemiatycki 2020).

The purpose of this paper is two-fold: to identify whether there is sufficient institutional capacity in Victoria to support collective action and to identify what processes, if any, are leading to increased institutional or negotiation capacity in response to shifting formal and informal rules. The paper begins with a conceptual framework for understanding negotiation-based transactions, drawing on negotiation theory and the concept of institutional capacity. We then present the case study of newly introduced changes to planning legislation in the state of Victoria in Australia. Drawing on twenty interviews with stakeholders engaged in affordable housing agreements in the context of newly implemented legislative change, the paper charts the perceived efficacy of such arrangements. We argue that these agreements represent competitive negotiation practices nested within existing and shifting institutional structures. We conclude with a discussion of how negotiated agreements are shaping institutional capacity while generating opportunities for both exploitation and effective collective action. We argue that both Institutional Capacity and Negotiation Capacity are severely constrained in the context of Victorian affordable housing negotiations. However, recent changes designed to encourage these negotiations may be functioning as spaces for capacity development as actors and institutions work to build the relational, knowledge and political resources necessary to better support collective action.

2. Introducing a Conceptual Framework for Understanding Affordable Housing Agreements

As new forums for urban governance and decision-making based on competition and creative negotiation emerge, bringing together institutional capacity and negotiation theory can bring new insight to how decisions are made, implemented and progressed. By emphasizing the importance of interests, trust and the idea that stakeholders will not negotiate if they can better achieve their goals without entering negotiations, negotiation theory addresses the pragmatic articulation of agreement-based planning processes. However, negotiation theory has less explanatory power for the structures that shape collective processes, or “the ways in which institutional rules and social discourses open up opportunities for agreement, while closing off others” (Saarikoski, Raitio, and Barry 2013). We draw on negotiation and institutional capacity insights to expand understanding of the political and value-laden processes through which affordable housing is delivered.

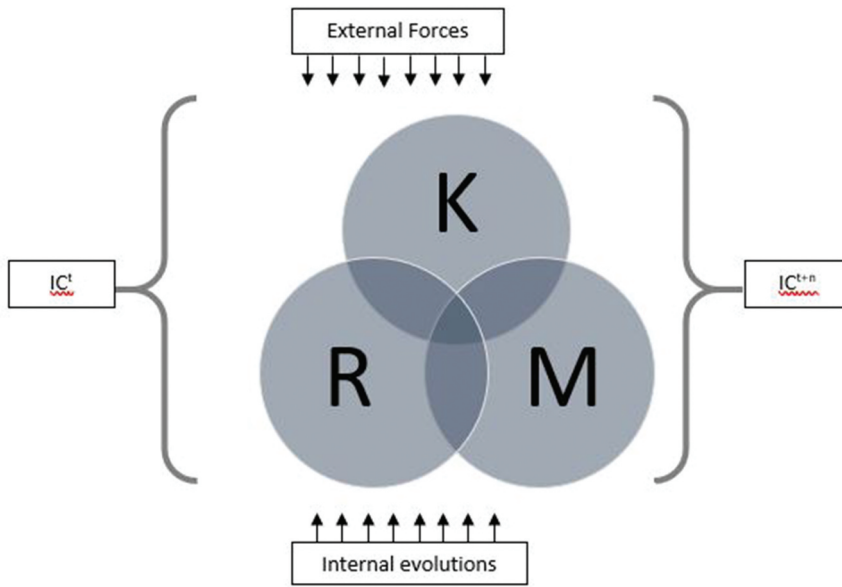
2.1 Institutional Capacity and Institutional Capacity Development

The definition and conceptual use of institutions varies widely (Jessop 2001). Institutions constitute a range of rules that shape collective action (Giddens 1984). These rules may be formal, like those enshrined in legislation and policy documents, or informal, emerging from social norms, “rules of thumb” or individual habits. Institutions are the means whereby transactions between individuals, groups and states are made sufficiently predictable to enable collective action (Dovers and Hezri 2010). While they don’t determine behaviour, they provide the context for action that helps us understand why actors make the choices that they do (Kettunen 2018). These explicit and implicit ensembles of norms, rules and practices are therefore fundamental to “getting things done.”

Scholars emphasize the importance of building Institutional Capacity (IC) as a mechanism that increases the potential for collaborative efforts – often through the generation of knowledge and relational and political resources (Innes and Booher 2010). IC can emerge from collaborative planning processes between multiple sectors working to find mutually acceptable solutions (Polk 2011; Raynor, Doyon, and Beer 2017). For Madanipour (2002), IC is a normative term for forms of social richness that allow groups to mobilize resources and perform meaningful action.

Sørensen and Torfing (2003) offer an Institutional Capacity Development (ICD) Framework for understanding the interplay of knowledge resources (K), relational resources (R) and mobilization capacity (M) in supporting or inhibiting institutional transformation. We elaborate on these concepts in the following paragraphs.

Knowledge resources (K) refers to access to explicit and tacit knowledge sources and shared frames that can improve the likelihood of effective governance. Shared understandings of problems, opportunities and interventions increase the potential for collaboration (Innes and Booher 2010). The ICD framework focuses on how knowledge and expertise is developed and transferred within a governance system. It considers the range of intellectual resources available; actors’ abilities to reflect on and develop new frames of reference; and levels of social learning (Barry 2012).



* K- Knowledge Resources, M – Mobilisation Capacity, R – Relational Resources, t – time, n – number of time, IC – Institutional Capacity

Figure 1. Recreation of Sørensen and Torfing (2003) Institutional Capacity Development Framework.

Relational Resources (R) refers to the presence of trust, respect and reciprocity evident within a network. ICD considers the morphology of social networks, the “thickness” of network interconnections and the power dynamics between stakeholders and broader institutional structures (Barry 2012).

Mobilization capacity (M) refers to actors’ abilities to identify, access and benefit from institutional resources. It relates to opportunity structures, repertoires of political techniques and strategies, access to change agents and appropriate arenas for collaboration. These institutional arenas are composed of formal enabling mechanisms like legislation, regulations, incentive schemes and policies and informal enabling mechanisms such as networking opportunities, histories of successful precedents, policy champions and market conditions (Madanipour 2002).

As Figure 1 demonstrates, Healey posits that institutional capacity (IC) changes over time (t) in response to the interaction of these capitals and external forces and internal evolutions. The framework illuminates how collaborative processes that build institutional resources have the potential to alter and enhance capacities in a wider governance system.

2.2 Negotiation Theory

Lax and Sebenius (1986:87) define negotiation as “an opportunistic interaction by which two or more parties, with some apparent conflict, seek to do better through jointly decided action than they could otherwise”. This definition demonstrates why parties choose to negotiate and why negotiation may be time consuming, and sometimes

combative. We argue, in line with others (for example, Mnookin 2003; Raynor, Palm, and Warren-Myers 2021; Shmueli, Kaufman, and Ozawa 2008), that four overarching elements are particularly relevant within negotiations: knowledge and information; trust; interests and potential for mutual gain; and political capital. We elaborate on these concepts below.

Knowledge and Information refers to both the collaborative power and exploitative potential of unequal access to knowledge and information. Familiarity with the needs and priorities of other actors can improve the likelihood of creative problem-solving (Susskind 1987). However, negotiation literature emphasizes the competitive manipulation (or withholding) of knowledge and the strategic benefit derived from greater access to knowledge, skills and expertise (Mara and Smith 2009). Scholars have raised this as an issue in planning gain agreements, highlighting the consequences of knowledge imbalances between developers and communities (Fox-Rogers and Murphy 2015), and between developers and local councils (McAllister, Street, and Wyatt 2016).

The degree of *trust* between parties has large implications for negotiations as certain “deposits of faith” are required before parties even begin to develop enough trust to have productive discussions (Menkel-Meadow 2009). Actors will not engage in a negotiation if they believe there is little chance that agreements will be honoured and are less likely to share information freely if they feel others are withholding information (Murtoaro and Kujala 2007). The role of trust and relationship building is evident in development negotiations, where decisions are often shaped by informal associations, with trusting relationships between councils and developers more likely to facilitate development outcomes (Ruming 2010).

Negotiation theory presents two ideas that are rarely conceptualized in studies concerned with institutional capacity: *interests and mutual gain*. Interests “define the problem” and tend to be the abstract and intangible motivations that sit behind a party’s stated position or claim (Provis 1996). Rather than simply reflecting a profit-maximizing focus on economic gain, interests often reflect concerns about tangible gains or losses and intangible aspects like relationships, reputation, and legal and political precedent (Fisher and Ury 1981; Shmueli, Kaufman, and Ozawa 2008).

The ability to achieve a better outcome through negotiation than is possible by working alone (mutual gain) is central to negotiations. If a party believes it can achieve its desired outcome without collaborating they are unlikely to engage in negotiation (Shmueli, Kaufman, and Ozawa 2008). In the context of planning decisions, the potential for mutual gains are impacted by incentive structures such as density bonuses, or market conditions and the relative competition for developable sites in an area (Thaden and Wang 2017).

Political Capital: Inspired by the work of Barry (2012) we add political capital as a key component of negotiation capacity. Political capital includes consideration of an actor’s “level of access ... to decision-making processes (endowment); their capacity to make a difference in these processes (empowerment); and their perception of themselves as political actors (political identity)” (Sørensen and Torfing 2003:610). These factors shape both how likely actors are to engage in negotiations and their likelihood of obtaining beneficial outcomes from negotiation. Both Ruming (2010) and Leffers (2018) have highlighted unequal access to political decision-making power among developers: larger

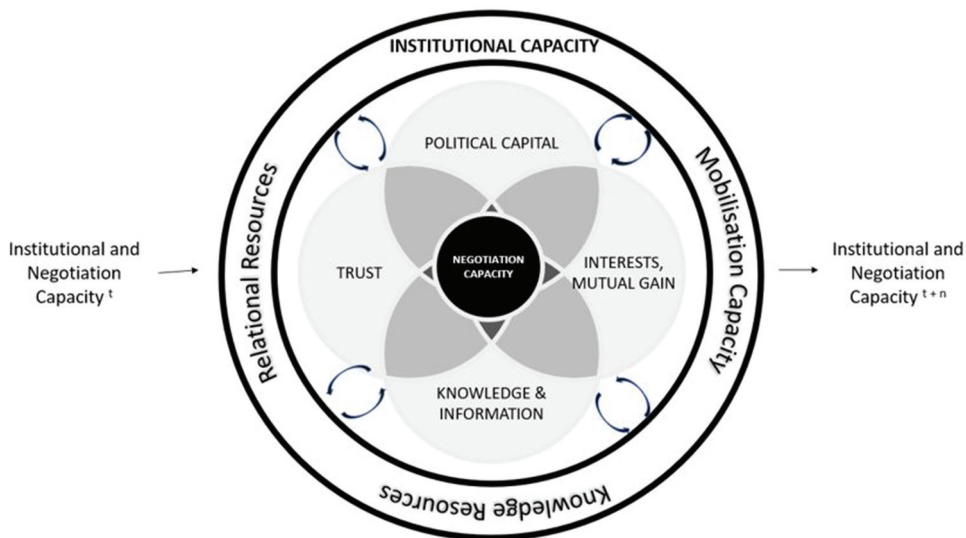


Figure 2. Institutional and Negotiation Capacity Framework, Created by Authors.

companies and those strongly involved in industry associations engage in more advocacy and have greater willingness and power to negotiate.

We present Figure Two as an extension of Institutional Capacity and negotiation literatures. We argue that negotiations occur in contexts characterized by the interplay of differing levels of the following: political capital; trust; interests and capacity for mutual gain; knowledge and information. The outcomes of negotiations will partially rely on how these intersecting elements are distributed between the negotiating parties, with power imbalances, “unfair” outcomes or sub-optimal solutions often emerging from unequal access to these elements. However, we extend this argument by adding the concept of Institutional Capacity. To do this we focus on the relational resources, knowledge resources and mobilization capacity distributed across the field of affordable housing. We argue that these resources are the “institutional scaffolding” which further shapes the likely outcomes of negotiations. This institutional scaffolding makes some outcomes possible while thwarting or discouraging other options. We argue that negotiation capacity may be discerned on a case-by-case basis but understanding Institutional Capacity requires a more holistic and longer-running analysis of the ways in which multiple negotiations and long-term histories between actors play out. As illustrated by the arrows in Figure 2, there are feedback loops between Institutional Capacity and Negotiation Capacity, as the two capacities are interdependent and mutually reinforcing. In this way, we focus insights from negotiation literature on the internal machinations of case-by-case agreements or developments while applying a broad-range understanding of institutions to the longer-term development of connections, understandings and strategies for collaborative action.

3. Methodology

We start our methodological overview with an explanation of our case study. Following that, we discuss research design and data analysis.

3.1 Affordable Housing Negotiations in Melbourne, Australia

This research was conducted in the second most populous state in Australia with a population of 6.7 million people, 5.1 million of whom live in the capital city of Melbourne. Australia has a three-tiered system of government: Federal, State and Local. The Federal Government receives and allocates the most funds, and devolves funding for social housing and homelessness services to State Governments. State Governments are responsible for housing policy and legislation, as well as social housing provision. Local councils decide on specific development applications and local-scale plans and are often characterized by constrained budgets and limited policy power in the context of affordable housing (Raynor and Whitzman 2020). Local councils are responsible for delivering a range of services, and often achieve these obligations through developer contributions (Killin and March 2018). While local councils are usually the key decision makers for specific development applications, landowners have the right to appeal decisions through a State-level mechanism called the Victorian Civil and Administrative Tribunal (VCAT).

There is a small and diminishing stock of social housing in Victoria (approximately 3.5% of housing stock). The State has a history of limited strategic planning of social or affordable housing and decisions are often devolved to the 31 local councils that comprise Greater Melbourne (Raynor and Whitzman 2020). While there are several inclusionary zoning programmes in Australia designed to generate affordable housing, including a precinct-scale programme in inner Sydney and broader programmes in the state of South Australia and the Australian Capital Territory, it is not widely applied outside of these locations (Gurran et al. 2018). Indeed, Victoria has no history of formalized inclusionary zoning.

In 2018 the State Government made changes to the affordable housing policy. It added a new objective to the Victorian Planning and Environment Act 1987 “to facilitate provision of affordable housing in Victoria.” Under these changes, Responsible Authorities (usually local councils) may now negotiate with landowners and/or developers for affordable housing contributions via a ‘Section 173 agreement’¹ as part of a development approval process. The State Government published guidelines with income limits, creating a definition of affordable housing for the first time. These two contributions laid the groundwork for local councils to enter negotiations with landowners and/or developers to request affordable dwelling contributions as part of the planning approval process. While the Act does not stipulate governance or delivery requirements, the affordable housing generated through Section 173 agreements is most likely to be managed and/or purchased by non-profit housing providers as they are the only actors with existing governance arrangements and expertise in affordable housing management in Victoria (Community Housing Industry Association 2020).

3.2 Research Approach

The research applies a qualitative research approach, using semi-structured interviews with 20 key stakeholders involved in affordable housing projects in Melbourne, Victoria, Australia. It is part of a broader project where the first phase involved a survey of 148 affordable housing stakeholders from Victoria (See Raynor, Palm, and Warren-Myers 2021 for the results).

3.2.1 Interviews

The stakeholders were interviewed in 2021 via Microsoft Teams Video, Zoom and over the phone and all interviews were recorded and transcribed. The interviewees were purposively recruited for having been involved in projects that were identified as having negotiated affordable housing outcomes in Melbourne. Participants were identified through a variety of channels: 1) survey participants from phase one of this research who indicated an interest in a follow-up interview 2) stakeholders identified through the research team's involvement in a Victorian inter-council affordable housing group and 3) snowball sampling based on each interview. Each interview lasted 30–60 minutes.

Table 1 provides an outline of those interviewed and their role in delivery of affordable housing projects in Victoria.

4. Findings

Below we present findings from the interviews, referring to the conceptual framework in Figure 2.

4.1 Knowledge and Information within Negotiations and Knowledge Resources across the Broader Affordable Housing Sector

While interviews highlighted processes of shared learning occurring, there were also substantial gaps in actors' knowledge and a common belief that different actors did not really understand each others' perspectives, goals or modes of operating. Across those interviewed, only developers and some non-profit housing associations had substantial experience or education in development feasibility. This was a point of frustration for developers who explained that councils would often focus superficially on a quantity of affordable housing required while developers needed to know the degree of discount on market rates to calculate the financial impact of decisions. As one developer explained

'I find it's hard for local governments to relate to what the dollars actually mean.' (Dev_Int_8).

In contrast, planners explained that negotiations were

"hard work purely because they [the developers] hadn't had experience in affordable housing and didn't know how to do it" (LocalGovt_Int_6).

Returning to negotiation literature, this lack of familiarity with other actors' requirements and motivations slowed negotiations and made it harder to identify the "ideal packages" that exploit [stakeholders'] special needs and capacities" (Susskind 1987:14).

This lack of clarity was apparent in local council policy and plan-making. Both local councils and developers acknowledged that having a pre-existing council strategy that identified affordable housing expectations was a key ingredient in successfully negotiating outcomes. However, this policy was absent in many jurisdictions. One council explained that, while their policy asked for 5% affordable housing on sites, there was no internal understanding about how that should be funded, defined or delivered. This lack of clarity led to less trusting relationships and the perception that affordable housing requests were unreasonable or arbitrary. While ICD is based on seeking agreement or at

Table 1. Overview of interview participants and case study sites.

Location	Trigger for Affordable Housing negotiation	Total Dwellings	Affordable Housing Contribution	Interviews
Inner western suburb	Surplus government land available for temporary use – unlocked the land at no cost to the Housing Provider.	50–100	~60 dwellings in total, all social housing	1
Inner eastern suburb	Development application resulting in increased density	100–150	4.73% affordable housing contribution sold at a 50% discount to cost price to Housing Provider	4
Inner western suburb	Strategic Rezoning	>3,000	5% of total dwellings sold at a 25% discount to market rate (based on 12 month average property prices for the suburb)	3
Inner western suburb	Strategic Rezoning	500–1,000	20 social housing dwellings gifted to a housing provider plus a \$4.5million AUD financial contribution to council for social housing	1
Outer northern suburbs	Proponent led rezoning with affordable housing requirement identified in strategic plan	To be determined	5% social housing and 10% affordable housing	1
Inner northern suburbs	Rezoning (Proponent led) followed by Council resolution to require 10–15% affordable housing	To be determined	Agreement yet to be reached	1
Inner south-eastern suburbs	Preparation of a Structure Plan (Proponent led)	>3,000	5% affordable housing, delivery and cost still to be decided	3
Multiple sites across Melbourne (Government Inclusionary Zoning Pilot)	Surplus government land parcels	To be determined	Agreement yet to be reached	1
Inner northern suburbs	Surplus council land parcel	< 10	< 10 apartments (100% of development was affordable)	1
Interviews providing insights on multiple sites)	Multiple	Multiple	Multiple	4

least building shared knowledge and heuristics for collaborative action (Innes and Booher 2004) this was often not apparent, with one developer saying

“the council adopted extortion tactics to get an outcome; regardless of the fact they had no policy to begin with and no prior knowledge on the subject matter” (Dev_Int_14)

Interviews revealed that institutional capacity was commonly being developed through “on the job” learnings. Actors spoke of tapping into existing relationships for knowledge sharing, with interviewees describing knowledge sharing forums emerging across local governments and between local government and the community housing sector. As one planner explained,

‘We do have strong relationships with a number of housing providers and associations which work in our area. We were able to lean on them for advice throughout the process and subsequently ... They’re more than willing to share their expertise in respect of the sector.’ (LocalGovt_Int_10)

Similarly, larger developers were involved in “educating” local councils and smaller developers. A large-scale rezoning project in the inner West, identified by interviewees as a successful affordable housing outcome, was likely aided by the considerable experience of some of the key personnel involved in the negotiations from the council, and experienced large-scale developers who were pursuing interests in affordable housing. As one local government planner explained,

“As a council we weren’t that well skilled in it (affordable housing) either, to be fair. Whereas when you’ve got [big developers] (names redacted), they get it, understand it. They know what you’re trying to do. They kind of lead you in a certain way. But luckily for us we had a few goes before we got to them.” (LocalGovt_Int_7)

This observation could reflect productive processes of collective learning and formation of shared frames of reference based on the accumulation of knowledge through multiple negotiations (Innes and Booher 2010). However, the reference to “leading” is indicative of the power dynamics at play in emerging policy areas with limited formalized regulations and a workforce with limited formalized training or expertise. It reflects Mara and Smith’s (2009) observation that knowledge may be manipulated, withheld or strategically withheld, especially where actors feel they are less likely to be held accountable or “caught out”. In many cases, interviewees identified developers as holding disproportionate knowledge and information. This created opportunities for knowledge manipulation. This was often framed as inevitable and justified, with one consultant explaining;

“I think it’s a bit unreasonable to expect them to provide you with data that is commercially sensitive – we never ask them how much does it cost you to implement these energy-efficiency requirements? ... We just say put solar panels on the roof. So, why we would ask them, well, what’s your internal rate of return? ... Which is essentially what we’re asking them when we ask them for affordable housing, because we say, oh, can you afford to do this or not? Then they either say yes or no and then we say, ‘oh, but show us, show us your development feasibility.’ One, I don’t think they are obliged to, and two, even if they did, I’m not convinced that people outside their sector truly understand the numbers that they’re receiving.” (HousingConsult_Int_20)

4.2 Trust in Negotiations and Relational Resources across the Broader Affordable Housing Sector

Interviews suggested that power tended to move throughout negotiation processes, with participants from different sectors emphasizing different components of the negotiations process when considering power dynamics. As one local government planner noted,

“at the start we always would feel that we were the planning authority, we had the power ... I think there were then stages where the VPA [Victorian Planning Authority] had the power and the control. Then the developers also had their key pieces where they were quite - they could be quite influential.” (LocalGovt_Int_6)

Additionally, non-profit housing associations could reshape plans when agreements did not conform to their business models. This could be the deciding factor that supported or ended a negotiation if they did not choose to take part.

The interviews revealed interconnected relationships between housing associations, local councils and developers. These relationships were both newly formed in response to changing expectations or existing relationships that were strengthened. Many of these

relationships emerged as a knowledge-sharing mechanism as previously disparate actors worked to understand the positions of others. This is an important observation as the emergence of new constellations of actors with the ability to undertake joint action is a key measure of ICD (Polk 2011). While these connections often hadn't coalesced into productive partnerships for housing delivery, they do reflect an effort to find shared frames of reference and are an indicator of emerging networks of association:

"We possibly get more phone calls from developers than we do from local government. You know they're just wanting information, you know they're not really wanting to partner with us at this stage, but they're being told by local government that, it'll be to your benefit if you include affordable housing. So they might ring us and go, what does that mean?" (HousingProvider_Int_16)

This research identified the importance of pre-existing relationships as trust and personal relationships allowed processes to move faster by enabling more direct and honest communication:

"[The developer] used to work for a greenfield developer years ago so I know him from there. So those sorts of relationships are valuable because we know that we can trust each other ... and I know that the projects get built. So it's not just hot air." (HousingConsultant_Int_2)

Indeed, many of the interviews revealed pre-existing social and professional relationships serving as a "back channel" for decision making, echoing prior research (Ruming 2010). These pre-existing relationships allowed for modifications of formal rules, a heightened perception of trust, and provided the means for negotiation to take place outside formalized governance structures. For example, a councilor who strongly supported affordable housing acted as a project champion. As the CEO of a non-profit housing association explained,

"he rang me out of the blue and said, you know what, there's a block next door that the council owns. I really want you to buy it and I want you to build another project just like that next door." (HousingProvider_Int_16)

This story illustrates how constellations of actors distributed across sectors can generate collaborative action, especially when those actors have sufficient power and political capital to translate opportunities into outcomes. Across the projects and interviews, trust and transparency were strongly interlinked. Practitioners sought to overcome a lack of trust by being very transparent.

"we put a project plan down, we share all of the project - the consultant scopes, we share all of the reports, we meet on a regular basis, we take all the issues seriously, we constantly go back to try and resolve outstanding items. So that builds up a relationship of trust." (StateGovt_Int_13)

In contrast, a lack of trust and fear of being exploited encouraged other actors to withhold information. One council described their negotiation strategy as being focused on locking in as many details as possible before making any agreement. They explained,

"we were always so worried that if we didn't have the detail in there that further along in the process it would just get looser and looser." (LocalGovt_Int_11)

4.3 Political Capital within Negotiations

Unequal distributions of political capital were apparent across the negotiated outcomes. Perhaps most obvious were the substantial differences in political endowment, or level of access to decision-making spaces. As one interviewee observed

“Well, ironically, the people who lose are not at the table, and the people who gain are not at the table. So, the people who lose are the community who need housing, if it fails. But I can’t think of a way that you get them at the table, not really. The people who gain are either [housing] associations or providers.” (HousingConsult_Int_20).

This observation echoes frequent criticisms of negotiated affordable housing agreements, that note the “black-boxing” of decisions and lack of community involvement (McAllister, Street, and Wyatt 2016). It highlights that, while non-profit housing associations will often have final say in whether an affordable contribution goes ahead based on their willingness to acquire dwellings, they are rarely engaged during negotiations. This lack of involvement can constrain the creative problem-solving capacity of stakeholders who do not have full access to input on the suitability of negotiated outcomes (Susskind 1987).

Interviews reflected local government’s growing awareness of their identities as political actors that could change outcomes. One local planner explained that this change had only occurred in the last few years, arguing;

“I think now the expectation politically is almost embedded - ... these big developments, we should be getting affordable housing out of them. We’re not going to let them go anymore. We’re not going to lose anymore. We’re going to win and we’re going to get these through.” (Localgovt_Int_17)

This is an example where political capital, an element we have termed as part of negotiation capacity in our conceptual framework, can directly lead to greater institutional capacity, as experiences of multiple negotiations can build political capital and over time lead to broader institutionalized expectations, rules of thumb, codified policies or arenas for collective action.

4.4 Interests and Mutual Gains within Negotiations

The capacity for mutual gain is fundamental to whether actors will choose to engage in negotiations (Raynor, Palm, and Warren-Myers 2021). Interviews identified many cases where actors were able to negotiate incentives and contributions that benefited all parties. Indeed, the key premise for the affordable housing negotiations to “work” was centred on stakeholders’ ability to negotiate mutually beneficial outcomes that satisfied their interests. Stakeholders acknowledged that willingness to participate in the process was predicated on gain.

A key theme throughout interviews was the importance of certainty in this process and the translation of affordable housing contributions into quantifiable project costs. Participants spoke of the importance of starting negotiations early, with each party clearly articulating their goals. As a council planner stated;

“originally we really wanted 10 per cent of affordable housing but we ended up with five. But it was when we started to say well ‘we wanted the housing stock at a 25 per cent discount and it

could be in the form of land, cash, dwellings.' It gave the developers some certainty" (LocalGovt_Int_6).

The negotiation of mutual gain was, for many, simply a calculation of the costs and foregone profit associated with delivering affordable or social units compared with the potential economic value of an expedited planning approval or density increase. Developers sought a "cost neutral" or beneficial solution, and spoke about the necessity of walking away from a project if contributions became too onerous. One consultant explained;

"The developer is like 'I don't need to care [about affordable housing], just tell me what you need from me and I'll build it into my feasibility.'" (HousingConsult_Int_20)

Where incentives made affordable housing contributions worthwhile, affordable housing negotiations often occurred. However, this research also uncovered a series of sub-optimal or failed negotiations that struggled to meet the criteria of mutual gain. In these cases, ambiguity of processes and interests, or a sense of a power imbalance and inequitable gains, led to the breakdown of negotiations. Some developers often fundamentally disagreed with the need for their involvement, indicating that asking developers to deliver social housing was "*not good commerce or good government*" (DevT_Int_14), as it departed from their underlying interests.

Interests were not purely financial and mutual gains around affordable housing were rarely considered in isolation. Local councils often referenced having to manage separate requirements for community benefits as part of processes that ran parallel with affordable housing negotiations. This created a challenge of balancing the desire for affordable housing with the need to deliver community facilities, open space, or schools. Particularly for larger developers, managing their long-term rapport with councils and communities was important as was the social licence attributed to providing affordable housing. While economic viability remained the leading consideration for developers, it was part of a suite of benefits that could accrue from delivering social housing. As one developer explained,

"Everyone wants to be the best citizens of the world they can be. So it's nice to be able to mix it up and still do - put your commercial hat on and also still feel like you're giving something back. That negotiation went really well. We got an incredible permit, amazing height. There was the social housing element." (DevT_Int_3)

Despite this, interviewees acknowledged that only certain actors saw association with delivery of affordable or social housing as an asset to their reputation. As one planner explained, the only interest in "*participating in voluntary negotiations was amongst their deliberative development² clients, who were already doing it anyway*" (LocalGovt_Int_18). For her, changes to the Act had not substantially changed the range of actors likely to engage in negotiations, although it had made implementation of outcomes slightly clearer.

This observation is important, as affordable housing negotiations are often framed by stakeholders as almost entirely dependent on mutual gain calculations, or the balancing of the cost of affordable housing contributions with receipt of planning benefits (Thaden and Wang 2017; Warren-Myers et al. 2019). However, non-monetary interests such as reputation, ethical positions and perception of procedural fairness are strong factors in negotiation (Friendly 2020; Hyde and Myers 2018).

4.5 Mobilization Capacity across the Broader Affordable Housing Sector

Mobilization capacity refers to the ability of actors to perceive and respond to windows of opportunity for collective action. In our typology, it differs from the political capital described in negotiations because it focuses less on individuals and their self-assessment of their political power and emphasizes collective arenas, strategies or mechanisms for collaborative effort. Interviews revealed that mobilization capacity remains constrained by a lack of arenas or strategies that may be translated into collective action. For example, while the use of Section 173 agreements represented a new formal mechanism for delivering affordable housing, actors found it difficult to translate this into action. Developers sought to reduce or remove affordable housing stock allocations post-approval. Interviews revealed a common pattern of negotiated affordable housing outcomes becoming enshrined in section 173 agreements following negotiations between local governments and developers before being overthrown by VCAT. An interviewee explained;

“the Council tried to force the social housing onto a developer. I think the developer offered up a certain number to Council and the permit conditions came up with a whole bunch of other numbers. They (the developer) then took Council to VCAT on that issue and they won. Council got nothing in the end . . . Yet Council said ‘we’re only giving you the permit on the condition that this is in there.’ VCAT said ‘you can’t do that.’ So they took that (requirement for affordable housing) away and the developer still got the permit.” (Dev_Int_3)

The ability for the VCAT process to be “gamed” or manipulated, and the wide-spread acknowledgement of this inevitability led to cynicism and extremely constrained political capital for local councils and deeply eroded trust in developers and the broader planning system.

Mobilization capacity appeared constrained by poor application of formal institutions like definitions and legislation. Interviews highlighted challenges in the interpretation of the changes to the Planning and Environment Act (the Act) and considerations of affordable housing more generally. This was most commonly mentioned in relation to the vague definition of “affordable housing” and the ways it could be manipulated to generate different results. Despite the creation of a definition for affordable housing being a key contribution of the 2018 changes to the Act, this appeared to introduce more confusion and conflict rather than reduce it. For example:

“I think the other thing, for me, is that definition of affordable and social [housing], which I think developers, in particular, struggle with . . . we used to just say, make sure you put in social housing [in the agreement]. Don’t put in affordable housing, because it can be interpreted in so many ways, and really, they can get out of it.” (HousingProvider_Int_16)

Despite this, mobilization capacity appears to be increasing, especially through shifting informal rules or norms. A key change highlighted across interviews was the belief that expectations were changing;

“I think the number one thing that has been helpful is there seems to be a shift in developer – what do you want to call it? - mentality. And an expectation that there will be social housing expectations on these sites from council” (Dev_Int_2)

Such norms or institutional expectations are essential to collective action and are indicative of shifting mobilization capacity (Innes and Booher 2004). Interviews often referred to

the power of precedent-setting in embedding on-going expectations for affordable housing delivery. While not enforceable, “rules of thumb” or nearby precedents matter greatly in setting expectations and parameters around negotiations. Legal precedents are similarly emerging through formal planning processes as planning decisions generate principles and strategies that actors can follow. While interviewees still referred to negotiation processes as confusing, time-consuming, difficult to enforce and insufficient, mobilization capacity appears to be increasing.

5. Discussion and Conclusion

This paper joins a body of literature pointing to the potential for inefficient, exploitative, undemocratic and opaque decision-making to emerge from reliance on negotiation-based planning decisions and developer contributions to social goods (Biggar and Siemiatycki 2020; Raynor, Palm, and Warren-Myers 2021). We chart examples of strategic manipulation of information, unequal power relations, and insufficient enforcement mechanisms apparent in a nascent policy area by bringing together institutional capacity and negotiations frameworks. Interviews reflected strong criticism of the uncertainty, and labour-intensive nature of current affordable housing agreements.

We find that negotiations do drive modest increases in Institutional Capacity insofar as they encourage or even necessitate increased knowledge sharing, internal capacity building and increased familiarity with other actor’s motivations, a finding rendered visible by our theoretical melding of negotiations and capacity frameworks. As Raynor and Whitzman (2020) have argued, developing a shared definition and shared data sets or policies can greatly increase the capacity for collective action on housing and this appears also to be the case in the present study. We have found that institutional capacity may still emerge from competitive negotiations, especially where stakeholders have strong incentives to work together and sufficient time to transition towards adjusted institutions. Where negotiations were most productive, the cost of subsidizing affordable housing was often spread across all negotiating actors, expectations were clearly stated and developers were often motivated by managing longer-term relationships and reputations associated with being ethical or innovative developers. These findings highlight the interrelationship between case-by-case negotiation strategies and broader institutional trajectories. The introduction of new legislation in Victoria appears to have functioned as the “shock” or “moment of opportunity” (Healey 2007) that drives the development of new institutional capacities.

Despite this, institutional capacity and negotiation capacity is still limited in Melbourne, as evidenced by the constrained number of successful agreements across the city. Indeed, negotiations sometimes appeared to occur *despite* new Section 173 arrangements rather than *because* of them. Where negotiations were most ineffectual, affordable housing agreements were completely reversed due to procedural loop-holes, or poorly justified and researched affordability requirements. The ease with which this process may be circumvented points to a current lack of durable institutions. Similarly, a lack of mechanisms to encourage or mandate agreements meant that there was limited

potential for mutual gain for negotiating parties. The findings of this paper point to the value of mandated inclusionary zoning as a mechanism for strengthening formal institutions and the capacity for mutual gain within affordable housing delivery, especially if accompanied by network and capacity building opportunities to build cross-sectoral familiarity, trust and knowledge.

In this paper we present a pragmatic reflection on how ICD may improve the delivery of affordable housing agreements through strategic interventions and adaptive interactions. We argue that the elements that most strongly influence the likelihood of effective collective action are information, trust, relationships, capacity for mutual gain and an awareness of political capital. We identify improved knowledge-sharing networks, the development of explicit affordable housing policies, shifting affordable housing expectations and precedent-setting as just some of the ways in which affordable housing delivery is becoming more institutionalized. We find that councils with codified housing policies and larger developers with more experience in this area were more likely to develop affordable housing.

Finally, our analysis points to the value of bringing together the institutional capacity and negotiations literatures. This theoretical advancement allowed us to expand our analysis beyond the negotiating table itself to understand how pre-existing relational resources fostered trust during negotiations, and how negotiations cultivated new relationships and co-learning that enhanced capacities. It helped us to chart how repeated engagement in negotiations transformed political capacity and norms, at least among some stakeholders. It revealed how efforts to build trust and share knowledge during negotiations became avenues through which new institutions and shared knowledge frames could form across sectors. As such, our theoretical framework encourages researchers to pay attention to both the internal machinations of negotiations and the broader institutional scaffolding in which these negotiations exist. Many questions remain.

Notes

1. A Section 173 agreement is a legal contract between the responsible authority (usually a local council) and a land owner that sets out conditions or restrictions on the use or development of land. It is most commonly used in Victoria to secure open space or preserve heritage features.
2. Deliberative development is a term used to describe non-speculative development models, similar to *baugruppen*.

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