Regulatory Systems and the Enabling of Plans

Prof. August E. RØSNÆS, Norway

ABSTRACT

Through the latest years the overall conditions for town and country planning in Norway have gradually been changing. To some extents these changes are extensions of international trends indicating that shifting physical, economic, organisational and mental relationships between man and his environment will be impacting the use of the planning system over time. Since the national planning systems are more or less unique for each state, the impacts of these changes will be varying between different countries. Consequently societal conditions for the political acceptance of planning means will also be varying. Changes in the working conditions of the planning system are of institutional and societal character. They are also related to territorial strategies for urban development. The most obvious outcome of these changes is a stronger commitment of non-public actors in the whole planning process, particularly in the plans' enabling; preparation of development plans, financing of projects and extensive collaboration towards the public stakeholders through the whole implementation phase.

This paper deals with the capacity of Norwegian the planning system to adapt to the new private wave throughout the planning process, emphasising the enabling of plans as the immediate planning purpose. The planning system is discussed in relation to the non-public impact regarding planning forms, regulation methods and implementing mechanisms.

Systèmes Régulateurs et la Réalisation de Plans

RÉSUMÉ

Pendant les dernières années, les conditions générales pour la planification rurale ainsi qu'urbaine en Norvège ont changé progressivement. En partie, ces changements suivent une tendence internationale vers de nouvelles pratiques pour l'emploi du système de planification, qui sont dues à la transformation de la relation entre l'homme et son environement au niveau physique, économique, mental ainsi qu'au niveau des organisations. Comme le système de planification est propre à chaque pays, les impacts de ces transformations varient selon le pays. Par conséquent, les conditions sociales pour permettre aux nouvelles méthodes de planification d'être politiquement acceptées varient aussi. La modification des conditions qui gouvernent le système de planification est évident au niveau social ainsi qu' institutionel. Elle est liée à de nouvelles stratégies territoriales en vue du dévelopement de l'espace urbain. Le résultat le plus évident de ces changements est un plus grand engangement de la part des acteurs privés dans le processus de planification, notamment en ce qui concerne la réalisation des plans; la préparation de plans de dévelopement, le financement de projets et une collaboration étendue avec les pouvoirs publics à travers toute la mise en place des projets.

Le présent document traite de la capacité du système de planification norvégien à s'adapter à cette nouvelle vague privée à travers toute les phases de planification. Il met en avant la réalisation des projets comme le but le plus immédiat de la planification. La discussion porte sur l'influence des acteurs privés sur les formes de planification, les méthodes régulatrices et les mécanismes réalisateurs.

Regulierungssysteme und die In-Kraft-Setzung von Plänen

ZUSAMMENFASSUNG

In den letzten Jahren haben sich die Rahmenbedingungen für Stadtplanung und Planung im ländlichen Raum in Norwegen allmählich verändert. Zum Teil sind diese Änderungen Erweiterungen internationaler Trends, die anzeigen, dass die Änderung von physischen, ökonomischen und mentalen Beziehungen zwischen dem Menschen und seiner Umgebung im Laufe der Zeit Auswirkungen auf den Gebrauch des Planungssystems hat. Da die internationalen Planungssysteme in jedem Staat mehr oder weniger unterschiedlich sind, werden die Auswirkung dieser Änderungen zwischen den einzelnen Ländern variieren. Folglich werden sich auch die gesellschaftlichen Bedingungen für die politische Akzeptanz der Planungsmittel ändern. Änderungen in den Arbeitsbedingungen des Planungssystems sind von institutionalem und sozialem Charakter. Sie sind verwandt mit raumbezogenen Strategien bei der Stadtentwicklung. Die offensichtlichste Auswirkung dieser Änderungen ist ein stärkerer Einsatz von nicht-öffentlichen Akteuren in dem gesamten Planungsprozess, besonders beim In-Kraft-Setzen; Aufstellung eines Entwicklungsplans, Finanzierung von Projekten und die umfassende Mitarbeit von öffentlichen Interessengruppen in der gesamten Realisierungsphase.

Diese Abhandlung erörtert die Fähigkeit des norwegischen Planungssystems an die neue private Welle im Planungsprozess angepasst zu werden, unter Schwerpunktlegung der In-Kraft-Setzung von Plänen als eine direkte Planungsabsicht. Der Bezug des Planungssystems auf die nicht-öffentlichen Einflüsse bezüglich Plattform, Regulierungsmethoden und Umsetzungsmechanismen werden diskutiert.

CONTACT

August E. Røsnes, Professor Dr. Scient.
Agricultural University of Norway
Department of Land Use and Landscape planning
P.O.B. 5029
N-1432 Ås
NORWAY
Tel. + 47 64 94 83 81
Fax + 47 64 94 83 90
E-mail: august.rosnes@ilp.nlh.no

Regulatory Systems and the Enabling of Plans

Prof. August E. RØSNES, Norway

1. INTRODUCTION

In Norway there has been a shift in the involvement of actors in urban development process during the past decades. To some extents the same tendencies are observed in planning at regional levels. Private companies have gradually gained a stronger position than earlier not only when it comes to initiation of building projects, but also in realisation of developmental policies and planning as well. In the context of development the immediate ends of the private sector are to achieve the desired physical outcome. A swing towards stronger private drive in the development process should then imply that the aspects of enabling planning decisions into materialised results will be gaining importance. The term enabling could here be understood as a composite one, comprising both the aspects of realising strategic plans as the implementation of project development plans

External changes to the planning system create new conditions for planning. In practice the planning system will have to respond to these new forces. Any mature set of institutional means in terms of laws and regulatory structures will hardly be revised ahead of such changes in order to meet the challenges in a proactive way. This will require amendments initiated from the top of the system through constitutionally prescribed procedures, whether there should be a comprehensive strategy for producing a more relevant and up-dated version of the regulatory framework or new challenges should be met partially through legal adjustments step by step.

In practice then new challenges will be generated through the building marked and arise at the very ground level through contemporary projects. Accordingly, the project-oriented part of the planning system for the public handling of development plans and for the exertion of development control in general will be decisive for how these challenges are met. Under this kind of stress planning professionals as well as politicians try to utilise the existing regulatory machinery according to public law in a more creative way than earlier. Furthermore there are legal possibilities to adopt tools according to private law, which traditionally are used outside the planning system. A combination of planning tools from the two realms of law will therefore be the possible outcome of this search for new planning instruments. During the processes of adjusting planning tools to the new order of the day creativity, trial and errors are well known ingredients.

The immediate impact on the project-oriented part of the planning system will to some degree create a new situation for planning at upper levels, i.e. strategic plans. Mechanisms used for financial implementation might for instance have little influence on the overall planning strategy. Still the changing relationships between the different actors involved in the development process might call for a review of the existing approach, and probably require a reorientation of the planning strategy as well of related regulatory tools. In consequence there

are reasons to believe that planning at superior levels will also be affected by the changes introduced to project-oriented part of the planning system.

he content of this paper is a response to three questions. First, what kinds of changes have been creating the new challenges for the project development planning? Second, how is the planning at the project-oriented level responding to all these changes taking place and finally what should be the consequences for planning at strategic levels?

2. CHANGING PLANNING CONDITIONS

2.1 Institutional Waves

Different aspects relating to the functioning of the public sector reached the political debate during the 1980s. In connection to international trends the changes are at local level partly reflected in the political fight over city money and the need for a new fiscal policy (Clark & Ferguson, 1983). At the more overalls level the institutional implications of the new policies were later on generalised through characteristics as deregulation, privatisation and marketisation. These terms are mostly used to characterise specific features of reforms within the public sector with particular reference to the central state level (Lane, 1997). But certainly they can also give relevance to the discussions of reforms at local level.

Intents to introduce these institutional reforms were basically connected to financial arguments. The immediate institutional outcome aimed at was first and foremost new concepts for organising public activities in general, and redefined borderlines between public and private activities in particular. Because physical planning represents a kind of public intervention into the civil society it could not avoid being influenced by the new trends. In Norway the implications have been more or less obvious after the early 1990s (Christensen & Lægreid, 1996; Grønlie & Selle, 1998).

Deregulation means reorganisation of state enterprises combined with transfer of state authority to the board of the new organisation. Transfer of public authority is a part of this process. The authority can be transferred jointly to a new body or divided between two or more bodies. Regarding physical planning in Norway the most prominent state agencies are Department of Public Works, Norwegian Rails and in the countryside the State Forest Company. Traditionally they have not only represented the state authority within their fields of jurisdiction. They are also important actors in the development process because of their ownership to land, particularly to centrally located plots in the biggest cities. Some of these state-organised enterprises have undergone deregulation the latest years, some of them are still in this process. One consequence is that the number of public and semi-public enterprises has been increasing. Some of them are still in charge of the exertion of some public authority. Another consequence is a diverting of the authority structure into several levels and branches. The planning authorities will in general have to meet these challenges with higher demands for co-ordination. However in practice there will also be an escalation of the disputes between the different bodies involved in the planning process. It all generates needs for planning mechanisms and techniques that can be used for the settling of conflicts and resolving of disputes respectively.

Strictly, privatisation implies that public duties are taken over by private sector agencies or third sector institutions. Since municipal authorities are responsible for planning and permitting the public finance situation at this level will be of particular interest. During a quite long period of time the municipal revenues from residential taxpayers have been decreasing. In order to make up for local service production the central government has tried to compensate for these deficits by centrally organised funding partially earmarked for particular purposes, which covers a growing proportion of the municipal budgets (NOU 1997:8).

Financial shortage has gradually undermined the traditional municipal position in planning and financing both when it comes to local infrastructure and facilities for public production of services at his level. Local governments have accordingly changed their priorities to cover demands either ruled by individual rights or requirements put forward by superior authorities. One consequence in local planning is that the municipalities are much more reluctant to devote resources for the preparation of local development plans. Most of these plans are now being prepared and submitted over for public handling by developers (Bonnevie-Svendsen, 2000; Miljøverndepartementet, 2001:61). Another and perhaps more decisive consequence will be the lack of public funding regarding acquisition of land, financing of infrastructure and public facilities. Municipalities do exceptionally acquire land for development any longer, but some of them still own substantial pockets of land due to earlier acquisition. When it comes to infrastructure and facilities the municipalities try to place the financial burden on the developers either through exaction techniques or more common negotiations. Struggle in order to escape from or to redefine traditional duties has intensified the search for mechanisms that might enhance the capacity for public-private partnerships at local level. Since the regulatory framework will be decisive for the integration of these mechanisms into the plan, the new situation will also impacting methods used in regulations. Consequently, creating new mechanisms for public-private partnerships will require certain adjustments of the regulation methods used for the implementation of project plans.

Deregulation and privatisation are accompanied by marketisation. Transfer of public responsibilities to the private sector should normally take place according to certain principles of benchmarking. Whether the transfer will be beneficial for the municipality or not does depend on the capacity of the private entities to achieve the objectives set by the municipality. From a fiscal point of view the municipality will chose the entity that is able to produce the services at the lowest costs. These kind of requirements implies that marked considerations within the private sector are brought into the discussions. Developers for instance will consider for whom they are going to build and the capacity of the local authorities to facilitate profitable developments. Marketisation will therefore lead to a more extensive competition between the municipalities not only when it comes to preferences given to the most reliable developers but indirectly also regarding the socio-economic attractiveness of their future taxpayers. These tendencies are not new. However through the latest years a deeper concern for the relationship between the physical environment, particularly residential standards, and the local public economy have been underlined by planning analysts as well as politicians, at least within the regions of the biggest Norwegian cities (Granheim, 2000).

2.2 Societal Inputs

Different kinds of changes in the society as such have affected the planning conditions, especially concerning the connection between rules for local taxation and the demand for infrastructure and public facilities. In Norway individual taxes are broadly based on income of the resident and value added. The taxpayer according to income can only be inhabitant of one municipality. Local property tax is scarcely levied. Owners of real properties or homes will have to pay certain fees for local infrastructure and solid waste services. This system of local finance is gradually being challenged when it comes to planning and development, mainly caused by two factors. One is the increase of second homes and related facilities. Another is the technological opportunity to use them.

During last decades the number of second homes or eventually multiple homes as real properties has been increasing (Skjeggedal, 2000:142). Today there are on an average more than one second home per each fifth dwelling in use (SSB, 2000; 2001). Besides of these figures are mobile homes and lodgings classified as dwellings, but in reality used as temporary homes for the dwellers with one permanent address. For the municipalities development of second home areas represent a kind of tourist industry. The direct revenue in term of taxes is modest, if any at all. But if the locality is able to attract buyers belonging to the upper income level local spending might compensate for the lack of possibilities to levy taxes. However it requires some public services and of course commercial services for consumption and entertainment. Marketisation is also influencing this kind of development. The contest between localities implies that the quality of the physical environment including infrastructure, floor space, architecture, out door spacing, recreational facilities, etc. will be competitive factors for attracting the right buyers and consumers. Hence, the municipalities will be searching for instruments that might be used for securing the environmental quality that most likely will appeal to the attractive groups of owners and spenders, also when it comes to recreational facilities (Wolf, 1999).

In parallel with this physical development and partially as a precondition for it, development of communications systems and improvement of transportation technology have extended the range of the working place and diminished the travel time respectively. Cybernisation combined with contractual agreements have in early adopting branches extended the possibilities for working outside a fixed working place, at least for some days of a working week. This might be a home or any kind of recreational facility. Over a longer period of time improved service levels of roads and capacity of cars have made the travelling between home and recreational sites easier. Both of the two systems have contributed to extended geographical mobility of the labour and the merging of time for work and recreation. While the normal weekend earlier chiefly consisted of the two days off, Saturday and Sunday, it might now include two ordinary working days spent in front of a computer in a second home. In this case the living is shared with a minor part at the permanent address. More time is spent outside. This spatial splitting up of individuals' or households' consumption will in general demand enhanced capacities for planning and production of constructions and facilities where the consumption can take place, compared to a situation where everything is concentrated to one place. In times of public sector reform higher demands for environmental

qualities will turn the attention of the municipalities to planning instruments that will safeguard the aimed standards of facilities, but at the costs of future users.

2.3 The Spatial Context

During the last decades urban development exhibits in general sprawling tendencies. Current environmental policy is in favour of turning this empirical trend (Engebretsen, 1983; Røsnes, 2001A) into more well delineated and compact built-up areas. The turn in central governmental policies emerged in late 1980s when the intent to co-ordinate land-use and transportation planning was addressed. For the purpose of urban planning central authorities issued guidelines and other kind of written material in order to intensify urban land-use and increase densities of population and working places. Intensification of land-use within built-up areas meant shortly that the urban development would have to concentrate on urban transformation projects on a scale from total regeneration into higher densities to modest infill in residential areas consisting of detached houses.

This policy was new, true, but a new tendency to initiate larger development project that would transform quite extensive urban areas and nodes had started earlier (Ellefsen, 1988). Even earlier, in the 1960s and 1970s, some the advantages of land-use intensification compared to horizontal urban development were discussed. In neighbouring countries there was substantial research on the economy of urban transformation projects (Ahlström et al., 1982; Andersson et al., 1983), still compared to other types of developmental situations. The main conclusions from this kind of investigations was that transforming of built-up areas would normally be more demanding in terms of both financial issues and transactions for getting public adoption of the developments. Still in the good times of the municipal economy public funding would not be recommendable as long as the development costs and political risks would be lower in open land developments.

When the new policy was about to be followed up the public economy was declining as well as the political climate for extensive public involvement in development projects. Accordingly the ambitions of transforming built-up areas into higher densities were handled over to private developers. The question of private contributions to public provisions, when engendered by the project or alternatively required by the municipality was immediately brought to debate. One major problem was that the municipalities lacked instruments suitable for these purposes, or they were not willing to put the available ones into force from some other reasons (Røsnes, 2001B). Besides the geographical direction of the urban development directions invited to some discrepancies in itself. Since the NIMBY-syndrome prevails, it is not that easy to convert available urban land for building purposes. And contrary because of an overall land-use intensification policy, private developers can not easily shift form a troublesome urban transformation project to open land developments. Moreover horizontal urban expansion might also require quite extensive investments in infrastructure and facilities, especially if there is no easy connection to existing networks, or easy access to required facilities in the vicinity.

3. THE IMPACT ON PLANS IMPLEMENTATION

Changes in the society in terms of different aspects of public sector reforms, societal changes and shifts in the urban development policies have all together created new conditions for the implementation of building projects. It should here be underlined that plans for actual building projects are being implemented, normally through partially overlapping processes of public handling, projecting, financing, constructing and subdivision together with identification of properties according to legal procedures.

The consequences of these changes impacting the planning system will among other tings be depending on the capacity of the planning system to accommodate to the new order in a way that will create outputs aimed at. In practice the formal regulatory part of the planning system will decide what is legal or not, statutory or voluntary. In terms of all its instruments and mechanisms the law is also witnessing about what kind of planning situations it is made for. In this regard the anticipation of roles of the different parties involved, including the interrelationships between the private sector and the public authorities, is of particular interest during circumstances of public reforms. The same applies for the financial mechanisms related to plan implementation.

The Norwegian Planning and Building Act (PBA) was adopted in 1985. But the basic justification for public intervention and the role of the public sector in the development process was outlined more than 20 years earlier, and is more or less kept unchanged later. The conceptualisation of the law took place in a period of growth. A political majority assumed more or less that the planning authorities should have a leading role in plan preparation at any level of plans. Furthermore, and supposedly as a consequence, the financial responsibility regarding implementation was placed on the public bodies; municipalities, county municipalities or state sectors. The regulative tools for implementing plans under the rule of public authorities were formulated accordingly.

In this contradictory context of change and legal stability two questions seem to be of particular relevance. One is the problem of finding regulatory mechanisms suited for the new situation where property owners and developers will have a more decisive role to play than earlier. The other one will have to focus on mechanisms that can safeguard financial implementation in a period where private contributions to public provisions are necessary.

3.1 Regulatory Mechanisms versus the Property Regime

In principle planning through regulatory instruments should have capacity to decides where, what, how and under certain circumstances when to build. Land designated for development will normally be more valuable in monetary terms than land reserved for agriculture or forestry. Similarly, plots designated for higher floor-space intensity will usually within certain constraints represent higher values than less intensified plots. In this sense the regulatory power of planning generates new properties of land either by changing the rights to use it for different purposes or by adding rights of development to the existing bundle of rights belonging to the same plot.

The interests to build what, how and when will differ between the individual land-owners. Therefore the legally binding ordinance of a plan is used for compelling the owners to build according to the plan's objectives. It means that land-owners will have to obey mandatory requirements regarding land-use, densities, design measure, etc. This is the traditional approach of a land-use planning strategy. However when it comes to the project level the conditions for achieving the aimed outcome might very soon be different.

In reality planning never control actions of the individual landowners completely. And regularly the discrepancies between strategic plans and their realised *ex post* outcomes start at the project level. Theoretically, two different land property situations explain the difficulties in project plans implementation regarding the possibilities to achieve an outcome in conformance with the objectives of the strategic plan.

The implementation can take place plot by plot according to the existing plot pattern. Consequently each project will be limited to one plot and one owner. Provided that rules and regulations are observed the implementation as such will be under the rule of one owner. Depending on how the planning ordinance is formulated the plot owner can to some extents decide what to build and how much, for instance how much floor space out of the required maximum stated in the strategic plan. Besides building typology, building heights, facades' texturing or colouring, and issues of architectural style in general might be brought into this discussion. Furthermore time lags in the process of project plans implementation is a serious factor in urban land-use intensification, particularly on the subject of urban design measures. The plot owner will according to inherent economic rights linked to the constitution have the right to decide when the development of the actual plot can start, at least within a certain frame of time. Such contradictions implies that the project can only be implemented with some adjustments to what the neighbouring owners will be doing on their plots and when it is going to be done. Physical surroundings related to the property structure or plot pattern and the structure of property owners will therefore have some influence on what is possible to build and when to build it. The property structure might among other things affect the physical characteristics of the project, e.g. the building typology, while timing for the implementation of future projects is decided by the holders of the building rights, i.e. the property owners.

A project plan covering two or more plots will at least in some cases give opportunities to manipulate the physical property structure and the owner structure as well. So if the planning authorities should want stronger physical coherence in the urban development they would probably choose the other situation where one project plan covers several plots. And they normally do. Then again, just to extend the area of the project plan does not necessarily give better possibilities for enhanced continuity in implementation processes and seamless physical development. The implementation of the plan will need mechanisms that can be used to reduce negative impacts of an inconvenient property structure and unsynchronised priorities or decisions of land-owners.

At least under fragmented land ownership these two structural elements contribute to severe planning challenges. For that reason a planning system will have to include some regulatory mechanisms that can be used for manipulating the property structure and improve the co-

ordination between land-owners. Here only three regulatory or sub-regulatory possibilities exist.

A public authority can as a part of the implementation process readjust the existing property structure together with allocation of the building rights established by the plan (Larsson, 1993). A complete land readjustment Norwegian style will require assessment of property values *ex ante*. It will also allow possibilities for a final equalisation of property value accounts in monetary terms. The latter is based on the assumptions that land readjustment should increase the total value of property within the area, and that there should be a positive increment for each property, and as a minimum no loss. Comparing the situations before and after a completed land readjustment procedure reveals that the physical property structure is different, regarding plots and to some extents the building volumes including those stated in the plan. However the structure of property owners is in principle the same.

Furthermore but not allowed in Norway there are mechanisms that can be used solely for the allocation of building rights established by the plan in terms of "transfer of the development rights". As in the previous procedure certain valuation is necessary, here limited to the anticipated market values of the building rights established by the plan. Just transferring those property rights created by the plan means that property structure concerning plots is kept unchanged. There is only a change in the distribution of building volumes before and after a finalised process of transfer. Hence these mechanisms will be changing the structure of property owners, but not necessarily the number of owners or the ownership as such. Accordingly neither this nor the previous mechanism will provide the authorities full control over the implementation process when it comes to time for initiation new development projects and even more demanding, programming of the process of implementation.

A third possibility is simply to abolish the existing structures by replacing several land-owners by one owner, hence pooling several plots into one. Voluntary transactions in the property market will over time transform the property and ownership structures. Though for the purpose of implementing plans a market process will usually be running too slow. Still there are three more options of this variant. Theoretically, the land-owners can voluntarily set up a partnership agreement for joint development of all the plots under their ownership, acting as one subject according to law. Legally there will be one entity ruling over the plots belonging to all owners who gave their consent to the agreement. Such voluntary agreements are difficult to obtain in normal situations. Thus the authorities will more often than not need a legal basis to demand the landowners to sign a partnership agreement for joint development as a binding condition for example for the adoption of a plan. It should be possible to invent mechanisms for co-ordinating the interests of the owners into such agreements. In the meanwhile the authorities will still lack access to the development rights in a way that can give full control over the implementation. In the Norwegian tradition this control has only been possible to obtain through public transformation of a several-plots-several-owners situation into a one-plot-one-owner situation. The final output here is public land ownership, usually exerted by a municipal agency. This is also the only possibility for overcoming these structural challenges in urban planning according to the Norwegian PBA. Property and owner structures can of course be transformed into public power voluntarily for instance by private selling and municipal buying, and forcibly by municipal compulsory purchase or eventually

expropriation. Currently the planning authorities are not that willing to use these kinds of mechanisms. Therefore projects implementation and furthermore the whole urban development process will have to rely on transactions within the property regime to a larger extent than earlier. In the practice of urban development it means by and large that it will be up to the land-owners and developers to decide localising, size and shape of building project areas and the time for future implementation.

3.2 Financial Mechanisms

Infrastructure and other kinds of facilities for the production of public services are indispensable parts of urban development. Implementation of plans requires that the respective facilities either are included in the plan or that the needed facilities with sufficient capacities are accessible outside the planning area. Those who are owners or users of floor space to be built need a right to utilise these facilities or make use of produced services. Access to facilities required is therefore a prerequisite for implementation. Neither in this regard is there any free lunch. Someone will have to pay for the construction of the facilities, eventually the running. Normally the financier will either be a public authority, the developer, the owners of land and buildings, or eventually a mixed combination where some or all parties are contributing.

As long as the actors of implementation or those who are benefiting from it are willing to cover the resources needed there should be no problem for achieving the output of the plan aimed at. The challenges in planning are of two kinds. One is to compel unwilling parties to pay for facilities and services required. This is a question of achieving a planning output according to the objectives of the plan. The other one is to control the ways in which such advantages are being paid for. Since the planning authorities represent the legislative power in the adoption phase of a plan, this power can be violated, corrupted or misused in other ways when it comes to the actual plan as well as future plans related to this one. Both are challenging the mechanisms used for financing. But while the former deals with the problem of raising funds for the public services needed is the latter concerned about legality of the mechanisms used for obtaining sufficient funding.

Facilities disputed are usually not intended to be included in the projects proposed by the developer. But once included in the project they are supposed to be valuable not only for those who are going to buy properties or rent floor space from the developer when the project is finalised. They might be beneficial for holders and renters of property outside the planning area and in general for any groups of users. Any planning system will in some other way try to justify mechanisms that can safeguard a fair funding of public services. These will more or less be based on the assumption that those benefiting should be under the rule of the developer, meaning that the developer will distribute the costs through selling and renting of the real properties produced. In this case the developer is the acting financier under the assumption that the rise of standards engendered by the investment will increase the market value of buildings and floor space. But when other groups are enjoying benefits in terms of improved services and rising property values, the mechanisms connected to developer's transactions will not be functioning.

In a planning system the question of fairness needs moreover to be balanced towards the territorial range of the facilities to be financed and the functioning relationships to the project under implementation. Future owners and renters of properties within the planning area might benefit from the facilities produced by the developer. Still it is not fair that the developer and subsequently this group of beneficiaries should cover all the costs if groups outside the planning area will go for free although benefiting from the same investments. Similarly, should the authorities require that the developer and indirectly the future holders of property in the planning area should finance facilities outside, which can not be regarded as a necessary consequence of this development, and hence useful for the same group people? Eventually if they are to pay, should they cover all of the costs or should they just contribute with their fair share according to a calculated benefit? And finally, is it possible to believe that all kinds of public facilities can be financed through mechanisms connected to the planning system? Should not facilities depending on higher population thresholds like hospitals or infrastructure of regional standards be under financial responsibility of some public agencies or alternatively other sources of finance?

A planning system can hardly deal with all these questions in an explicit and consistent way. And the Norwegian system is no exception. On the other hand when comparing systems from different countries or states it seems to be certain common denominators regarding mechanisms for financing physical facilities for public services (Alterman, 1988A; Kayden, 1988; Renard, 1988; Alterman, 1988B). First of all there are mechanisms under the rule of the regulatory part of the planning system. These are more or less based on the idea that the planning authorities should have a leading role both in financing of facilities and in the distributing of costs. Second there are tools according to private law, which can be used for the same purpose, but the formal linkages between the private arrangements and the planning law might be differing. There are several models for using all these mechanisms.

The regulatory part of the planning system reflects some basic ideas about the role of the public authorities regarding financing of public facilities. It should include the relationship between planning authorities and actors within the private sector as developers and landowners. If the public sector should be given a less dominant role in financing development one could expect more diversified and powerful instruments in order to demand money for financing public facilities. And opposite, less diversified and perhaps weaker instruments should more regularly be found within planning systems where the public sector is expected to represent the main and possibly the sole financier of public facilities. Within the former category the requiring of private contributions for public facilities are established on a broader scale of instruments. These might be ranging from levying money based on rise or decline of land values, for instance like betterment and compensation, to other kinds of instruments limited to particular situations or projects in which public financing traditionally is expected. Within the latter category of planning systems the financing instruments belong more or less to this last group. Here the instruments can partly be regarded as supplementary mechanisms connected to the ordinance, partly as separate instruments for getting hold of private contributions to specific projects.

When the local authorities want to include infrastructure and other facilities in a plan put forward by a developer they have the possibility to formulate development obligations in the

ordinance. Such obligations can be labelled as a kind of exactions, formalised directly by the authority or negotiated between the authority and the developer (Alterman, 1988:8). With reference to the Norwegian PBA, §§ 20-4b and 26, there are possibilities to require that the development should take place in a specific order. Formulated as binding regulations the developer will have to finalise the constructions of for instance roads or public open spaces before construction of the buildings is completed. Even though this mechanism is meant for setting a specific order of the development it has gradually gained importance as an instrument for exacting private contributions to public facilities. This kind of contributions has to be delivered in-kind, meaning that the development costs can not be allocated on several developments without specific additional agreements. Developer's provisions in-kind represent a particular challenge in urban development because subsequent developments will normally take advantages from these particular facilities. Then the developer will have to pay for benefits harvested by competing companies. Provisions in-kind tend therefore to create a game among the developers how to avoid projects that will exceed thresholds of service levels in infrastructure and other public facilities (Røsnes, 2001B). The common hope among the developers is that some competitor will accept the financial burden of the obligations or alternatively that a public agency will have to pay at the end.

Developer's provisions in lieu can in principle tackle such problems. Development impact fees have during the last 20 years been discussed as a possible financing tool in several countries (Nelson, 1987; Goodchild & Henneberry, 1994). However this discussion did not reach Norway when PBA was under revision in the early 1980s. The regulative part of the planning system gives only possibilities to use what might be called betterment fees as in lieu contributions. The planning authority can require that landowners should pay a share of the surplus value accruing the respective properties generated by public or even private investments. Due to PBA betterment fees can only be used for investments in infrastructure, and is in principle a kind of reimbursement, i.e. it can only be required after the development is implemented. For that and other reasons it is not well suited to the current urban development situation.

The up-coming mechanisms for obtaining developer provisions of public benefits are based on private law and the free right to establish agreements through negotiations. Negotiations over private contributions to public benefits will in most cases only include two parties, the local planning authority and the developer. As any attempt to bridge diverting interests both parties will need certain incentives for going into discussions. Without possibilities to establish an agreement that is supposed to be better or at least equal to the best regulative resolution, it will have little sense to start negotiating. These incentives are established through the land-use regulations. It might be that public land-ownership is sufficient to draw a developer into negotiations. Still the regulations determine the material content of the development. The local authorities will in some other way recognise the regulations as necessary for achieving local goals, among other things regarding implementation of public facilities. And for the developer the regulations are necessary to indicate whether there are profitable alternatives for the development of land. In practice then agreements according to private law has to be a combined with regulative mechanisms related to public law. A successful negotiation between the parties leads to a legally binding scheme for both parties

involved. This land development agreement or contract is based on incentives created through the regulations, which also commit the parties to the agreement.

In Norway there is no authorisation for the legal use of development agreements in planning, neither regarding conditions for use, contributions to be negotiated or formal structure. Even though some few municipalities have used variants of such agreements more or less continuously since the early 1970s (Gussgard, 1974) the legal framework for their utilisation is still in an early stage. It might be supposed that their future status in local planning would be decided through the court system.

4. CONSEQUENCES FOR THE REALISATION OF PLANS AT STRATEGIC LEVELS

In certain contrasts to plans for implementing projects plans at strategic levels are realised through chains of future decisions. The underlining of a decision making process is particularly important when discussing effectiveness of planning agencies to influence actions of those who contribute to achievements through planning (Needham, 1997:273). In terms of authority the strategic level is superior to the project level. But when it comes to financial means for the implementation the latter is generally more decisive, although financial programmes can be connected to some categories of strategic plans.

Financial programmes kept apart, two categories of mechanisms can regularly be applied in plans' realisation at strategic levels; regulations connected as a legally binding ordinance or guidelines to the plan, and various strategic implements of regulative character. Planning at this level implies that alternative strategic possibilities have to be elaborated, also regarding the use of regulations. Therefore the choice of regulation methods and other kinds of methods should be based on such strategic considerations. For instance certain planning objectives will usually be politically considered as more important than other objectives. There might then be discussed whether the most efficient means, eventually means with some unwanted side-effects, should be used for achieving objectives of higher priorities or the means applied should be of similar and in any respect acceptable character. Consequently it is difficult to discuss the use of regulation methods isolated before the strategy together with its essential implements is outlined.

Since realisation of strategic plans is reliant on the capacity to influence upon actions of all those who contribute to plans' realisation, the public authorities need to enhance the inter-institutional capacity of the plan. It means among other things that the plan and planning procedures should open up for participation from the different contributors, actors as well the public. All these groups are interested in what the authorities are going to prioritise, i.e. the substantial content of the plan in relations to their self-interest. Moreover they will also like to know how the planning authority will realise the plan, i.e. the issue of methods and means. And finally since these groups will have different institutional status in relation to the public authorities they will probably know how they can influence upon the realisation of the plan. The first of these issues deals with the agenda setting for planning, the second with the capacity of the plan to initiate development and the last with the ability of the authorities to negotiate and participate through the planning processes. A solid explanation of all of them

will to some extents be functioning as a recipe for the use of the planning documents, for the actors throughout the process of realisation and for the public.

4.1 The Setting of Policies for Local Agendas

The purpose of strategic land-use planning is to manage or tackle substantive challenges identified by the planning authorities. It is up to the local planning authorities to set a policy agenda for how these challenges should be resolved locally. In situations where the realisation of plans is more or less totally dependent on initiatives taken by many and to some extents unknown individual actors the authorities need to communicate to all parties supposed to be involved. The agenda can be looked upon both as a policy marketing strategy and a justification of the plan simply in order to attract stakeholders for its realisation. Institutional changes towards privatisation and marketisation will in particular require clear and consistent presentation of the development policies as guidance for the local building market.

Outline of a land-use policy agenda will not only comprise a straightforward presentation of planning goals and substantive challenges to be resolved. As Khakee (1997:255) points there are three issues that need to be discussed and explained explicitly. First there should be a presentation of relationships that will justify why these challenges are brought into the policy agenda, how they should be dealt with institutionally and over time, and eventually who represent the acting interests behind them. This will be a kind of procedural outline that explains why the plan is focusing on these particular challenges and the relative importance among them, meaning some sort of ranking indicating how the decision-makers will prioritise under changing conditions and over time.

Second the agenda should present an unambiguous connection between the territorial setting and planning challenges. For planning at local level this might be viewed as an easy task. Still the locality consists of different areas. Their status concerning planning challenges and related stakeholders for finding solutions will therefore in most cases be varying. The agenda will explain how all these issues will be treated.

Third a local land-use plan is somehow a staged document according to time. Some challenges can perhaps only be resolved through courses of sequences demarcated by milestones or target dates. Additionally there might exist ties or connections between sequences of different courses or the resolving of various challenges. Such issues are strategically important for the realisation of the plan and need to be communicated clearly through the planning documents.

The approach of policy agendas in land-use planning is probably first and foremost a question of technical choice. Requirements for instance regarding content and presentation methods are seldom found in planning laws and regulations. And if there should be found some statements they will supposedly just give brief directions leaving the tasks of real formulation to the local authorities. This is also the case in Norway. The importance of agenda setting in planning is not reflected in PBA. But the central planning authorities are issuing guidelines and guiding material for the preparation of local land-use plans. For the strategic levels this

material is in some measure focusing on the relationship between the societal and particularly the financial part of the plan and the land-use part. When the land-use part is dealt with it is mainly concerned with methods of displaying regulation techniques (Miljøverndepartementet, 1998). It might then be assumed that strategic land-use plans are more or less considered as blue prints. They are not fully regarded as strategic documents that should communicate actual policy agendas in order to enhance the ability to preconceive future planning conditions for those who take part in the realisation of the plan

4.2 The Capacity to Regulate and Initiate Development

In a formal tradition the regulations of a plan are viewed as coercive instruments directing initiatives towards identified objectives. Regulating future development is essentially conceived as an independent activity in which the effects of the regulations are just going one way, towards the initiatives taken, however without real possibilities to influence the level of initiatives. But in realisation of strategic land-use plans neither regulation methods nor initiatives for development can be regarded as isolated elements without any linkage for mutual adaptation.

Such mutual dependencies will especially arise in collaborative planning processes where public entities, developers and the public are involved in discussions on future development. The discussions will take place mainly at the project level, where the initiatives are evaluated towards the regulations of the strategic plan. However the developers will need to know how these regulations should be understood just to come up with acceptable project proposals. And opposite, the planning authority need feedback from those who are involved in projects implementation in order to use regulation methods in ways that can direct development into aimed tracks and at the same time create wanted initiatives for development as well. Again this is a question of communication. The planning authority responsible for the public intervention through the plan will have to explain methods and procedures being used, in addition to the implications for the different parties involved.

Some of the planning methods and procedures together with related mechanisms are statutory for the local authorities, i.e. they are obliged to apply implements and follow procedures prescribed by the superior authorities. Besides the local planning authority can choose some other tools that can be decided locally. Distinctions between methodologies mandatory applied and optionally decided are important in several respects. It clarifies what is statutory given, alternatively to be varied through specific procedures, and what is up to the respective entities to decide, eventually on which terms. More important however is that it can be used to discuss possible alternative tools for tackling particular challenges on the ground. In this sense it creates a *modus operandi* for the invention of new and legal ways for resolving local problems. When explained as a part of the planning strategy all those parties acting according to the plan will formally be given opportunities to adapt to the methods and procedures applied, and being familiar with the mechanisms addressed for resolving current challenges.

The regulatory part of a planning system will contain explanations of regulation methods, planning procedures and related mechanisms. But there will hardly be found any clarification of alternatives, which in practice are left practitioners to develop, and perhaps the judiciary to

prove the legality of. Similarly as in the Norwegian case there is no legal guiding concerning the explanation of planning implements and procedures in specific plans for the purpose of enlightening the users and enhancing the capacity for realisation of the plan. As for the agenda-setting there might be some requirements in national guidelines, which neither in this case give any general understanding how the planning authority should communicate the implications of planning tools chosen to actors and the public involved. Regarding statutory procedures and particularly for the general use of Environmental Impact Assessment there is for instance quite extensive guiding material (Miljøverndepartementet, 2000). However there is no general model for the local authorities how they should communicate procedures related to the use of these kinds of instruments in a planning strategy. And for the of land-use planning as such, the guiding material does not inspire the local authorities to invent, communicate and apply regulation methods as real alternatives or supplementary tools to the statutory ones. It is rather recommendations of the central planning authority's mainstream understanding of the way statutory regulation methods pursuant to PBA should be used. This attitude seems to be based on the assumptions that the local authorities have still a unitary lead in the development process as well as willingness to finance the constructions of new public facilities. As a consequence the traditional methods, which can be characterised as variants of rigid zoning, prevail in the production of strategic land-use plans. The methodological output materialised in land-use plans can according to typologies discussed by Kaiser & Godschalk (1995) be characterised as land-use design.

4.3 The Issue of Participation

There are real differences between groups controlling constitutional rights related to real property resources and groups just putting forward their general civil rights regarding participation with public authorities in planning. Both of them will in a modern planning system have a right to participate with planning authorities. Formally as in reality they can influence the outcome, in terms of plans or the physical output on the ground. However the legal systems do not always recognise the real differences between the two groups when it comes to method or level of participation (Arnstein, 1969). For instance PBA uses the term co-operation is used for collaboration between public authorities, cf. §. 10-1. For all other groups terms as consultation, publication and information are applied in the English translated version, f. § 16.

When local planning authorities negotiate with developers about financing of public facilities it is a kind of participation that takes mutual commitment for granted based on the acceptance of existing inequalities in power between the parties (Fisher, Ury & Patton, 1991). The public can normally not take part in such negotiations without violating the mutuality between the parties involved. Still they might obtain information about the result. When these kinds of negotiations are gaining importance in planning information about the use of negotiating methods and its impact on the planning process should be underlined as an obligatory part of the participatory framework. Usually it is too late to give this information at the project planning level. Clarifying of why and how collaboration towards implementing actors and likewise participation towards the public will have to be set as a part of the plans at strategic levels. It will enhance the understanding of the methodological repertoire that might be expected during the projects planning, and probably strengthening the efficiency during the

implementation phase in general. Without clarifying the use of participatory tools the planning processes will in general loose transparency. The access to information will be more difficult not only for the public, but also for all groups of interests.

5. CONCLUDING COMMENTS

In Norway the planning system is meeting new challenges. Institutional alterations together with societal changes and changes in the spatial contexts of urban development have created new conditions, particularly for the enabling of land-use plans. First and foremost the challenges are observed during the implementation of project development plans. Most of these problems are traditionally related to inconveniencies of the property structure, i.e. the plot pattern in urban development and the unsynchronised priorities of property owners, i.e. the structure of property owners. These problems at the very detailed level of planning have also certain consequences for land-use planning at strategic levels. Due to fragmentation of authorities and responsibilities planning at strategic levels have to be more concerned about inter-institutional relationships in order to make various actors and the public aware of policies, methods and tools used for the realisation and implementation of plans, cf. table below.

Challenges in plans' enabling	**Possible tools in local level planning**
Implementation of project development plans:	
• Inconvenient property structure • Unsynchronised priorities of land owners/developers	• Readjustment of property structure • Transfer of development rights • Transformation of "several-plots-several-owners-situation" into "one-plot-one-owner-situation"
• Private contributions to the financing of public facilities	• Obligations through regulation • Impact fees • Betterment fees • Negotiated contributions (development agreements)
Realisation of strategic land-use plans:	
• Lack of inter-institutional capacities	Strategic outlines for the involvements of actors and participants: • Policies for the setting of local planning agendas • Methods and tools in plans' realisation and implementation • Participatory approaches towards actors and the public

In theory there are several kinds of mechanisms that can be used for meeting all challenges arising. However some of the most important ones are lacking in the planning system of

Norway. It is especially experienced when it comes to struggling with plot pattern, the structure of property owners, and the financing of public facilities in transforming of urban areas. To some degree utilisation of private law arrangements is compensating for the lack of appropriate tools according to the Planning and Building Act. Supposedly for planning at strategic levels the challenges are closer related to customs and policies than to lack of appropriate legal instruments.

REFERENCES

Ahlström, O. et al. (1982) *Stadsförnyelseåtgärder i ett samhällsekonomisk perspektiv*. Stockholm. Byggforskningsrådet R 149:1982.

Alterman, R. (1988A) *Exactions American Style: The Context for Evaluation.* Pp. 3-21 in: Alterman, R. (ed.) *Private Supply of Public*

Services. New York. NY-University Press.(1988B) *Exactions Law and Social Policy in Israel.* Pp. 182-201 in: Alterman, R (ed.) op.cit.

Arnstein, S. (1969) *A Ladder of Citizen Participation.* APA-Journal 35(3)216-224.

Andersson, R., Samartin, A. & Martinez, J. (1983) *The Economic Evaluation of Easter City Plans.* Vol. 1.

Stockholm. Swedish Council for Building Research. D 18:1983.

Bonnevie-Svendsen, M. (2000) *Grenlandsprosjektet. Forutsigbar plan- og byggesaksbehandling.* Oslo. NBI-oppdragsrapport.

Christensen, T. & Lægreid, P. (1996) *Administrative Policy in Norway: Towards New Public Management. Bergen Universitet.* LOS-senter notat 9647.

Clark, T. & Ferguson, L. (1983) *City Money. Political Processes, Fiscal Strain, and Retrenchment.* New York. CUP.

Ellefsen, K. (1988) *Arkitektur og den norske byen.* Pp. 7-27 in: Engh, P. et al. (red.) Arkitektur i Norge. Årbok 1988. Oslo. Norsk Arkitekturmuseum.

Engebretsen, Ø. (1983) *Arealbruksstatistikk for tettsteder.* Oslo. SSB. NOS 333B.

Fisher, R., Ury, W. & Patton, B. (1991) *Getting to Yes*. New York. Penguin.

Goodchild, B. & Henneberry, J. (1994) *Impact. Fees for Planning*. London. RICS.

Granheim, K. (2000) *Kommunale investeringer til befolkningsvekst.* Sandvika/Oslo. Agenda. Rapport 2804.

Grønlie, T. & Selle, P. (red.) (1998) *Ein stat. Fristillingas fire ansikt.* Oslo. Samlaget.

Gussgard, G. (1974) *Utbyggingsavtaler – et alternativ til refusjon. Juristkontakt* 1974:134.

Kaiser, E. & Godschalk, D. (1995) *Twentieth Century Land Use Planning. A Stalewart Family Three*. APA-Journal 61(3)367-85.

Khakee, A. (1997) *Agenda-setting in European spatial planning.* Pp. 255-268 in: Healey, P. et al. (eds.): Making Strategic Spatial Plans.

Innovation in Europe. London. UCL-Press.

Kayden, J. (1988) *Planning Gain: Developer Provision of Public Benefits in Britain.* Pp. 163-172 in: Alterman, R., op.cit.

Lane, J-E. (ed.)(1997) *Public Sector Reform. Rationale, Trends and Problems.* London. Sage.

Larsson, G. (1993) *Land Readjustment. A Modern Approach to Urbanization.* Aldershot. Avebury.

Miljøverndepartementet (1998) *Kommuneplanens arealdel.* Oslo.

_____(2000) *Konsekvensutredninger i kommunal arealplanlegging.* Oslo.

_____(2001) *Bedre kommunal og regional planlegging etter plan- og bygningslover.* Planlovutvalgets første delutredning avgitt 31. januar 2001. Oslo.
Needham, B. (1997) *Planning strategies and planning methods.* Pp. 269-281 in: Healey, P. et al. (eds.) op.cit.
Nelson, A. (ed.) (1988) *Development Impact Fees.* Chicago. Planners Press.
NOU 1997:8 *Om finansiering av kommuneøkonomien.* Oslo. Kommunal- og regionaldepartementet.
Renard, V. (1988) *Financing Public Facilities in France.* Pp. 173-181 in Alterman, R. (ed.) op.cit.
Røsnes, A. (2001A) *Gjensyn med regional arealplanlegging.* Kart og Plan 61(4)254-270.
_____(2001B *Land Development Contracts as Instrument in Norwegian Planning and Development at Local Level.* Pp. 111-135 in:
Kraus, W. & Trappe, P. (Hrsg.) Nachhaltige räumliche Entwicklung auf dem europäischen Kontinent – Interdiziplinäre Ansätze.
Bern. Peter Lang. Social Strategies Vol. 32.
Skjeggedal, T. (2000) *Arealplanlegging og virkelighet i LNF-områdene.* Pp. 121-154 in: Fiskaa, H. & Skjeggedal, T. (red.) Planlegging og bærekraftig utvikling. Trondheim. Tapir. SSB (Central Bureau of Statistics)(2000) *Statistisk årbok 2000*. Oslo____(2001*) http://www.ssb.no/emner/10/09/bygningsmasse/tab.2001 03 06 04.html*
Wolf, P. (1999) *Hot Towns.* New Brunswick. Rutgers University Press.