

## Legal governance in land use planning [GOVLAND]

Striking a balance between national and municipal power and between private initiative and public control



'Helgeland coast' by Mahlum

### 1. Relevance

Legal governance in land use planning [GOVLAND] will examine the core legal instruments for regulating the balance between national and municipal power in Norwegian land use planning. How the legal framework is and should be on land use planning, the interpretation of the rules and day by day management, can have a major impact on living conditions, infrastructure and sustainability. What are the legal requirements for effective, knowledge-based decision processes and what legal protection does local democracy have in a rapidly changing society, marked by Europeanisation, globalisation, privatisation, climate change and population growth? How can democracy and efficiency be balanced in municipal land use planning? The relative strength of public and private actors in the land use context is an integral part of the study.

The aim is to fill in knowledge gaps in the first three prioritised themes in DEMOS programme of the Research Council: 1. Internationalisation, the state and local democracy; 2. Integration and sectorisation; 3. Regions and urbanisation. See section 3.2 below for a more detailed discussion. The project will produce new knowledge on the legal division of power between central government and local authorities, and between public authorities and private operators. It will achieve this through six integrated subprojects. Jurisprudence is the focus in five of six subprojects, whereas one subproject deals with geography. In the project, we will address current challenging issues relating to the Planning and Building Act.<sup>1</sup> The division of roles between administrative levels and administrative sectors, and between the state and citizens, is becoming increasingly important as more types of land use become subject to the provisions of the act. The project also aims to contribute to the ongoing discussion on whether municipal autonomy should be inscribed in the Constitution and on the merging of municipalities and new boundaries.<sup>2</sup> The project will contribute not only to legal dogmatics, but also, through a legal politics (*Lex ferenda*) analysis, examine what legal framework is best suited to meeting tomorrow's challenges. Among other things, the study will build on the DEMOSREG programme: EVAPLAN 2008 and the project 'Handling conflict in compact city/centra development: How is local sustainable planning managed through new planning tools and practices?' and the DEMOSREG programme on evaluation of the Planning and Building Act, 'Evaluering av PBL (2008) - fungerer plandelen etter intensjonene?'<sup>3</sup>

<sup>1</sup> Lov 27 Juni 2008 nr. 71 om planlegging og byggesaksbehandling (plan- og bygningsloven).

<sup>2</sup> See, inter alia, Smith, Eivind, Grunnlovsfesting av kommunalt selvstyre, Lov og Rett 2003 pp. 3-20.

<https://www.regjeringen.no/no/dokumentarkiv/stoltenberg-ii/krd/Nyheter-og-pressemeldinger/pressemeldinger/2013/offentleg-utval-skal-gje-framlegg-til-ny-mandat-for-kommunelovutvalget/id731204/>

and Meld. St. 14 (2014–2015) Kommunereformen – nye oppgaver til større kommuner.

<sup>3</sup> See, inter alia, Kompakt byutvikling, Muligheter og utfordringer, Hege Hofstad (ed.) et al., Universitetsforlaget, Oslo 2015 og [http://www.forskningsradet.no/no/Nyheter/Skal\\_evaluere\\_plandelen\\_av\\_plan\\_og\\_bygningsloven/1253997481959](http://www.forskningsradet.no/no/Nyheter/Skal_evaluere_plandelen_av_plan_og_bygningsloven/1253997481959)

## 2. Aspects of the research project

### 2.1. Background and status of knowledge

The discussion on the distribution of competencies between parliament, the government administration and the municipalities is not new, but is rather an ongoing discussion as to what constitutes the best legal management regime to meet new societal challenges relating to land use.<sup>4</sup> In particular, there are two discussions that it is important to look at more closely. One concerns the balance between state power and municipal competencies. International obligations such as the European Convention on Human Rights and Norway's association with the EU through the EEA Agreement lead to greater government responsibility and can place municipal autonomy and decision processes under pressure.<sup>5</sup> Stricter procedural requirements and material demands to achieve sustainable development, an ecosystem-based approach and political ambitions as regards, for example, the use of energy-saving solutions in planning and fewer salmon lice in aquaculture, can necessitate adjustments at the local elected administrative level. At the same time, it is important to ensure that municipalities and local stakeholders can significantly influence land use, compact urban development and the development of the coastal zone.<sup>6</sup> How competencies are or should be distributed in various situations will be examined more closely in this project.

The second important discussion in this project is the distribution of initiative, competencies and responsibility between the public administration and private operators. We are in a period of increasing privatisation.<sup>7</sup> What is the legal division of competencies, and what are the benefits and drawbacks of privatisation, here illustrated by increased use of private zoning and development agreements? How much can the government entrust the management of common resources to private landowners and developers? It is also important to consider third-party interests in such plans and processes. The general public's rights are under pressure.<sup>8</sup> One question that should be asked is whether representatives of public rights have good enough possibilities to influence processes relating to private zoning plans and development agreements, which, if implemented, will redefine outlying land as infields and change the basis for the exercise of public right of access.<sup>9</sup>

In general, there is little legal literature on local government law, environmental law and planning and building law, although there are some general presentations that it will be important to expand further on.<sup>10</sup> Most of the specialist literature on legislation on land use planning has focused on the implementation of plans through the expropriation of land and compensation.<sup>11</sup> There are currently

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<sup>4</sup> See Sigrid Stokstad, 'Kommunalt selvstyre, Kompetansefordelingen mellom Stortinget, statsforvaltningen og kommunene', Faculty of Law, University of Oslo, 2002.

<sup>5</sup> Sigrid Eskeland Schütz and Ingunn E Myklebust, 'Coastal zone management – between politics and law. New guidelines for differentiated management of the shore zone in Norway', *Local Environment*, Taylor & Francis, published online 27 July 2014.

<sup>6</sup> Ingunn Elise Myklebust, *Challenges of municipal land use management in coastal waters*. *Kart og Plan*, 2014, 2014, no 3, pp. 223-232 (11 p.) Winge, Nikolai, *Kampen om arealene: Rettslige styringsmidler for en helhetlig utmarksforvaltning*. Universitetsforlaget 2013 (ISBN 978-82-15-02200-0) 443 s. NMBU. See also <http://www.universitetsforlaget.no/nettbutikk/kompakt-byutvikling-uf.html>

<sup>7</sup> Recall that 100% of all the zoning plans adopted in 2011 in Trondheim, Kristiansand, Sarpsborg and Larvik were the result of private zoning plan proposals, as compared with 60-80% in 2004. In Oslo and Bergen, the figure is somewhat lower, at 55.6% and 77.8%, respectively. See master data from Statistic Norway's research programme, KOSTRA, Table: 08854: J1. Group – Physical planning, cultural heritage, nature and local environment – level 3\_(K).

<sup>8</sup> See, for example, Rt-1998-1164, Furumoadommen, Rt-2004-1985, Laksefiskedommen, Rt-2005-805, Hvaler, Rt-2007-102, Ulrichsendommen and Rt-2008-803, Kongsbakke.

<sup>9</sup> See, for example, Reusch, Marianne, 'Forholdet mellom friluftsløven og plan- og bygningsloven', *Kart og plan* no 4 2013 pp. 276-287.

<sup>10</sup> See, for example, Jan Fridthjof Bernt et al., *Kommunalrett*, 4th edition, Universitetsforlaget, Oslo 2002, Gerd Engelsrud et al.; *Kommunalrett, Oppgaver, organisering og kontroll*, Cappelen, Akademisk, 2014, Hans Chr. Bugge, *Lærebok i miljøforvaltningsrett*, 4th edition, Oslo 2015, and Inge Lorange Backer, *Innføring i naturressurs- og miljørett*, 5th edition, Oslo 2012, Inge Lorange Backer, *Innføring i naturressurs- og miljørett*, 5th edition, Oslo 2012, p. 218. Marianne Reusch, *Allemannsretten, Friluftslivets rettsgrunnlag*, Oslo 2012, pp. 455-457. See Carl Wilhelm Tyren, *Plan- og bygningsloven, Kommentarutgave*, Universitetsforlaget, Oslo 2010, Frode A. Innjord (ed.): *Plan- og bygningsloven med kommentarer* Volume 1 and Volume 2. Gyldendal Akademisk, Oslo 2010, 1084 p, Odd Jarle Pedersen, *Plan- og bygningsret* Volume 1 and Volume 2, Oslo 2010.

<sup>11</sup> See, for example, Endre Stavang; *Ekspropriasjon - noen sentrale emner*. Cappelen Damm Akademisk. 2010. ISBN 978-82-02-32949-5.

very few legal analyses that concentrate on competence, efficiency and the assignment of responsibility up until a decision is made. In their doctoral theses, members of the management team for this project have touched on central aspects of municipal land use planning procedures. Sigrid E Schütz wrote her PhD thesis on environmental impact assessments, while Ingunn Elise Myklebust's PhD thesis addressed, inter alia, the legal protection of private rights and private interests in municipal decision-making processes.<sup>12</sup> Both address core issues related to the knowledge basis in the process and the value of public participation in the decision-making process. We wish to further develop this expertise through this project.

### 3. Approaches, hypotheses and choice of method

#### 3.1. Approaches, hypotheses and choice of method: overview

There is no generally recognised method in today's legal science paradigm, and it is not necessary to approach a subject in a specific way in order to designate the research result legal science. This is partly due to tradition, since it is common to view not only papers and theses in which the so-called strict legal dogmatic method is applied as legal science. The concept also includes legal politics (*Lex ferenda*), legal history, legal philosophy, sociology of law and comparative perspectives. There are no clearly defined borders between the different approaches, and, in several of them, including legal dogmatics, the method employed is basically of an argumentative nature. However, in legal dogmatics, the argumentation must be rooted in the sources of law. This is a distinct feature of legal dogmatics, and it is also a feature that has led to the direct use of research results in the practice of law, such as when lawyers and judges refer to (the argumentation in) doctoral dissertations and articles when arguing for a certain outcome in a case. Subproject 2 (see below) takes a different methodological approach, being a social science project. In order to examine how local democratic practices and local planning institutions deal with increasing demands for efficiency, the subproject will, in addition to document analysis, collect planning cases from municipalities, and include qualitative studies of planning practices by interviewing planners and local officials. Finally, in section 3.3, we look at some cross-cutting issues that are important to municipal administrative law in general.

#### 3.2 Description of planned individual subprojects

##### **Project 1 Local decision-making processes and objections (PhD student)**

In the PhD thesis, it will be explained how decision-making processes take place under the Planning and Building Act. It should be analysed how decisions are made, and by whom. One main question is in which cases the normal procedure may be deviated from as a result of formal objections from neighbouring municipalities or government bodies, or, in other words, the conditions under which the state can take over responsibility for making decisions on matters for which the law, in principle, assigns responsibility to the municipality as administrative authority. This research is at the core of the prioritised themes in the first and second programmes: the relationship between state and municipal self-government, and the relationship between integration and sectorisation.

Objections are clearly the most important legal tool available to the central government pursuant to the Planning and Building Act. Despite this, objections have not been subjected to comprehensive legal or social science analysis.<sup>13</sup> The threshold for filing an objection is that the issue concerns important regional or national interests, and it is the objecting authority, which can be a neighbouring municipality or the central government sector agency, that itself defines whether the issue involves such an interest. Given such an arrangement, which is essentially setting the fox to

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<sup>12</sup> The implementation of the directives in Norwegian law is analysed in Sigrid Eskeland Schütz's PhD thesis, *Miljøkonsekvensutgreiing av planar og tiltak*, Bergen 2007. With respect to the public duty to investigate and private property rights, see also Ingunn Elise Myklebust, *Strandrett og offentlig styring av arealbruk i sjø. Strandeigaren sin rett til tradisjonelle og nye utnyttingsmåtar i sjøen i møte med offentlig arealplanlegging og konsesjonsreglar*, Universitetsforlaget, 2010, pp. 126-211.

<sup>13</sup> See also Nicolás J. I. Rodrigues, *En studie av bruk av innsigelse mot kommunale kystsoneplanar*, Levert som mellomfagsoppgåve IKSF 215/Utrekningsoppgave for Fiskeridirektoratet, 2002.

mind the geese, it is important that the instruments available to central government are properly assessed.

What is deemed to be the national interest in municipal land use planning can change. Norway has international and constitutional obligations to ensure an ecosystem-based approach to the management of land as well as the coastal zone and coastal waters. The state is responsible for ensuring an efficient system for sustainable management of the areas it has been allocated through several international conventions, such as the Convention on Biological Diversity<sup>14</sup> and the Bern Convention.<sup>15</sup> Through the EEA Agreement,<sup>16</sup> extensive requirements apply to Norway's management, inter alia through the EU's Water Framework Directive and the directive on impact assessments, which form the basis for Norwegian regulations stipulating requirements for water quality and procedures aimed at ensuring sustainable development.<sup>17</sup> Responsibility rests with both the state and the municipalities, but the state has a responsibility to ensure that the municipalities carry out their tasks in accordance with national and international requirements and expectations. At the constitutional level, Article 112 of the Constitution ensures the right to an environment that promotes health and where production capacity and diversity are given due consideration. On the other hand, we have the goal of local autonomy, where Norway has obligations, through national principles and particularly through the ratification of the European Charter of Local Self Government.<sup>18</sup> Processes aimed at preservation and sustainable management, for example as regards aquaculture, will often collapse if the municipality does not first ensure that its land use management plans are ecosystem-based.

One question is whether the state and municipality have the same understanding of which interests are of a national nature. There is little case law concerning these questions, but there is comprehensive practice by public authorities that should be studied in more depth. An issue that should be discussed is what type of interests can justify objections, and whether this is made sufficiently clear to the municipalities. Predictability is a keyword. White papers and guidelines, such as guidelines for climate and energy, urban development, transport and the shoreline, are examples of ways in which the state can convey to the municipalities what can be deemed to be of such importance that an objection can be made.<sup>19</sup> It can be asked whether the current guidelines provide an appropriate basis for municipal land use management and also whether additional forms of land use planning, such as aquaculture, also need to be clarified through similar government policies.

Objections also raise many questions of a procedural nature. How can an objection be an effective instrument and simultaneously safeguard national and municipal interests? An increasingly important topic is how to coordinate a process involving various objections from several sector bodies. A pilot project is currently being conducted in which the County Governors are given special responsibility for coordinating governmental sectors in relation to demands on a municipality from several state authorities.<sup>20</sup> The trial period is from 1 September 2013 to 1 September 2016. The aim of the pilot project is to achieve more efficient processing of planning

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<sup>14</sup> Convention on Biological Diversity, 22 May 1992, in force in Norway on 29 December 1993.

<sup>15</sup> Bern Convention (Council of Europe) 19 September 1979, in force in Norway on 1 September 1986.

<sup>16</sup> Act 27 Nov 1992 no 109 on the implementation in Norwegian law of the main part of the Agreement on the European Economic Area (EEA) (The EEA Act.)

<sup>17</sup> Sigrid E Schütz, 'Vassdirektivet – konsekvensar for næringsverksemd', Tidsskrift for Eiendomsrett, 2014 Vol 1 p 11-47, on the EU water framework directive and its implications for industry.

<sup>18</sup> The European Charter of Local Self-Government, Strasbourg, 15 October 1985.

<sup>19</sup> FOR-2009-09-04-1167, Statlig planretningslinje for klima- og energiplanlegging i kommunene, Statlige planretningslinjer for samordnet bolig-, areal- og transportplanlegging, Fastsatt ved kgl. res. av 26.09 2014 and FOR-2011-03-25-335, Statlige planretningslinjer for differensiert forvaltning av strandsonen langs sjøen.

<sup>20</sup> The trial initially included the counties of Vestfold, Aust-Agder, Rogaland, Hordaland, Nord-Trøndelag and Nordland. From 2015, it was expanded to include six new counties - Oppland, Buskerud, Telemark, Vest-Agder, More og Romsdal and Troms.

applications, better cooperation between municipalities and central government sector authorities and to enhance the quality and possibility of implementing municipal plans.<sup>21</sup> The pilot project will be completed during the early phase of the PhD project, so it will be possible to use it in as a basis for the legal analysis of instruments for interaction and coordination, both vertically and horizontally.

As part of this subproject, comparative assessments should also be made of rules concerning central government control of municipalities in countries with which it is natural to compare Norway. The thesis will make comparisons with Denmark and Sweden, but also Scotland and Canada, where we also have active partners in the project. Our partners in Canada (Montréal) and Scotland (Aberdeen), Professors Marie-Claude Prémont and Anne-Michelle Slater, will provide good support in this connection and will ensure that the project has a broader perspective, both as regards the assessment of questions relating to local government law and to planning and building law, and as regards assessing how similar issues are handled differently in different countries. It will be necessary for the PhD student to visit Canada and Scotland, and our partners will also come here, see section 4.1 below. The other partners are all also important to this project, to which the other subprojects are related and will underpin.

### ***Project 2: Smart city - urban development, wealth creation and health (researcher position)***

Our participant in the project, Håvard Haarstad (PhD), researcher at the Department of Geography at the University in Bergen, will, as part of this research project, look more closely at what impact the development of attractive cities and towns has on the environment, health and wealth creation. This research is central to the programme's third research area, regions and urbanisation, and it will also build further on the new research on compact urban development.<sup>22</sup>

Haarstad will examine urban planning in more depth and how energy-saving solutions can be achieved. How do democracy and efficiency play out in 'smart city' projects in Norway? 'Smart city' is now a highly popular policy framework promoted by the European Union, and it is in the process of being adopted in several Norwegian cities. For instance, Stavanger, in cooperation with Manchester and Eindhoven, won a 'smart city' bid under the European Innovation Partnership – Smart Cities and Communities call last year. 'Smart city' is typically portrayed as the cutting edge approach to urban planning, as it resolves multiple urban problems simultaneously – through technological innovation and the integration of smart solutions and more efficient transport solutions with more efficient uses of energy. At the same time, 'smartness' has been widely critiqued by social scientists for constructing a technology-oriented concept of citizens, and an efficiency-oriented notion of urban planning, leaving little room for citizenship and democracy. The key question in connection with this work package is how issues of efficiency and democracy are worked out in the cases examined in Norway. It is also a goal of the subproject to form an empirical basis for further legal research on urban development and legal management instruments for sustainable urban development, and also to examine the transfer value of 'smartness' to other complex planning situations. The challenges in the aquaculture sector, the lack of sea areas, salmon lice and other environmental challenges, and the prospects offered by new technology solutions, are examples of such situations.

### ***Projects 3 and 4: Objections. Some key international and national issues (research leaders)***

The development of Norwegian law can only fully be understood in light of developments in international discussions and approaches. In an article, Professor Sigrid Eskeland Schütz will analyse the Norwegian system for municipal land use planning and central government control compared with Canada and Scotland, research that is also highly relevant under Horizon 2020 and

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<sup>21</sup> The trial will take place within a common framework set out in the letter from the Ministry of Climate and Environment of 3 September 2013, but practical implementation can be adapted to conditions in each county.

<sup>22</sup> Kompakt byutvikling, Muligheter og utfordringer, Hege Hofstad (ed.) et al., Universitetsforlaget, Oslo 2015.

JPI Urban Europe. Key issues include what rules apply to decision-making competence in land use planning, what body is competent to consider appeals against decisions and the possibility of going to court in cases where disputes arise between a municipality and the state. A comparison of policies allowing the state to take over decision-making processes in several countries' systems will illustrate the effectiveness of the Norwegian rules on formal objections and how the Norwegian model compares with respect to the division of competence between the state and municipalities. Cooperation with our partners Marie-Claude Prémont (Canada) and Professor Anne-Michelle Slater (Scotland) will be particularly important in this subproject. In her article on formal objections, Professor Ingunn Elise Myklebust will focus on the Norwegian system in particular, and in more depth on matters concerning planning at sea, aquaculture and salmon lice issues. Ongoing changes in the system for aquaculture management and the legal framework for municipal spatial planning must be seen in context.<sup>23</sup> Keywords here are functional units, an ecosystem-based approach and municipal boundaries, but the concept of 'smartness' could also be relevant. The work will follow up – and will be more specialised than – previous work on the division of responsibility between the central government level and administrative sectors in relation to the localisation of aquaculture.<sup>24</sup> The subproject will also build on the findings of DEMOSREG, HAVKYST and MARINFORSK.<sup>25</sup> The cooperation with our active partner Sussie Dalvin (PhD), researcher in Molecular Biology at the Institute of Marine Research, will be particularly important in this work. Schütz and Myklebust will also cooperate closely on these subprojects and form a close network with the PhD candidate working on similar problems (P1).

#### ***Project 5: Private zoning (master, 60 credits)***

The development of urban regions and urbanisation are often the result of private plans, where both the initiative for and the implementation of plans often depend on the resources and priorities of private participants.<sup>26</sup> This subproject analyses the legal framework for such land use plans. The research touches on all the programme's priority areas, especially research topic 3: Regions and urbanisation. The use of private zoning can lead to a 'first come, first served' situation, which can be perceived as unfair. There are several examples of plans that facilitate a type of exploitation, both of private property, but also of open sea areas, since they close them off from other citizens and their needs as regards land use.<sup>27</sup> The increased use of private zoning can be a challenge, both in relation to optimal resource management and in relation to landowners. On the other hand, private zoning plans strengthen necessary initiative and vigour, and ensure sustainable development in the municipality. Very little has been written about this subject, which will virtually be a pioneering work in this area. In this research subproject, the cooperation with the regional administrative level via Marit Rødseth of Hordaland County Authority will be important in terms of gaining insight into how regulations are practised. See section 4.1 below.

#### ***Project 6: Development agreements. In particular, on the relationship between municipal planning, zoning, building case processing and development agreements (master, 60 credits)***

<sup>23</sup> White paper 16 (2014-2015), Forutsigbar og miljømessig bærekraftig vekst i norsk lakse- og ørretoppdrett, section 4.1.

<sup>24</sup> Ingunn Elise Myklebust, 'Vilkår ved vedtak om lokalitetsklarerung for akvakultur, Kven har ansvaret for vern av villfisk? Korleis er ansvarsdelinga mellom offentlege forvaltningsorgan, og kva for ansvar kan leggjast på næringa sjølv?' TFE, 2013, no 2, pp. 100-125. (26 p.), Ingunn Elise Myklebust, 'Kommunen si rolle ved kystsoneforvaltning. Tilhøvet mellom plan- og bygningslova og andre sektorlover', Det juridiske fakultets skriftserie no 98, March 2004. ISBN 82-7960-026-4. (137 p.) 'Tilhøvet mellom kommunelova og hamnelova - om inntekter som er øyremerka for hamneformål og om statlege oppretta hamnestyrer sin autonome kompetanse', Det juridiske fakultets skriftserie no 79, Feb. 1999 (71 p.)

<sup>25</sup> <http://www.forskningsradet.no/prognett-demosreg/Forside/1224698086041>;

<http://www.forskningsradet.no/no/Utlysning/HAVKYST/1107980695306>

<http://www.forskningsradet.no/no/Utlysning/MARINFORSK/1254008907302>

<sup>26</sup> See Ingunn Elise Myklebust, 'The Protection of Private Ownership Rights in the ECHR and Norwegian Planning and Building Law', Nordic Journal of Human Rights, Volume 32, Issue 3, 2014, 220-237, DOI: 10.1080/18918131.2014.937218 (18 p.) and Ingunn Elise Myklebust, 'Kva pliktar har staten etter menneskerettane til å ta omsyn til privat eigedomsrett i samband med offentleg planlegging', i *Undring og erkjennelse*, Festskrift til Jan Fridthjof Bernt 70 år, Karl Harald Søvig et al. (ed.), Bergen 2013, pp. 432-442. (11 p.)

<sup>27</sup> See, for example, Rt-2011-556 (Spellsundet) and Rt-2011-780 (Vindmølle)

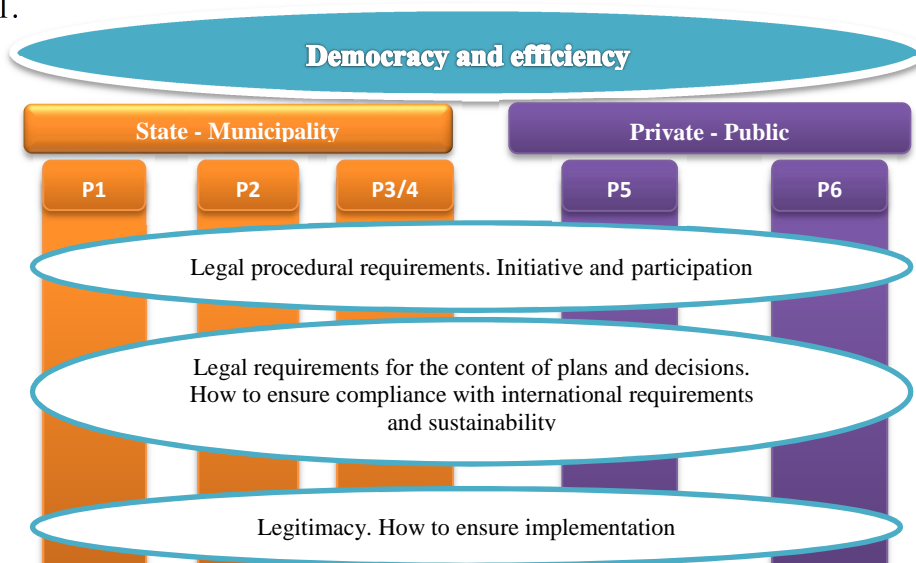


Interaction between public and private initiatives is not just evident in zoning plans, but also in negotiations on development agreements and more detailed conditions for how a development can take place. This research subproject examines the legal issues associated with development agreements, which is also a key and express topic in the programme's third research theme, Regions and urbanisation. Chap. 17 of the Planning and Building Act contains provisions that regulate the right to enter into development agreements, including rules of procedure and provisions concerning what such agreements may contain. However, the limits on what can be agreed upon are far from clear. To find an answer to this, it is important to look more closely at how this policy instrument works together with land use planning and the processing of building cases. The question is what is binding in relation to land use, and at which stage of the process this is decided. Very little has been written about this type of question in legal theory.<sup>28</sup> Like the other master's thesis, it also addresses what responsibilities and tasks relating to land use planning can and should be assigned to private parties. This research subproject will seek to clarify this on the basis of development agreements as a legal policy instrument. Ensuring close cooperation between the two master's students is a goal of the subproject, in which cooperation with the municipal administrative level via Elisabeth Totland, an expert on development plans, City of Bergen, will be particularly important. See section 4.1 below.

### 3.3 Cross-cutting themes

#### Introduction

All the research subprojects deal with land use management, and how areas are to be managed and utilised in a democratic and responsible manner in Norway today. The question of democracy and efficiency can be divided along two main axes. One axis concerns the interplay between municipal autonomy and central government control (see fig. below, orange). The PhD subproject on objections, the research post and senior articles all concern the distribution of power and competence between authorities. The second axis concerns the interplay between public and private management (purple). Both master's theses examine the sharing of tasks between public and private actors. All the subprojects will examine the interaction between democracy and efficiency from the perspective of three themes: 1) Legal procedural requirements 2) Legal requirements for the content of plans and decisions, and 3) Legitimacy and implementation. These are also cross-cutting issues that will form the basis for an article summarising the whole project written by the project managers, Myklebust and Schütz, together with Haarstad and Stokke. This article in English will address both research findings from the participants and input from international and national partners, and it will seek to ensure both a legal and a social science methodological approach, cf. section 6.1.



<sup>28</sup> On the general preparation of development plans based on the former Planning and Building Act (1985), see Johan Greger Aulstad, *Kommunale utbyggingsavtaler*, Fagbokforlaget, Oslo 2005.

### ***Legal procedural requirements . Initiative and participation.***

Land use planning in Norway takes place in continuous *municipal political processes*. The work on private zoning often takes place in parallel with municipal planning processes, but they can also be separate processes. One key question will be whether the driving force – public or private – has too much power, or whether the existing system for consultation and participation ensures that all interests are given sufficient consideration before a final decision is made. The key to winning acceptance for legislation, plans and decisions is often that citizens perceive the process as safeguarding all affected public and private interests, through rules providing for, inter alia, participation and an opportunity to appeal.

### ***Legal requirements for the content of plans and decisions. How to ensure compliance with international requirements and sustainability.***

International demands, Europeanisation, climate change etc. set requirements for the *contents of planning* decisions. A keyword is sustainability. Sustainable development can be defined in various ways. In this project, it is not necessary that all researchers define it in exactly the same way, but all researchers must set out what they mean by the concept, and in a manner that provides a platform for communication, both with each other in ongoing discussions and upon publication.

### ***Legitimacy. How to ensure implementation.***

The aim of all land use planning is that plan decisions can also actually be implemented. Just like formal laws, binding land use plans must have a content that citizens perceive as democratically legitimate, and that they will therefore adhere to. Questions of democracy and legitimacy often concern legal processes, but they can also be about what is acceptable content. One recurring aspect of all the subprojects consists of assessing the legal instruments that must be highlighted and used to secure a planning tool that forms the basis for plans that can be implemented and that is also forward-looking in relation to climate change and the need for new areas in the future.

## **4. The project plan, project management, organisation and cooperation**

### ***4.1 Project plan***

The project is built up around one legal science PhD fellowship (P1), one researcher position in geography (P2), research activities of the management team (P3/P4), and two law student theses (60 credits) (P5/P6). Both members of the management team, Professors Ingunn Elise Myklebust and Sigrid Eskeland Schütz, are employed at the Faculty of Law at the University of Bergen. PhD Håvard Haarstad, who is responsible for research subproject (P2), works at the Department of Geography at the University of Bergen. The work will be organised at the university.

The involved partners will cooperate closely in order to ensure a fully integrated and multi-disciplinary approach to each research module and the cross-cutting themes. All the involved researchers will draw on the knowledge and experience represented by the consortium as a whole and additional partners, which will be made possible by regular colloquiums, seminars and conferences. It is a great advantage that most of the consortium members are based in Bergen. Sussie Dalvin (PhD in Molecular Biology) is employed by the Institute of Marine Research in Bergen, Norway. Tord Skogedal Lindén (PhD in Comparative Politics) is Research Manager at Uni Research Rokkan Centre in Bergen, where he is head of the research group for Democracy, Welfare and Public Administration. Furthermore, Akkelies van Nes (Professor of Architecture) from Bergen University College, Department of Building Construction, carries out research on urban planning and coordinated land use and transport planning. The final participants from Bergen, and key supporters from the public administration, are Marit Rødseth, Head of Spatial Planning at Hordaland County Authority and Elisabeth Totland, who has extensive practical experience of the preparation of development agreements, and works for the City of Bergen.



From the academic community in Oslo, we have Sigrid Stokstad (PhD in jurisprudence) of the Norwegian Institute for Urban and Regional Research (NIBR) and Knut Bjørn Stokke (associate professor of Urban and Regional Planning) of the Norwegian University of Life Sciences. They will come from Oslo to Bergen to participate in activities on a regular basis. International collaborators will attend seminars and workshops organised throughout the project period in order to provide input to the ongoing research and to ensure that the comparative and theoretical perspectives are duly reflected.

#### ***4.2 Project management, organisation and cooperation***

The leader of the project will be Professor Ingunn Elise Myklebust, who will also carry out research as part of the project. Professor Sigrid Eskeland Schütz will also be part of the research management team, write an article and contribute to the summary. Both Professor Myklebust and Professor Schütz have done extensive work that is relevant to this project, and we refer to their attached CVs. Supervision will also be provided in the context of the research group for Natural Resource Law, Environmental Law and Development Law (<http://www.uib.no/fg/ressurs>) and the research group for Administrative Law (<http://www.uib.no/fg/forvrett>). Professor Schütz is head of the research group for Natural Resource Law and Professor Karl Harald Søvig is head of the research group for Administrative Law. The extensive expertise of both groups will be utilised in the project. Håvard Haarstad's research addresses issues of sustainability and democratization in natural resource and energy governance, and has in particular emphasized relationships between geographical scales. We refer to his attached CV. The PhD student will be enrolled in the PhD programme in law, which is the organised doctoral training offered by the Faculty of Law, University of Bergen. He or she will also have office facilities etc. at the Faculty of Law, but the intention is that he or she will conduct research abroad for a shorter period at the cooperating or other institutions.

Our partners will contribute to the project in various ways. Sigrid Stokstad (PhD) did her doctoral thesis on Local Self-Government – the Distribution of Competencies Between Parliament, State Administration and Municipalities (2012), and she is now a member of the municipal legislative commission that was established on 21 June 2013 to conduct an overall review of the Local Government Act with a view to strengthening municipal autonomy. With this expertise, she will be an important partner in the project. Marit Rødseth and Elisabeth Totland will help to ensure that the issues discussed are of practical importance, and will also help to identify issues that are important for the public administration to find answers to. The research project also has interdisciplinary strength, primarily through Håvard Haarstad's (social science) participation in the subproject (P2), but also from other collaborators: Tord Skogedal Lindén, who is also a social scientist, and Knut Bjørn Stokke and Sussie Dalvin, both with education and research experience in relevant natural sciences.

In this project, the expertise of the faculty will also – as noted above in section. 3.2 – benefit from the close cooperation with foreign partners with legal expertise that has developed in recent years. Marie-Claude Prémont has been a professor of law at the École nationale d'administration publique (ENAP), Montréal, Canada, since 2007. She teaches local government law and health and social services law at ENAP. She is interested in the history of law and political and administrative reforms. Anne-Michelle Slater is Head of the School of Law at the University of Aberdeen, Scotland. She is a specialist in spatial planning law. Anne-Michelle Slater writes on marine and planning matters and has also published work on aquaculture and marine planning.

#### ***4.3 Salary and payroll compensation – researcher positions***

Ingunn Myklebust will contribute to the project equivalent to 20% of her position each year during the project period (10% from RCN as leave of absence and 10% as part of the research portion of her position). Sigrid Eskeland will contribute to the project equivalent to 20% of her position

during a one-year period (10% from RCN as leave of absence and 10% as part of the research portion of her position) as well as 5% of her own research portion per year during the rest of the project period. Håvard Haarstad will contribute to the project equivalent to 100% during a one-year period (funding from RCN). See grant application form for further details.

## **5. Key perspectives**

### ***5.1 Relevance and benefit to society***

Research and changes in legal rules for land use planning, will affect social sustainability. Striking a balance between urban development and economic growth, on the one hand, and protection of land and resources, on the other, presupposes updated and appropriate legal instruments.

### ***5.2 Environmental impact***

Legal research on land use planning can have a major impact on the management regime, and what legal framework applies, and should apply, to private stakeholders, could be crucial to the balance between use and conservation. The project management team regularly communicates its research to public and private stakeholders, and offers continuing education to planners from all over Norway (see <http://www.uib.no/emne/JUS265-2-A>).

### ***5.3. Ethical perspectives***

The project raises no special ethical problems. It is necessary to take an objective approach and not let any of the strong financial interests that some actors will have influence the research methods or the results.

### ***5.4 Gender issues (Recruitment of women, gender balance and gender perspectives)***

This research project will have a female leader, and two women – including the leader – on the research management team. Several of our key partners are women.

## **6. Communication with users and the utilisation of results**

### ***6.1 Scientific publication***

The publishing of books and articles will be an essential element of the dissemination of scientific results to the academic community. Our research results will be disseminated to Nordic and international colleagues and academic institutions, both through conferences, seminars and meetings and by publishing articles in national and international scientific journals. As mentioned in section 3.3, research leaders Myklebust and Schütz, together with Haarstad and Stokke, will write an article in English summarising all the findings of the research.

### ***6.2 Communication with users***

Communication with principal users will be established early in the research process, through meetings and seminars. Research findings will be of substantial interest at several levels, and insights gained from the project will be communicated to relevant stakeholders, organisations and institutions in order to disseminate important knowledge and information.

### ***6.3 Public dissemination and website***

Participation in public meetings, debates and op-ed articles in newspapers will ensure that the general public receives information about the research activities and results. In particular, efforts will be made to translate knowledge into policies and measures. The project will also establish a website in order to facilitate information and communication. The website will post information about the project, members, activities and relevant publications and policy-related events. This project will cooperate with Dragefjellet Centre of Learning and Communication to film key lectures in workshops/seminars and make them publicly available online.