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Better citizen involvement and efficient approval processes in Large-Scale Renewable Energy and Infrastructure Projects

Summary

Large scale renewable energy infrastructure projects are classified as nationally significant infrastructure projects (NSIPs). Onshore wind turbines are not classified as NSIPs however: since March 2016 they require planning permission from the Local Planning Authority (LPA). The Planning Act 2008 is the main legislation applying to such structures and this includes requirements that community groups are consulted in the planning stages.

1.1 Nationally significant infrastructure projects (NSIPs)

Most proposed development projects in England require planning consent from the local planning authority (LPA, usually the district council), but there is a different regime for projects that are considered to be nationally significant.

Major infrastructure projects relating to energy, transport, water, and waste are classed as 'nationally significant infrastructure projects' (NSIPs). They are projects of certain types and over a certain size, which are considered by the government to be sufficiently large and nationally important that permission to build them needs to be

given at a national level, by the responsible government minister (the Secretary of State) as set out by the Planning Act 2008. The Commons Library briefing on planning for NSIPs sets out the policy background.

Part 3 of the Planning Act 2008 sets out the threshold above which projects are considered NSIPs. For example, an offshore wind farm with a generating capacity of at least 100 megawatts (MW), or an onshore solar farm with a capacity of at least 50 MW would be classed as an NSIP. Local planning authorities decide planning applications for projects below the relevant NSIP threshold.

Planning systems in different parts of the UK

England

The developer of an NSIP must apply to the Planning Inspectorate, an executive agency of the Ministry of Housing, Communities and Local Government (MHCLG), for a permission called a Development Consent Order (DCO). The National Infrastructure Planning Unit, part of the Planning Inspectorate, handles the applications and a planning inspector or a panel of inspectors will carry out an examination of the project and prepare a report. This will include a recommendation on whether the project should be given development consent. The final decision on whether to grant development consent to an NSIP rests with the relevant Secretary of State.

For example, the Secretary of State for Transport for transport projects or Secretary of State for Energy Security and Net Zero (DESNZ) for energy projects.

A DCO can also include powers that remove the need to obtain additional, non-planning, consents that would otherwise be required for development. The consents are listed in Schedule 2 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (as amended) (the IPMPP Regulations 2015). The government is keen that maximum use is made of these provisions but Government pre-application guidance suggests that this is not always the case in practice.

The NSIP process allows for a DCO to authorise the compulsory purchase of land (that is, the purchase of land without the consent of the landowner).

Wales

The system mainly applies in England, and to a smaller extent is Wales. There are fewer projects that fall into the NSIP category in Wales, and the levels for some of these are set at higher values. For example, while, in England, generating stations with a capacity over 50 MW are classed as NSIPs, the threshold for Wales is 350 MW.

Scotland

The matter is devolved in Scotland which does not use a NSIP system. All planning applications in Scotland must be made to an LPA, and the Scottish process differs from

that in England and Wales with differing rights of appeal and application process, depending on development's type, size and importance.[1]

Public consultation prior to decision-making

Before a developer can submit an application for a DCO, they must carry out extensive consultation (including with the local community) as part of a pre-application process.

Sections 42 to 44 and section 47 of the Planning Act 2008 set out who a developer must consult; this includes local authorities, those with an interest in the land (such as landowners) and local communities. Section 47 states that the applicant must prepare a 'statement of community consultation' setting out how they intend to consult the local community on the proposed project.[2] Once this statement has been prepared, the applicant must make the statement available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land. Government guidance advises developers to consider "how they can engage communities in a way that supports them to understand the necessary issues […] and how they will show how they have responded to their issues of concern".[3]

Members of the public can register as 'interested parties' to participate in the examination process.[4] To register as an interested party, members of the public must make a 'relevant representation' within a certain period (at least 28 days). A relevant representation is a summary of a person's views on an application. For further information about how members of the public can register as an interested party, see the Planning Inspectorate's advice note 8.2: How to register to participate in an examination.

The Planning Inspectorate has published further advice to inform applicants, consultees, the public and others about a range of process matters in relation to the Planning Act 2008. This explains that Interested parties are invited to preliminary hearings and have a right to be heard during the examination process. A planning inspector is required to hold a preliminary meeting for interested parties.

Challenging a development consent order

There is no automatic right of appeal against decisions on DCOs made by the Secretary of State. Under section 118 of the Planning Act 2008, however, decisions can be challenged in court by judicial review. Decisions to refuse an application for

1 Morton Fraser MacRoberts LLP, Scottish and English planning regimes, 25 June 2014

2 Planning Act 2008, s47

3 Ministry of Housing, Communities and Local Government, Planning Act 2008: Pre-application stage for Nationally Significant Infrastructure Projects, April 2024, para 22

4 Planning Inspectorate, Nationally Significant Infrastructure Projects - Advice Note 8.2: how to register to participate in an Examination, December 2012

development consent and decisions to revoke, or make to, changes a DCO can also be challenged in court under judicial review.[5]

An application for judicial review must be made within six weeks of a decision being made.[6] The focus of judicial review is on whether the decision was made in a proper and lawful manner; it is not concerned with the merits of the proposed project itself. Any claim for judicial review requires permission from the court. If the court allows a claim for judicial review and finds that procedural mistakes were made, it can quash a development consent decision. The Secretary of State would then have to remake their decision, correcting any mistakes identified by the court. In remaking their decision, they might reach the same decision again, for different or expanded reasons, or reach a different decision.

1.2 National Planning Policy Framework

The National Planning Policy Framework (NPPF) (updated December 2023) sets out the government's planning policies for England and how these are expected to be applied.

It does not contain specific policies for NSIPs but provides a framework within which locally prepared plans can provide for sufficient housing and other development in a sustainable manner. Local planning authorities primarily administer the planning system, working with local communities.[7] Preparing and maintaining up-to-date plans is seen as a priority in meeting this objective. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

In 2020, the National Infrastructure Strategy established a government ambition to accelerate and improve the decision-making process for major infrastructure projects, including those considered under The Planning Act. This ambition was reinforced in 2022 within the British Energy Security Strategy that committed to establishing a process allowing some Nationally Significant Infrastructure Projects (NSIPs) to be capable of receiving a decision within 12 months.

Following an operational review of the Planning Act 2008 process beginning in 2021, the Department for Levelling Up, Housing and Communities (DLUHC) published an Action Plan setting out proposed reforms that would be implemented to ensure the Planning Act 2008 process can support the country's future infrastructure needs. The

5 Planning Inspectorate, Application process: Frequently asked questions, undated [accessed 18 May 2024], FAQ 61; Section 118 of the Planning Act 2008

6 Part 54 of the Civil Procedure Rules; Landmark Chambers, Challenging development consent orders in the High Court (PDF), July 2018

7 National Association of Local Councils

Planning Inspectorate published guidance on the new pre-application service (May 2024, updated June 2024) for NSIPs.

Updated government guidance has been published which provides the framework for the new pre-application process on the government's 2024 National Infrastructure Planning Guidance Portal.

National Policy Statements

Applications for DCOs are decided in accordance with National Policy Statements (NPSs), which set out the national policy in relation to the different categories of NSIPs.

There are 12 separate NPs and they cover energy, transport, water, wastewater and waste sectors. They give reasons for the policy set out in the NPS, including an explanation of how it takes into account government policy relating to the mitigation of, and adaptation to, climate change.

There are six Energy NPSs, which provide planning guidance for developers of nationally significant energy infrastructure projects. These are:

- Overarching NPS for energy (EN-1)
- NPS for natural gas electricity generating infrastructure (EN-2)
- NPS for renewable energy infrastructure (EN-3)
- NPS for natural gas supply infrastructure and gas and oil pipelines (EN-4)
- NPS for electricity networks infrastructure (EN-5)
- NPS for nuclear power generation (EN-6)

NPSs EN-1 to EN-5 were designated on 17 January 2024 and were produced by the Department for Energy Security and Net Zero (DESNZ).

NPS EN-6 was designated on 19 July 2011 and had effect for listed nuclear projects capable of being deployed by the end of 2025. This was produced by the former Department of Energy and Climate Change (DECC), now DESNZ. A new NPS is being prepared by DESNZ.

NPSs undergo a process of public consultation and parliamentary scrutiny, before being officially designated by the government (set out in part 2 of the Planning Act 2008, as amended by the Localism Act 2011).

A consultation on revisions to NPSs ran from 30 March 2023 to 23 June 2023. In response to some 157 responses NPSs were amended: for example, DESNZ made a significant number of amendments to the Energy NPS..

1.3 Onshore wind planning

The Library briefing planning for onshore wind sets out the policy framework and explains that all onshore wind turbines, except for small-scale domestic turbines, require planning permission from the local planning authority (LPA) in England.

Until March 2016, onshore wind farms with a generating capacity over 50MW were treated as NSIPs. The Energy Act 2016 and the Infrastructure Planning (Onshore Wind Generating Stations) Order 2016 removed onshore wind farms with a generating capacity over 50MW from the NSIP regime. Since March 2016, all onshore wind farms (regardless of their size) require planning permission from the LPA.

In September 2023, the government updated national planning policy to provide that LPAs should approve planning applications for an onshore wind farm if it is an area identified as suitable in the local development plan (local plan or a neighbourhood plan) or a supplementary planning document, and if the planning impacts identified by the affected local community have been appropriately addressed and the proposal has community support .The Local Plan will have been prepared by the LPA and guides planning decisions. It sets out opportunities for development and which types of development will be permitted or restricted in certain areas.[8]

The Welsh Government has identified pre-assessed areas for wind farms where there is a presumption in favour of granting consent.

The Scottish Government updated its planning policy in February 2023 to express support for new and repowered wind farms.

In Northern Ireland, LPAs should approve wind turbines that will "not result in an unacceptable adverse impact".[9]

Onshore wind developments are restricted in designated areas, such as National Parks and Areas of Outstanding Natural Beauty, across the UK.

In England, developers are required to carry out a pre-application consultation with the local community if the project consists of more than two turbines or the hub height of any turbine exceeds 15 metres. Developers must publicise applications for any proposed development that meet either of these conditions in a way that will bring it to the attention of the majority of people who live in the vicinity of the proposed location. They must allow the local community to comment on the proposed development. When finalising their application, developers must "have regard to any responses to the consultation" they received. When submitting their application, they

8 Planning Aid England, What is a Local Plan?,

9 Department of the Environment, Strategic Planning Policy Statement for Northern Ireland (SPPS) (PDF), September 2015

have to explain how they consulted the local community, what comments they received and how they took account of these.[10]

Before making a decision on applications for any onshore wind development, an LPA is also required to publicise the application and consult local residents to allow them to express their views on the proposed development. An LPA must take these views into account when making its decision.[11]

An LPA should grant planning permission to a proposed onshore wind development only if it has 'community support'. Whether a proposed development has community support is for the LPA to decide in the first instance (the Planning Inspectorate on appeal, or the courts if there is a dispute).[12]

1.4 Pylons and upgrades to the national grid

In April 2024 the Commons Library published a report on Pylons and Upgrades to the National Grid, prior to a debate in May 2024. The subject of this report was the ongoing upgrade to the single, connected electricity system that covers England, Scotland and Wales – known as the GB electricity grid.

The UK Climate Change Act 2008 (2050 Target Amendment) target to be net zero in greenhouse gas emissions by 2050 will require significant increases in low carbon electricity generating infrastructure.[13] The UK has ambitious targets relating to the development of offshore wind, solar energy and nuclear power in order to fully decarbonise the electricity grid. This, along with policies to drive electrification of transport and heat, is expected to lead to a doubling of electricity demand by 2050.

National Grid ESO, the electricity system operator for Great Britain, carried out a review of the grid requirements needed to deliver the increase in offshore wind and other low carbon generation. It recommended a single, integrated network connecting new offshore wind farms and associated offshore and onshore transmission networks.

The report stated that part of the need for new infrastructure was the long lead times developers of all low-carbon energy infrastructure have reported for connection to the GB electrification or distribution networks in 2023/24. The Electricity Networks Commissioner's report (August 2023) set out how to halve connection times of new projects to around seven years.[14]

10 The Town and Country Planning (Development Management Procedure) (England) Order 2015

11 The Town and Country Planning (Development Management Procedure) (England) Order 2015, sections 15 & 33

12 Ministry of Housing, Communities and Local Government, National Planning Policy Framework, last updated December 2023, footnote 58

13 The Climate Change Act 2008 (2050 Target Amendment) Order 2019

14 Department for Energy Security and Net Zero, Accelerating electricity transmission network deployment: Electricity Networks Commissioner's recommendations, 4 August 2023

In response, the government published its Transmission Acceleration Action Plan in November 2023. In a statement detailing this plan, the then Secretary of State stated that the government would 'introduce a community benefits package for communities who host transmission infrastructure, alongside a national communications campaign to improve public understanding of electricity infrastructure and its benefits'.
The government also proposed that electricity operators might introduce 'community benefits' to local communities that host electricity transmission infrastructure, such as community funds or compensatory payments to local residents. Following these proposals, it published a response on Community Benefits for Electricity Transmission Network Infrastructure (November 2023). A preference was reported for a combination of electricity bill discounts and benefits, and for such a scheme to be mandatory. wider community

1.5 Clean energy in the Labour 2024 general election manifesto

On 5 July 2024, the UK elected a new Labour Government. The Labour party's manifesto set out its plans to make Britain a clean energy superpower. It stated that Labour would

- Work with the private sector to double onshore wind, triple solar power, and quadruple offshore wind by 2030.
- Implement plans for the nuclear sector in relation to the goal of clean energy by 2023.
- Introduce a new Energy Independence Act.
- Create a new publicly-owned company, Great British Energy to "drive forward investment in clean, home-grown energy production", and "install thousands of clean power projects, including onshore wind, solar and hydropower projects, by partnering with energy companies, local authorities and co-operatives. Communities will be invited to come forward with projects, and work with local leaders and devolved governments to "ensure local people benefit directly".[15]

On 17 July 2024, a new Planning and Infrastructure Bill was announced in the King's Speech to reform the planning process and improve the system at a local level by modernising planning committees and increasing local planning authority capacity.

[15] Labour, Making Britain a clean energy superpower

The bill will also aim to reduced timescales for deciding applications for LPA and NSIP decisions to ensure demand for new infrastructure is met and climate targets achieved.[16]

1.6 Case Studies of community engagement

Geological disposal facility working groups (GDF)

In October 2006, the UK Government accepted the recommendations of the Committee on Radioactive Waste Managements (CoRWM) that the UK's higher activity radioactive waste (HAW) should be managed in the long term through geological disposal in a geological disposal facility (GDF). There is currently no such facility in the UK, however, a process to find a suitable site has been ongoing since 2006.

Nuclear Waste Services, a division of the government's Nuclear Decommissioning Authority, states in its guidance on Communities and GDF (updated February 2020) that the process is consent-based and that a facility will be built on a suitable site with a willing community. Radioactive Waste Management (RWM), part of Nuclear Waste Services since 2022 whose mission is to deliver a GDF, ran parallel public consultations on how suitable sites would be evaluated in England and Wales, from 19 December 2018 to 31 March 2019 and from 16 January 2019 to 14 April 2019 respectively. The response from the two consultations noted that there were 90 responses from a variety of stakeholders including academics, local authorities, non-governmental organisations (NGOs) and members of the public. The consultations helped inform the final documents: Site Evaluation: How we will evaluate sites in England (PDF, 2022) and Site Evaluation: How we will evaluate sites in Wales (PDF, 2020).

Nuclear Waste Services provide guidance on Communities and GDF (updated February 2020) advising on how they would work with communities across England, for example through Working Groups to engage with local people. A Working Group would consist of (at least) the interested party; Nuclear Waste Services; an independent chair, and independent facilitator.[17]

As of January 2024, NWR is engaged with four communities across England.[18] Mid Copeland, South Copeland (both in Cumbria), Theddlethorpe in Lincolnshire and South Holderness in East Riding, Yorkshire. The 2023 CoRWM progress report sets out that these are still in very early stages of development and there is a need to clarify expectations and levels of support.

16 Prime Minister's Office, The King's Speech 2024 (PDF), 17 July 2024

17 Nuclear Waste Services, Community Guidance: How we will work with communities in England (PDF)

18 Nuclear Waste Services, NWS welcomes formation of South Holderness GDF Working Group, 25 January 2024; CoWRM, CoRWM Report: Progress Towards the Delivery of an Operational GDF (PDF), August 2023

The Great Grid Upgrade

National Grid plc, who own and operate much of the electricity transmission network in in England and Wales, is undertaking a major upgrade of the system, called the Great Grid Upgrade. This consists of 17 major infrastructure projects with the aim of improving the existing network in order to boost energy security and the affordability of clean energy.

National Grid's website displays all current projects so that local residents or communities are able to check if there is a project happening in their local area. Local stakeholders are invited to attend public consultations to give their feedback on the project. National Grid state they will engage with local communities in a number of ways including through supporting local projects under a Community Grant Programme and holding consultation exercises using a variety of different methods of communication as well as working with relevant authorities locally.

Public consultations are run on each of the separate local projects that make up the overall grid upgrade, such as the Norwich to Tibury project. All statutory consultation documents and maps have been made available for viewing to inform those who choose to be involved, including Preliminary Environmental Information Reports (PEIRs) and a guide to interacting with consultation plans.

Another example is Eastern Green Links 3 and 4. This project ran a non-statutory consultation between 23 April 2024 and 15 July 2024 to explain the proposals and ensure all stakeholders had the opportunity to share their views on previous and planned work.[19] The second, statutory stage of consultation is planned for 2025 ahead of the submission of the application to the Secretary of State for Energy Security and Net Zero.

The Planning Inspectorate will review and examine the application and encourage submission of views from statutory stakeholders (such as Local Authorities, Natural England and the Environment Agency), communities and other interested parties, before making a recommendation to the Secretary of State. The consultation materials have been made available to stakeholders through a document library and a separate page for landowners is available.

[19] National Grid, Eastern Green Link 3 (EGL3) and Eastern Green Link 4 (EGL4), accessed 23 July 2024

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Canada

ECPRD #5838 Better Citizen involvement and efficient approval processes in Large-Scale Renewable Energy and Infrastructure Projects

Response of the Library of Parliament – Canada

15 August 2024

1. How do authorities involve citizens and other stakeholders in the preparatory work before political decisions on major infrastructure projects are made?

At the federal level, impact assessments of large-scale projects whose effects fall within federal jurisdiction are governed by the Impact Assessment Act and are conducted by the Impact Assessment Agency of Canada (the Agency), a Review Panel, or an Integrated Review Panel with a lifecycle regulator.

All projects subject to an impact assessment must develop a Public Participation Plan during the planning phase of the project.[1] A Public Participation Plan must also be developed for "regional assessments that assess the effects of existing or future activities in a region and strategic assessments that consider federal policies, plans or programs that are relevant to conducting impact assessments (section 92 and 95 of the Act, respectively)."[2]

Purpose of Public Consultation in an Impact Assessment

The goal of public participation in the impact assessment process is to ensure open and informed meaningful engagement by the public throughout the assessment process of approving large-scale projects.[3] Public participation plans must include the objectives of the project and key areas of concern set out in the planning phase, a list of participants who have indicated they wish to be included in the public consultation phases of the impact assessment, the method in which participants would like to engage, and a table to determine each phase of the assessment and corresponding opportunities for public consultation.[4]

The Agency's Framework: Public Participation, sets out the overarching principles that guide public consultation and achieve meaningful participation. These principles state that:

[1] Impact Assessment Agency of Canada. *Impact Assessment Process Overview - Phase 1: Planning*.
[2] Impact Assessment Agency of Canada. *Framework: Public Participation under the Impact Assessment Act*.
[3] *Ibid*.
[4] Impact Assessment Agency of Canada. *Overview of Public Participation Plan*.

- It starts early and continues throughout each step of the process, including timely notification of proposed engagement.
- It is supported with funding made available through the Agency's Participant Funding Program, which will be enhanced to improve public and Indigenous participation in impact assessments.
- It is transparent and information is available and accessible to the public on the proposed Impact Assessment Registry of Canada (the Registry), unless subject to valid exceptions set out in the Act, such as financial information that is consistently treated in a confidential manner.
- It is designed to increase the knowledge of participants and government and foster relationships. Citizens and communities are able to contribute to the science and evidence base for decision-making.
- It is designed to prioritize the participation of those who are most affected by the proposed project, while also ensuring that interested members of the public have an opportunity to share their views.
- Methods are flexible, innovative and consider the assessment context and legislated timelines. It includes a variety of engagement techniques that are appropriate to the circumstances and are accessible to diverse groups, including women, men, gender-diverse people and underrepresented Canadians.
- It influences decision-making and participants see that their input was considered.
- It continually adapts and improves. Each assessment will contribute to a greater understanding of participation practices.[5]

Input from the public during the assessment process will become part of the public record and will be included in the Impact Assessment Report. The Minister for Climate Change and the Environment will consider this information when making their final decision on the project.[6]

Assessment Process Timelines

When a large-scale project is submitted to the Agency for consideration, it is posted to the Canadian Impact Assessment Registry (the Registry) which triggers a 180-day time limit for the planning phase.[7]

[5] Impact Assessment Agency of Canada. "2. Principles." *Framework: Public Participation Under the Impact Assessment Act.*
[6] Impact Assessment Agency of Canada. *Why, how and when to participate in impact assessment.*
[7] Impact Assessment Agency of Canada. *Impact Assessment Process Overview - Phase 1: Planning.*

Before the end of the 180-day period, the Agency posts a Notice of Commencement on the Registry, which starts phase 2 – Impact Statement. The proponent prepares an Impact Statement within three years of the posting of the Notice of Commencement. [8]

When the Agency has determined the Impact Statement has satisfied all requirements, a Notice of Determination will be posted on the Registry which starts phase 3 – Impact Assessment. A time limit of 300 days is given to conduct the impact assessment (600 days if it is conducted by a review board). [9]

The public participates in these first three phases of the impact assessment process as described in the public participation plan. The Agency or the review board will set activity-specific timelines. Information about the process will be posted to the Impact Assessment Registry and be accessible to the public.[10]

Post-Impact Assessment

Following the completion of the impact assessment (phase 3), a decision will be made by the Minister within 30 days. For decisions that are deferred to the Governor General or are the result of a review panel or an integrated review panel with a lifecycle generator, the decision must be issued within 90 days.[11] Proponents who wish to counter a decision may submit an appeal to federal court.[12]

The public will also play a role in the final phase of the process, participating in follow up and monitoring committees (including Environmental Monitoring Committees), and may report on non-compliance through voluntary reporting mechanisms.[13]

Exemptions to Public Consultation

At the federal level, there are no exemptions to the requirement of public participation in the impact assessment process, whether the assessment is carried out by the Agency, a review panel, or as part of a regional or strategic assessment. However, provincial laws governing the assessment process may have different requirements for public consultation.

Provincial Example – Alberta

In Alberta, the Alberta Environment and Protected Areas (AEPA) department directs the environmental assessment process for most industrial projects, however environmental assessments of energy projects such as upstream oil and gas, oilsands and coal projects are the responsibility of the Alberta Energy Regulator (AER).[14]

[8] Impact Assessment Agency of Canada. *Impact Assessment Process Overview - Phase 2: Impact Statement.*

[9] Impact Assessment Agency of Canada. *Impact Assessment Process Overview - Phase 3: Impact Assessment*.
[10] Impact Assessment Agency of Canada. *Framework: Public Participation under the Impact Assessment Act*.
[11] Impact Assessment Agency of Canada. *Impact Assessment Process Overview - Phase 4: Decision Making*.
[12] *Impact Assessment Act*, S.C. 2019, c. 28, s. 1, ss. 138.
[13] Impact Assessment Agency of Canada. *Impact Assessment Process Overview - Phase 5: Post Decision*.
[14] Alberta Government. *Alberta's Environmental Assessment Process*, December 2015.

Environmental assessments are overseen by an Environmental Assessment Director (the Director), who is appointed by Ministerial Order in accordance with the Environmental Protection and Enhancement Act.

The processes that involve decisions about public interest and subsequent regulatory approval are the purview of regulatory bodies such as the Natural Resources Conservation Board (NRCBA), the Alberta Utilities Commission (AUC), and the AER.

Environmental Assessment Process

According to the Alberta Government, "Alberta's environmental assessment process has three basic goals:

> Gather information – the process ensures that enough information is provided by the proponent to inform the public and government agencies about the proponent's understanding of the consequences of their project;
>
> Public involvement – the process provides an opportunity for people who may be affected by a proposed activity to express any concerns and provide advice to proponents and government agencies; and
>
> Support sustainable development – the information provided during the process allows early consideration of the project's place in the overall plan for Alberta's environment and economy."[15]

When an Environmental Impact Assessment (EIA) report is deemed necessary by the Director, members of the public who are affected by a proposed project may participate during the *Preparation of Proposed Terms of Reference* phase. During this phase, the public provides comments on a project's proposed Terms of Reference, a document that determines the scope of the environmental assessment process.[16] An initial draft prepared by the proponent is published in local newspapers and the public is given a minimum of 30 days to submit their comments. The Director determines whether the comments will be included in the final Terms of Reference.

Comments submitted by the public become part of an Environmental Assessment Register and documents are stored online on the Government of Alberta's Current projects list.[17]

Following the acceptance and review of the Terms of Reference, an EIA report is produced and submitted for review, marking the end of the information requirements stage of regulatory approval.

[15] *Ibid*
[16] *Ibid*
[17] Alberta, Environment and Protected Areas. *Environmental Assessment Program - Guide to Providing Comments on Proposed Terms of Reference*.

The application is then sent to the appropriate regulatory body to determine if the project is within the public interest.[18]

Regulatory Bodies and Public Consultation

Once a project application has moved on for regulatory review, members of the public may submit a statement of concern or participate in any hearings held by a Regulatory Board to determine if a project is in the public interest.[19] Depending on the nature of the project, the regulatory review will be conducted by the NRCBA, the AUC, or the AER.[20]

Natural Resources Conservation Board of Alberta (NRCBA)

According to the NRCBA, the review process should be "open, public, and impartial" and there is an expectation that project proponents engage the public during the process of gaining regulatory approval.[21]

The NRCBA website states that "the Board values public participation in its review process. Albertans who are directly affected by a proposed development are encouraged to participate in the process, including the public hearing if one is held."[22] The NRCBA will post notifications in local papers of a public hearing and deadlines for registration to participate (at least 30 days).[23] The NRCBA will also solicit statements of concern from members of the public directly affected by the project.[24]

Alberta Utilities Commission (AUC)

Members of the public who "may be directly and adversely affected by utility development have the opportunity to have their concerns heard, considered and understood."[25] Those who can demonstrate that they occupy or maintain an interest in land affected by a proposed development may qualify to be appointed a "local intervener" to either submit concerns through the AUC's eFiling system or by participating directly in AUC hearings.

Alberta Energy Regulator (AER)

[18] Alberta Government. *Alberta's Environmental Assessment Process*, December 2015.
[19] Alberta, Environment and Protected Areas. *Environmental Assessment Program - Frequently Asked Questions*.
[20] *Ibid*.
[21] Alberta, Natural Resources Conservation Board. *The Board Review Process Under the NRCBA, Section 3: Early Public Involvement and Consultation*, Process Guide, 2018.
[22] Alberta, Natural Resources Conservation Board. *Public Participation*.
[23] Alberta, Natural Resources Conservation Board. *The Board Review Process Under the NRCBA, Section 8(1) Notice of hearing*, Process Guide, 2018.

[24] Alberta, Natural Resources Conservation Board. *AOPA Application Process - Statement of Concern*.
[25] Alberta Utilities Commission. *Have your say about a utility project*.

Albertans are encouraged by the AER to become involved in the regulatory process and public participation is made possible in a number of formal and informal ways.[26] The AER will occasionally hold public forums and community meetings, which can be found on the AER Events page. Participation in public hearings is also possible, although this is limited to those directly and negatively affected by a project.[27] Hearing participation is decided by hearing commissioners.[28]

Members of the public who can demonstrate that they are directly and adversely affected by a company's project may also submit a Statement of Concern (SOC).[29] An SOC will be evaluated and registered, and the AER may request a written response from the company to address the concern, consider the concern as part of the review process, or occasionally the concern may trigger a hearing to address it.

Synergy Alberta

Public participation in Alberta is also made possible by participating in a "Synergy Group" vis-à-vis the non-profit organization, Synergy Alberta. These groups are made up of community stakeholders and provide a forum for the discussion of resource development and to foster the relationship between industry and community stakeholders. These groups do not participate in decision making or regulatory approval.[30]

Post-Assessment Processes

For decisions rendered by AEPA or by a regulatory board, an appeals process is available to those "directly affected" by an AEPA decision or "directly and negatively affected" by a regulatory decision[31]. Appealing an AEPA decision is done through the Environmental Appeals Board, AER appeals are handled by the Regulatory Appeal Coordinator at AER, and NRCBA and AUC appeals may be directed to the Alberta Court of Appeal[32].

Exemptions to Public Consultation

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[26] Alberta Energy Regulator. "Participate in a hearing." *Have your say*.
[27] Alberta Energy Regulator. "How do I become a participant in a hearing?" *Having Your Say at an AER Hearing – EnerFAQs*.
[28] Alberta Energy Regulator. *Hearings*.
[29] Alberta Energy Regulator. *Statement of Concern*.
[30] Synergy Alberta, *Building, Navigating, and Maintaining Your Synergy Group*, October 2014.
[31] Alberta, Environmental Appeals Board. *Appeal Online*.; and Alberta Energy Regulator. *Request for Regulatory Appeal*.
[32] Alberta, Environmental Appeals Board. *Appeal Online*.; Alberta Energy Regulator. *Regulatory Appeal Process*.; Alberta, Natural Resources Conservation Board. *The Board Review Process Under the NRCBA, Section 10.2 Appeals*, Process Guide, 2018.; and Alberta Utilities Commission. "May an AUC decision be appealed?" *Hearings - Frequently Asked Questions*..

For activities that require environmental assessment, there are no explicit exemptions from public consultation. Decisions made by a director must take into consideration any concerns expressed by the public.[33] However, inclusion of the results of public consultation in the EIA Report is left to the discretion of the Director.[34]

2. Provide examples from your legislation aimed at promoting local support and the swift approval of projects. For instance, through the special arrangement of authority competencies, consultation processes, limited appeal opportunities, etc.

Federal – Impact Assessment Act

The approval process of large-scale projects that are carried out on federal lands or outside of Canada is governed by the Impact Assessment Act. Along with environmental considerations, assessments conducted in accordance with the Act also consider social, health, and economic factors as part of the assessment process.[35] Another important purpose of the Act is "to promote nation-to-nation, Inuit-Crown, and government-to-government **partnerships with Indigenous peoples**[.]"[36]

Designated projects that fall within federal jurisdiction and are described by the Physical Activities Regulations must submit a project description to the Impact Assessment Agency (the Agency) in order for a determination to be made as to whether an impact assessment is required.[37] In addition to determining timelines and the phases of the assessment process, the Act states that an impact assessment must include meaningful public engagement.[38]

The Act's Physical Activities Regulations describe the designated projects whose effects fall within federal jurisdiction and who must submit a project description to the Agency in order to determine whether an impact assessment is required.[39]

The Information and Designation of Time Limits Regulations allow for the suspension of time limits by the Agency under certain circumstances as well as outlining the information that must be included in the project description delivered to the Agency. The Regulations also state that the Agency must provide the proponent with the documents necessary for information gathering, including those relating to the public participation plan (i.e., the public participation plan template).[40]

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[33] Alberta, Environmental Protection and Enhancement Act, RSA 2000, c. E-12, Division 1, s.43(3).
[34] *Ibid*, Division 2, s.49(l).
[35] Canadian Environmental Assessment Agency (Impact Assessment Agency of Canada). "Purposes of the Impact Assessment Act." *Overview of the Impact Assessment Act*. Training document, 2019.
[36] *Ibid.*
[37] Impact Assessment Agency of Canada. *Frequently asked questions - Regulations*.
[38] *Impact Assessment Act*, S.C. 2019, c. 28, s. 1, ss. 6.
[39] Impact Assessment Agency of Canada. *Frequently asked questions - Regulations*.
[40] Ibid.

Reference re Impact Assessment Act, 2023 SCC 23

On 13 October 2023, the Supreme Court of Canada delivered a decision which found that the Impact Assessment Act was in part unconstitutional.[41] The decision found that the federal government had acted outside of federal jurisdiction in constructing the Act, such that it had infringed on the constitutional rights of the Provinces and Territories. On May 2, 2024, Bill C-69, An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024 was introduced in the House of Commons and included amendments to the Impact Assessment Act that ensured the designation of projects for impact assessment review, along with decision-making provisions with respect to those projects, were to be carried out only in areas of federal jurisdiction.[42] The bill received Royal Assent on 20 June 2024.[43]

The Impact Assessment Agency of Canada issued a policy directive for the impact assessment process while the Act underwent amendments – Statement on the Interim Administration of the Impact Assessment Act Pending Legislative Amendments. The guidelines for the public participation components of impact assessment were not changed because of the amendments introduced in bill C-69.

Additional Legislation

According to the Act, in the case of activities that are regulated under the Canadian Energy Regulator Act or the Nuclear Safety and Control Act, the Minister must refer the assessment to a review panel to be led by the Canadian Nuclear Safety Commission (CNSC) or the Canada Energy Regulator (CER). In these cases the procedure for impact assessment set out by the Impact Assessment Act is to be followed, and both related Acts legislate the participation of the public in any public hearings that may be held.[44]

Provincial Example - Alberta

In Alberta, the environmental assessment process is governed under Part 2, Division 1 of the Environmental Protection and Enhancement Act. Environmental assessments conducted by the Alberta Energy Regulator are carried out in accordance with the Act.[45]

According to the Act, the purpose of the environmental assessment process is fourfold:

> (a) to support the goals of environmental protection and sustainable development,

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[41] *Reference re Impact Assessment Act*, 2023 SCC 23.
[42] Impact Assessment Agency of Canada. *The amended Impact Assessment Act*. Fact sheet.
[43] Bill C-69 - An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024, 44th Parliament, 1st Session, (Royal Assent version, 20 June 2024).
[44] *Nuclear Safety and Control Act*, S.C. 1997, c. 9, s. 40(5); and *Canadian Energy Regulator Act*, S.C. 2019, c. 28, s. 10, ss.74.
[45] Alberta Energy Regulator. *Environmental Assessments*.

(b) to integrate environmental protection and economic decisions at the earliest stages of planning an activity,

(c) to predict the environmental, social, economic and cultural consequences of a proposed activity and to assess plans to mitigate any adverse impacts resulting from the proposed activity, and

(d) to provide for the involvement of the public, proponents, the Government and Government agencies in the review of proposed activities.[46]

Ministerial and Directorial Powers in the Environmental Protection and Enhancement Act

Under some provisions of the Alberta Environmental Protection and Enhancement Act, the Minister or Director may decide the extent to which the public is involved in the assessment process.

For example, according to Part 1, s. 4(1)(b) of the Act the minister may "specify the functions that the committees and experts are to perform, including, without limitation, the seeking of input from the public, and the manner in which and time period within which those functions are to be performed."[47]

Conversely, according to the Approvals and Registrations Procedure Regulation, although the submission of an application or registration to the Environmental Assessment Director (the Director) must include a description of public consultation, the Director may also waive this requirement if it is not considered relevant to the application or they deem it appropriate to waive.[48]

Statement of Concern

According to the Act, members of the public who are "directly affected by a proposed activity that is the subject of a decision of the Director" may submit a written statement of concern within 30 days of notice of the decision (or longer if specified by the Director).[49] The Director must consider all statements of concern submitted during this period and must not render their decision until the period has expired.[50]

3. Effective Citizen Engagement: Provide an example of 'good practices' involving citizen engagement in recent major infrastructure and renewable energy projects.

Laurentia Project: Port of Quebec Deep-Water Wharf - Beauport Sector

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[46] Alberta, *Environmental Assessment and Enhancement Act*, RSA 2000 c. E-12, div. 1, s. 40.
[47] Alberta, *Environmental Protection and Enhancement Act*, RSA 2000 c.E-12, p. 1, s. 4(1).
[48] Alberta, *Approvals and Registrations Procedure Regulation*, Alta Reg 113/1993, s. 3(1)(q); and Alberta, *Approvals and Registrations Procedure Regulation*, Alta Reg 113/1993, s. 3(2).
[49] Alberta, *Environmental Protection and Enhancement Act*, RSA 2000, c. E-12, div. 1, s. 44(6).
[50] Alberta, *Environmental Protection and Enhancement Act* RSA 2000, c. E-12, div.1, s. 46.

The Laurentia Project was an infrastructure project proposed by the Quebec Port Authority that sought to extend an existing wharf in order to operate a deep-water terminal that would store cargo containers. Aside from water management, the scope of the project also included the construction of rail lines, a road overpass, and reconfiguration of the land the Port was located on.[51]

The Impact Assessment Agency conducted an exhaustive and rigorous environmental assessment which included extensive consultation with the public.[52] The principles for public participation established by the Agency in Framework: Public Participation (the Framework) were followed throughout this process.

Public Consultation Plan

In accordance with the Framework principle that calls for early and ongoing public consultation, the Agency released its Public Consultation Plan shortly after the project was registered. The Agency's development of the plan included a public e-consultation to allow for comments from the public. The plan's proposed activities for public consultation included further public e-consultation on the environmental impact statement, open houses, and public sessions led by a facilitator with subject expertise. The plan also provided information about the documentation to be posted on the public Registry, which conforms to the Framework principle that calls for transparent and accessible public information to be made available on the Registry.[53]

Participant Funding Program

Another principle in the Framework calls for improving public participation through funding made available through the Agency's Participant Funding Program. The Laurentia Project ensured that federal funding was made available to eligible individuals and groups, who could participate by reviewing and providing comments on various aspects of the assessment.[54] News releases and public notices were used to communicate deadlines to the public.[55] In total, $148,417.50 was awarded to community organizations to participate in the environmental assessment.[56]

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[51] Impact Assessment Agency. *Laurentia Project: Port of Quebec Deep-Water Wharf - Beauport Sector*.
[52] Impact Assessment Agency. *The Government of Canada releases its final decision on the Laurentia Project: Port of Quebec Deep-Water Wharf - Beauport Sector*. News release, 29 June 2021.
[53] Canadian Environmental Assessment Agency (Impact Assessment Agency. *Public Consultation Plan*. 13 October 2015.
[54] Impact Assessment Agency. "*Who is eligible?*" Participant Funding Program; and Impact Assessment Agency. *Federal Funding Available - Port of Quebec Deep-Water Multipurpose Wharf Project - Beauport 2020*. News Release, 16 September 2015.
[55] Impact Assessment Agency. *Federal Funding Available*. Public notice, 16 September 2015; Impact Assessment Agency. *Federal Funding Available*. News release, 16 September 2015; Impact Assessment Agency. *Deadline Extended to Apply for Federal Funding*. Public notice, 16 November 2015; and Impact Assessment Agency. *Deadline Extended to Apply for Federal Funding*. News release, 16 November 2015.
[56] Impact Assessment Agency. "Table 6: Funds allocated to Participant Funding Program organizations." *Laurentia Project: Port of Québec Deep-Water Wharf – Beauport Sector*. Environmental Assessment Report, June 2021.

Meetings with Citizen Groups

According to the Framework principles, public participation should prioritize those who are most affected by a proposed project while also allowing for input from the general public. Prior to public information sessions and open house sessions, the Agency held meetings with citizen groups who were more directly affected by the project.[57] Additionally, the project proponent created two standing committees that brought together key community stakeholder groups to address the project and provide a platform for discussion.[58]

Information Methods – Print, In Person and Online

Under the Framework principles, engagement methods are meant to be "flexible, innovative and consider the assessment context and legislated timelines."[59] The Agency held in person and virtual (Zoom) public information sessions in various formats, in addition to publishing print resources[60].

Final Decision

An Environmental Assessment Report for the Laurentia Project was prepared by the Agency in 2021, which included a summarization of the main concerns raised by the public in consultation (for example, air quality, noise pollution, and wildlife conservation).[61] Taking the comments of the public and First Nations into consideration along with advice provided by government experts, the Agency concluded that the project was "likely to cause direct and cumulative significant adverse environmental effects."[62] Ultimately, the Minister of Environment and Climate Change referred the project to the Governor in

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[57] Impact Assessment Agency. "3.2.1 Public Consultation Conducted by the Agency." *Laurentia Project: Port of Québec Deep-Water Wharf – Beauport Sector*. Environmental Assessment Report, June 2021.
[58] Port Québec. "4.1.2.1 Standing committees." *Summary of the Environmental Impact Statement*. September 2016.
[59] Impact Assessment Agency of Canada. *Framework: Public Participation under the Impact Assessment Act*.
[60] Impact Assessment Agency. *Port of Quebec Deep-Water Multipurpose Wharf Project - Beauport 2020 - Information Session*. Public notice, 29 October 2015; Impact Assessment Agency. *Public Notice - Revised Port of Quebec Deep-Water Multipurpose Wharf Project - Beauport 2020 - Public Comment Period and Information Sessions*. 26 January 2017; Impact Assessment Agency. *Virtual Information Sessions - Zoom links and Instructions*; Impact Assessment Agency. Letter from the Canadian Environmental Assessment Agency to Interested Parties re: Open House and Public Sessions. 4 January 2017; Impact Assessment Agency. *Information Sheet - Environmental Assessment Process for the Laurentia Project*. November 2020; Impact Assessment Agency. *Laurentia Project: Deep-water wharf in the Port of Québec - Beauport Sector - Consultation on the Draft Environmental Assessment Report*. PowerPoint presentation, 2020; and Impact Assessment Agency. *Information Session Presentation: Federal Environmental Assessment Process*. Québec Regional Office, November 2015.
[61] Impact Assessment Agency. "3.2.1 Public Consultation Conducted by the Agency." *Laurentia Project: Port of Québec Deep-Water Wharf – Beauport Sector*. Environmental Assessment Report, June 2021.
[62] Impact Assessment Agency. "9. Agency Conclusions and Recommendations." *Laurentia Project: Port of Québec Deep-Water Wharf – Beauport Sector*. Environmental Assessment Report, June 2021.

Council who "determined the potential significant direct and cumulative adverse environmental effects of the Laurentia Project are not justified in the circumstances."[63]

[63] Impact Assessment Agency. *The Government of Canada releases its final decision on the Laurentia Project: Port of Quebec Deep-Water Wharf - Beauport Sector*. News release, 29 June 2021.

Finland

ECPRD 5838 Better citizen involvement and efficient approval processes in Large-Scale Renewable Energy and Infrastructure Projects

1) **Public Participation Prior to Decision-Making:**
How do authorities involve citizens and other stakeholders in the preparatory work before political decisions on major infrastructure projects are made?

Like in Denmark, in Finland the environmental impact assessment (EIA) procedure is at the centre of involving the public and other stakeholders. The EIA aims at reducing or preventing the negative environmental impact of projects. Examples of projects include highways, landfill sites and power plants, *i.e.* all large-scale projects.

In the EIA procedure, the impact of the project is assessed at the preparation stage before any decisions are made and when the forthcoming solutions can still be influenced. The EIA procedure is a project planning tool, and its results must be considered when granting permits for projects.

The developer of the project is responsible for conducting the necessary environmental investigations and producing the Scoping Document and Environmental Impact Assessment Report. Developers can be individual companies or public actors, such as municipalities or government agencies. The procedure is supervised and controlled by the Centres for Economic Development, Transport and the Environment, who act as competent authorities. The competent authority for nuclear energy projects is the Ministry of Economic Affairs and Employment.

The public and the authorities affected by the project can participate in the EIA procedure. The nature of the procedure is participatory and open.

The Act on the Environmental Impact Assessment Procedure (252/2017) defines the projects whose environmental impact must always be assessed. The procedure may be applied to smaller projects and projects not mentioned, if the projects are considered to have significant environmental impacts.

Information on all projects is available online on the website of Finland's environmental administration and the local Centre for Economic Development, Transport and the Environment, and are often publicised further in newspapers, social media, etc. The information includes instructions for giving written feedback, attending a public hearing, or other forms of participating.

The EIA procedure is not an authorisation procedure, and the EIA cannot be appealed against.

The procedure in a nutshell:

- The developer draws up an EIA programme, i.e. a plan on how the environmental impact assessment is to be carried out. The programme describes the project, its options, and the impacts to be investigated. It also explains how information sharing and participation are organised.
- The contact authority shall inform the public about the existence of the EIA programme on its website and in a newspaper. The information shows how to view the programme and how to comment on it. There is at least 30 days to respond. The EIA programme is usually presented at a public event.
- The contact authority shall give its opinion on the EIA programme to the project manager one month after the end of the consultation. The opinion takes a view on the scope and precision of the programme. It also contains a summary of the comments made by others. The opinion shall be published on the authority's website.
- The party responsible for the project examines the environmental impacts and organises the related participation based on the EIA programme and the opinion of the contact authority and prepares an EIA report.
- The contact authority shall ensure that the *lis pendens* of the EIA report is communicated. The EIA report is usually presented at a public event. The commenting period for the report is 30–60 days.
- The contact authority verifies the adequacy and quality of the EIA report and then draws up a reasoned conclusion on the significant environmental impacts of the project. It shall be submitted to the project manager within 2 months of the end of the consultation and shall also be communicated. The party responsible for the project attaches an EIA report and a reasoned conclusion to the project permit applications.
- The permit authority takes the EIA report and the reasoned conclusion into account in the permit. The public will also be able to participate in the authorisation procedure.

Environmental permits are applied from Regional State Administrative Agencies. The public can read the documents related to the application in the Regional State Administrative Agency's Permit information service, where they will be displayed for at least 30 days after the publication of the notice. The parties (persons whose interests or rights may be affected) may file an objection to a pending application. Persons other than the parties concerned have the right to express their opinion on the application.

2) Framework and Legislation:
Provide examples from your legislation aimed at promoting local support and the swift approval of projects. For instance, through the special arrangement of authority competencies, consultation processes, limited appeal opportunities, etc.

The smooth progress of the projects will be facilitated by clear processes and responsible parties and the availability of as much information and participatory impacts as possible to the public at an early stage to avoid surprises at a later stage.

The objective of the Act on the Environmental Impact Assessment Procedure "is to further the assessment and consistent consideration of environmental impacts in planning and decision-making and, at the same time, to improve access to information and opportunities to participate for everyone" (section 1). The EIA process, authorities, and consultation processes are regulated in the Act.

While the EIA procedure is open to everyone to participate, it cannot be appealed against, since it is not an authorisation procedure. At the permit stage the right to appeal is limited to those whose interests or rights may be affected.

The Land Use and Building Act (132/1999, the English translation is not up to date but link to the Swedish version) lays down provisions on the planning of areas and the construction and use of areas. Its objective "is to ensure that the use of land and water areas and building activities on them create preconditions for a favourable living environment and promote ecologically, economically, socially and culturally sustainable development. The Act also aims to ensure that everyone has the right to participate in the preparation process, and that planning is high quality and interactive, that expertise is comprehensive and that there is open provision of information on matters being processed." (section 1)

Renewable Energy Directive (RED) III has led to the following legislative amendments to the Nature Conservation Act (9/2023) (amendments came into force on 1 July 2024, in Swedish):

- The preparation of renewable energy projects will be streamlined by stipulating that the environmental impact assessment of a renewable energy project and the Natura assessment (for nature reserves) should always be carried out jointly (section 35).
- In addition, the concept of *overriding public interest* in the national implementation of the EU Nature Conservation Directives was clarified so that renewable energy projects are always covered by it (section 39).
- A clarifying provision was added concerning specimens of a protected species that die unintentionally in connection with the construction or operation of a renewable energy production plant to be constructed with appropriate permits. For example, if birds die accidentally from wind turbine blades, there is no deliberate killing (section 70).

Act on Authorisation Procedures for Renewable Energy Installations and Certain Other Administrative Procedures (1145/2020, not available in English, link to the Swedish version) came into force on 30 June 2021. The aim of the Act is to expedite the procedures and to improve, among other things, the advice related to them.

The Ministry of the Environment has launched a project to prepare amendments to this Act in accordance with the requirements of RED III. This means, for example, that renewable energy projects implemented in areas defined as *an area for the rapid development of renewable energy* have shorter permit-granting deadlines than projects in other areas. Moreover, projects in the areas of rapid development are exempted from the EIA procedure under certain conditions. In addition, the role of the contact point authority will become increasingly important in streamlining the authorisation procedures for renewable energy installations.

3) Effective Citizen Engagement:
Provide an example of 'good practices' involving citizen engagement in recent major infrastructure and renewable energy projects.

An EIA of the wind and solar power park project of Myrsky Energia Oy (limited liability company) in Luumäki, Suurikangas, is currently under way. A maximum of 15 wind turbines and 76 hectares of solar power plants are planned. Luumäki is situated in South-eastern Finland.

Information on the project is published at least on the websites of Finland's environmental administration, the company Myrsky Energia Oy, and the municipality of Luumäki (links are to Finnish pages). The local Centre for Economic Development, Transport and the Environment (contact authority) has shared the notification in traditional and social media.

The EIA programme has been publicised between 6 March and 5 April in 2023. The contact authority provided its statement on the programme on 5 May 2023.

At the present stage, the EIA report with its 15 attachments is publicised between 22 May and 22

July 2024. The material is available to everyone online and provided to be read on paper in the municipality's premises.

A public presentation and consultation event was held locally and online on 18 June. The memo of the event has been published online. There were 28 people present at the meeting and 8 participants online (via Teams). Further opinions are requested until 22 July. Within two months of that the contact authority will provide its final statement.

Holland

1) Public Participation Prior to Decision-Making:

How do authorities involve citizens and other stakeholders in the preparatory work before political decisions on major infrastructure projects are made?

Since January 1, 2024, the procedures for spatial projects have been radically adjusted. From that date, the Environmental and Planning Act (*in Dutch: Omgevingswet*) came into effect in the Netherlands.

This Act describes when consultation/participation is mandatory. The Environmental and Planning Act itself does not define participation, but only determines when participation is mandatory or can be made mandatory.

Article 10.24 and Appendix V of the Environmental and Planning Decree (a further elaboration of the provisions of the Environmental and Planning Act) indicate which projects require a so-called environmental impact assessment (*in Dutch: Milieueffectrapportage, MER*). The projects you mentioned are part of this. The uniform public preparation procedure of section 3.4 (Articles 3.10-3.13 of the General Administrative Law Act) (*in Dutch: Algemene Wet Bestuursrecht, AWB*) is prescribed for such plans or decisions. This means that anyone can submit views on the draft decision. The Environment and Planning Act regulates that an view can also relate to the environmental impact report.

In this extensive procedure (uniform public preparation procedure, section 3.4 General Administrative Law Act), the competent authority decides within six months after an application. If necessary, it can be extended by six weeks if necessary. During the extensive procedure, the administrative body makes a draft decision on which views [*sorry, the explanation is only available in Dutch*] are open. After the decision has been made, an appeal to the court [*only in Dutch*] is still possible.

Article 7.4 of the Environmental and Planning Regulation [*sorry, again only available in Dutch*] states that the applicant for an environmental permit must indicate in the application:

• whether the applicant actively participated his plans with involved citizens, companies, civil societies and governing bodies

• if so: how the applicant participated and what the results of the participation are

This application requirement does not include any obligation for the applicant to participate. Participation by the initiator in the preparation of an environmental permit is voluntary. The answer to the first question above may therefore also be 'no'. The competent authority may not refuse to process an application (leave it aside) or refuse to grant the permit because there has been no participation. The intention of Article 7.4 is only to encourage the initiator to think about participation. If he participates, the competent authority must know what the results are. The duty does not entail more than that.

The project decision procedure under the Environmental and Planning Act is broadly as follows. The competent authority must carry out an exploration into possible existing or future tasks in the physical environment for all projects for which it adopts a project decision, prior to making the draft project decision available for inspection. The competent authority must publicly notify the intention

to do so. That notification must also indicate whether or not a preference decision [*in Dutch: voorkeursbeslissing*] will be taken prior to the project decision. In the preference decision, the board expresses its preference for the way in which it wants to solve the task in the physical environment. This concerns a political-administrative position statement that is not legally binding and against which no appeal is possible in court. However, anyone can put forward their views regarding a preference decision. The preference decision must ultimately be elaborated in one or more project decisions, which are legally binding and against which legal protection is available before the administrative court. Making a preference decision is an intermediate step in the funneling from an abstract task for the physical environment to a concrete project decision. This extra intermediate step is especially of added value in complex, controversial and administratively sensitive projects, where broad exploration and participation is desirable. Making a preference decision is therefore usually not mandatory for the competent authority. No later than the start of the exploration, the competent authority must indicate how citizens, companies and social organizations will be involved in the exploration. This obligation is further elaborated on this point in the Environmental Decree compared to the Route Act. The competent authority must in any case discuss: - who will be involved; – about which they are involved; – when they are involved; – what the role of the competent authority is in involving these parties; and – where additional information is available. The Environmental Decree also sets further requirements with regard to the manner in which notification of participation opportunities takes place. This notification must be made in such a way that the relevant public is best reached.

Not everyone is happy with the shift from traditional advocacy to more participation under the Environmental and Planning Act. The Netherlands Scientific Council for Government Policy [*Dutch abbreviation WRR*] wrote in a report from october 2023:

“The Dutch Environment and Planning Act, which came into effect in 2024, also prescribes participation, although without attaching many conditions to it. From the perspective of personal control, more participation is benefcial to those who have the time and the skills to operate effectively in this kind of procedure. To them, this probably means having more control over their living environment. But the opposite is true for people who do not have the time and skills. For them, the shift from a representative to a participatory democracy may lead to less control. They would probably beneft more from a ‘traditional’ representation offered by competent representatives who can counter the more vocal and organised interests. This means that policymakers who believe they can reduce discontent through ‘more participation’ may well be fooling themselves, because for some citizens this may actually mean having less personal control. That is why, besides providing participatory routes, it is crucial that our representative democracy continues to function properly and to the full extent.”

2) Framework and Legislation:

Provide examples from your legislation aimed at promoting local support and the swift approval of projects. For instance, through the special arrangement of authority competencies, consultation processes, limited appeal opportunities, etc.

Representatives of the government agencies involved say that it has been decided to set up an independent project organization for the national infrastructure project of a new tunnel under National highway A2 in the city of Maastricht. All government agencies involved signed a contract in which they established the framework within which the project would be further developed. With this, the administration and politics committed themselves. The further implementation of the

project and participation and communication was in the hands of the project office. See also the reply on your third question.

Platform Participatie is an initiative of the Ministry of Infrastructure and Water Management. Via this website stakeholders can give their views on projects in which the Ministry of Infrastructure and Water Management is involved. This includes topics as roads, railways, the environment, water and aviation. On the website internet consultations for legislation and regulations that the Ministry of Infrastructure and Water Management is developing can be found.

In 2019, the Dutch National Ombudsman conducted research into the participation of citizens in major infrastructure projects. Below are the recommendations from his report [*again, only in Dutch*]:

1. As a board, provide clarity about the frameworks

- determine in a timely manner which choices have already been made and to what extent citizens can influence exercise
- establish the framework
- respect the frameworks once established

2. Ensure an open attitude and behavior of civil servants

- trust that participating citizens also have relevant knowledge and experience
- be prepared to look for jointly supported solutions
- show understanding and a listening ear

3. Make sufficient time and money available

- provide the flexibility to be able to commit additional time and money if necessary, if necessary
- that more space should be provided for participation
- ensure that delays in the project are not detrimental
- participation opportunities

4. Evaluate and apply lessons learned

- make evaluation a standard part of a government infrastructure project
- ask both civil servants and citizens for feedback
- facilitate that civil servants use the scholar in subsequent government infrastructure projects
- put lessons into practice

3) Effective Citizen Engagement:

Provide an example of 'good practices' involving citizen engagement in recent major infrastructure and renewable energy projects.

Representatives of the government agencies involved say that in the infrastructure government projects Room for the River and realization of a new tunnel in National highway A2 near the city of

Maastricht, it was decided to invest time and money in participation at the earliest possible stage. This ultimately yielded significant results for both projects. This resulted in fewer complaints and fewer procedures. The procedures that were conducted were generally won, because the government had sufficiently involved stakeholders in the decision-making process. Furthermore, there was less stagnation during implementation. And the most beautiful thing; the residents are satisfied and even more proud of the result than the project organization. The social benefits of the project are great, according to the representatives.
(Source: 'Een goed begin is het halve werk', the National Ombudsman, 2019)

In addition to the legal instruments, other figures are emerging in practice in The Netherlands. In the National Climate Agreement, governments and initiators are urged to adopt a 'participatory approach', in which 'process participation' and 'financial participation' are key concepts in the construction of solar and wind energy parks.
These concepts are elaborated in the so-called Participation Range [*Participatiewaaier; unfortunately only available in Dutch*]. The Participation Range shows that process participation involves 'substantive involvement of stakeholders' prior to decision-making. Financial participation means that citizens can invest in or otherwise benefit from wind and solar parks. There are different forms of financial participation. For example, local residents can become co-owners or shareholders, or enjoy (in)direct benefits through a local residents' scheme or environmental fund.

In the Participation Range is noted that it's important to take into account when choosing participation option(s) the dealing with people with a small budget. Not everyone has the opportunity to invest money. That's why it's always important to start by making an inventory of the wishes of local residents about it project, according to the Participation Range.

Finally, some information you might have found yourself, but is nevertheless perhaps useful for you:

A Just and Effective Wind Energy Transition: Six Insights from Denmark and the Netherlands

STORTINGET

Norge

Stortingets utredningsseksjon

Dato: 19.08.2024 | Utreder: Hanne Camilla Zimmer | Oppdragsnummer: 2024237
ECPRD request no: 5838 | Oppdragsgiver: Danmark

Better citizen involvement and efficient approval processes in Large-Scale Renewable Energy and Infrastructure Projects

Oppdraget er opprinnelig et ECPRD-oppdrag, senere sendt som bilateral forespørsel, og forenklet til følgende spørsmål:

1) Involverer myndighederne altid borgere og andre interessenter i forarbejdet, før der træffes politiske beslutninger om større infrastrukturprojekter?

2) Kan I give eksempler fra jeres lovgivning, der sigter mod at fremme lokal opbakning og hurtig godkendelse af projekter? For eksempel gennem særlige ordninger for begrænsede klagemuligheder, myndigheders kompetencer, høringsprocesser osv.

1 Involvering av borgere før politiske beslutninger om større infrastrukturprosjekter

Det er ikke presisert om spørsmålet gjelder infrastrukturprosjekter generelt, eller spesifikt infrastrukturprosjekter knyttet til fornybar energi (særlig utbygging av kraftnett). Vi behandler først noen generelle prinsipper for involvering av borgere i større infrastrukturprosjekter, og deretter spesifikt store utbygginger av kraftnett.

Statlig forvaltning er underlagt utredningsinstruksen, som gir retningslinjer for utredning, høring og forberedelse av statlige tiltak. Det fremgår av innledningen i instruksen at formålet er «*å legge et godt grunnlag for beslutninger om statlige tiltak, for eksempel reformer, regelendringer og investeringer*». I tillegg til generelle regler om hvilke forhold som skal vurderes og hvor omfattende en utredning skal være, inneholder instruksen i § 3-3 regler om høring. Det fremgår her at

> «*Offentlige utredninger, forslag til lov og forskrift og forslag til tiltak med vesentlige virkninger skal normalt legges ut på høring. Høringene skal være åpne for innspill fra alle. Høringsfristen skal tilpasses omfanget av tiltaket og hvor viktig det er. Høringsfristen skal normalt være tre måneder, og ikke mindre enn seks uker.*»

Større infrastrukturprosjekter kan være «tiltak med vesentlige virkninger». Et eksempel på høring og involvering av interessenter på en tidlig fase av prosjekter, er Samferdselsdepartementets høring i forbindelse med utarbeidelsen av Nasjonal transportplan, en stortingsmelding om regjeringens transportpolitikk som beskriver målsetninger, virkemidler og prinsipper på transportfeltet. Ved utarbeidelsen av gjeldende plan (Meld. St. 14 (2023 – 2024), for perioden 2025 – 2036), ble underlagsmateriale, utredninger og innspill fra transportvirksomhetene selv lagt ut på høring, og departementet mottok over 250 høringssvar fra offentlige og private virksomheter, kommuner, organisasjoner og privatpersoner. I tillegg får berørte lokale myndigheter (som kommuner og Sametinget) særskilt mulighet til å medvirke i prosessen. Nasjonal transportplan eller stortingsbehandlingen av den fører ikke i seg selv til noen investeringsbeslutning.

Ved det videre arbeidet med prosjektet følger store statlige investeringsprosjekter statens prosjektmodell, som blant annet forutsetter konseptvalgutredning og ekstern kvalitetssikring. En konseptvalgutredning er et beslutningsgrunnlag for å velge hvilket konsept som eventuelt skal videreføres i forprosjektfasen. Det er ikke uvanlig at konseptvalgutredninger sendes på høring, se for eksempel høring av konseptvalgutredning (KVU) for transportløsninger i Nord-Norge. Høringsrunder, spørreundersøkelser eller annen involvering av berørte interesser kan også inngå i konseptvalgutredningens behovsanalyse.[1]

Infrastrukturprosjekter forutsetter normalt også arealinngrep. Dette reguleres i plan- og bygningsloven, som har omfattende regler om høring og medvirkning. Lovens regler om arealplaner forutsetter høy grad av medvirkning for og involvering av publikum. Utbygginger skal generelt være i samsvar med vedtatte planer, og plan- og bygningsloven forutsetter at den som

[1] Se Finansdepartementets veileder Utarbeidelse av KVU/KL dokumenter, s. 4: «*Kartlegging av interessenter og aktørers preferanser og opplevde behov er også nyttig ved utarbeidelse av behovsanalyser. Dette kan gjøres gjennom gruppeprosesser, spørreundersøkelser, dybdeintervjuer eller sammenstilling av allerede tilgjengelig informasjon fra formaliserte høringsrunder og lignende.*»

fremmer planforslag, legger til rette for medvirkning, jf. § 5-1. Videre forutsetter ulike bestemmelser i loven at ulike typer planforslag legges ut til offentlig ettersyn og sendes på høring. Når et planforslag skal sendes på høring, «*skal forslaget sendes til alle statlige, regionale og kommunale myndigheter og andre offentlige organer, private organisasjoner og institusjoner, som blir berørt av forslaget, til uttalelse innen en fastsatt frist*», jf. § 5-2. For mange typer planer skal det før oppstart med planen utarbeides et planprogram som skal gjøre rede for formålet med planarbeidet, planprosessen med frister og deltaker, opplegget for medvirkning og behovet for utredninger. Forslaget til planprogram skal også sendes på høring, jf. § 4-1(2).

Utbygging av kraftnett er i stor grad unntatt fra plan- og bygningslovens regler, jf. § 1-3(2). Kraftnett må derimot ha konsesjon etter energiloven, som i seg selv legger opp til en omfattende utrednings- og medvirkningsprosess. En oversikt over konsesjonsprosessen for ulike typer nettanlegg finnes på Norges vassdrags- og energiverk (NVEs) hjemmesider. I de aller fleste tilfeller forutsettes offentlig høring på minst ett stadium av prosessen. I de største prosjektene (Saksgang C) kan det være opptil tre høringer: Først sender departementet utkastet til konseptvalgutredning på høring,[2] deretter skal meldingen etter forskrift om konsekvensutredninger på høring, og til slutt skal selve konsesjonssøknaden høres. Se NVEs oversikt over ulike trinn i prosessen i prosjekter som følger Saksgang C for nærmere detaljer.

2 Eksempler fra norsk lovgivning på tiltak som skal fremme lokal støtte og hurtig godkjennelse av prosjekter

Utbygging av ny kraft og energiinfrastruktur er regulert i ulike lover i Norge, avhengig av typen prosjekt. Generelt kreves konsesjon for energi- og energiinfrastrukturprosjekter. En oversikt over hvilke regler som regulerer ulike typer prosjekter gis i tabellen under:

[2] Se «Konseptvalgutredning og ekstern kvalitetssikring av store kraftledningssaker», s. 3.

Konsesjonspliktige tiltak, lovverk og vedtaksmyndighet

Tiltakstype	Spenning eller effekt	Lovverk	Vedtaksmyndighet
Stor vannkraft	>10 MW	Vannressursloven, vassdragsreguleringsloven	Kongen i statsråd/Stortinget
Småkraftverk	1-10 MW	Vannressursloven	NVE
Minikraftverk	100 kW-1 MW	Vannressursloven	Kommunen
Mikrokraftverk	>10 kW	Vannressursloven	Kommunen
Vindkraft på land	>1 MW eller mer enn 5 vindturbiner	Energiloven	NVE
Fornybar energiproduksjon innenfor grunnlinjen	-	Energiloven	NVE
Fornybar energiproduksjon utenfor grunnlinjen	-	Havenergiloven	Olje- og energidepartementet
Solkraft	>1 kV	Energiloven	NVE
Kjernekraft		Atomenergiloven	Helse- og omsorgsdepartementet
Fjernvarme	>10 MW	Energiloven	NVE
Nettanlegg	-	Energiloven	NVE/Kongen i statsråd

Kilde: NOU 2023: 3 Mer av alt – raskere — Energikommisjonens rapport, kapittel 10 (tabell 10.1). og Vedlegg 1 om konsesjonsinstituttet

Se lenker til de aktuelle lovene her:

Vannressursloven

Vassdragsreguleringsloven

Energiloven

Havenergiloven

Atomenergiloven

De ulike lovene gir saksbehandlingsregler som skal sikre at lokalsamfunn og andre berørte gruppers interesser hensyntas. Grovt sett kan disse reglene deles i to grupper:

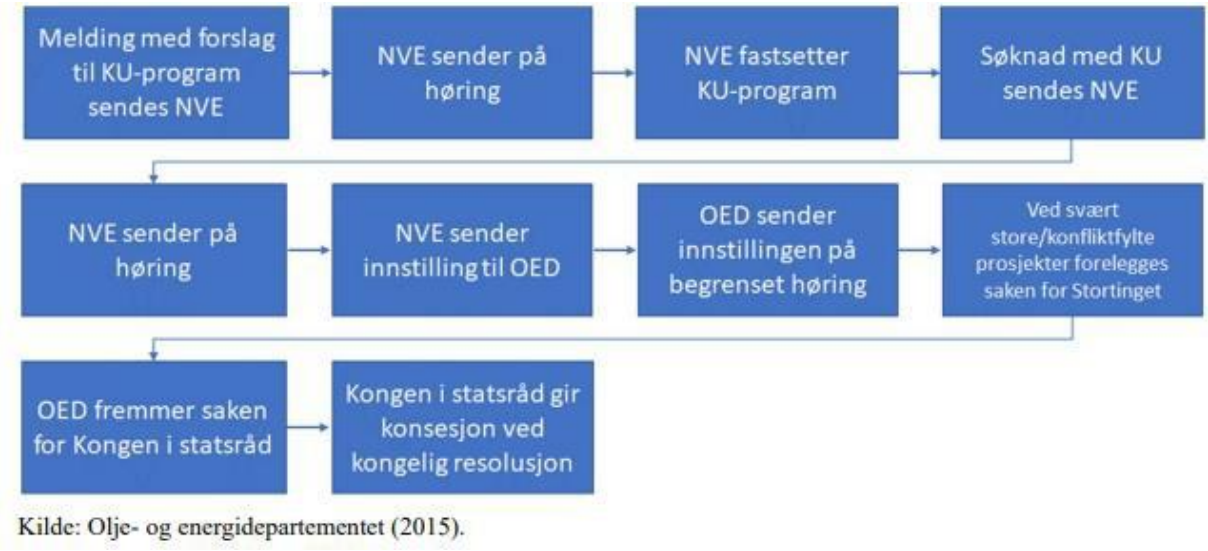
1. Regler om høring og utredning
2. Regler som særlig fremmer lokal støtte

Hensynet til *hurtig* godkjennelse og oppstart kan i noen tilfeller stå i motsetning til hensynet til lokal støtte og involvering av berørte grupper. Vi behandler regler som skal fremme hurtig godkjenning/oppstart i et eget avsnitt avslutningsvis.

2.1 Utredning, høring og involvering av berørte grupper

Prosessen frem mot konsesjon for de ulike prosjekttypene er nærmere beskrevet i Vedlegg 1 om konsesjonsinstituttet til Energikommisjonens rapport.

Her fremgår det at tiltak som krever konsesjon etter energiloven, vannressursloven eller vassdragsreguleringsloven har krav til konsekvensutredning etter plan- og bygningsloven (se plan- og bygningsloven kapittel 14 og forskrift om konsekvensutredninger, som blant annet bygger på direktiv 2014/25/EU). Saksbehandlingen for store vannkraftverk, som viser krav til høring og utredning på ulike stadier av prosessen, er fremstilt som følger i vedlegget:



Kilde: Olje- og energidepartementet (2015).

I forbindelse med høringer av forslag til KU-program (konsekvensutredningsprogram) og konsesjonssøknad arrangeres det også folkemøter. En mer detaljert fremstilling av prosessen finnes på NVEs hjemmesider. Det er også gitt en egen veileder om Konsesjonshandsaming i vasskraftsaker.

Også større vindkraftverk har krav til forutgående melding, se forskrift om konsekvensutredninger § 6 jf. Vedlegg I punkt 28. Saksbehandlingen kan være mindre omfattende for mindre anlegg, og for eksempel solkraftanlegg har i dag ikke krav til melding, selv om det må søkes konsesjon.

Ved utbygginger i tradisjonelt samiske områder gjelder en egen konsultasjonsplikt med Sametinget, se sameloven kapittel 4, veilederen for konsesjonsbehandling kapittel 2, samt informasjon fra regjeringen.

Myndigheten til å vedta arealplaner og gi byggetillatelser etter plan- og bygningsloven ligger hos kommunene, men konsesjonspliktig kraftproduksjon trenger som hovedregel ikke reguleringsplan eller byggetillatelse, se plan- og bygningsloven § 12-1 annet ledd og § 20-6. Anleggene kan likevel ikke bygges i strid med gjeldende arealplaner. Hvis tiltaket strider mot vedtatte planer, må det enten gis dispensasjon eller planendring. Dette er i utgangspunktet er kommunens ansvar, men plan- og bygningsloven inneholder en særbestemmelse om statlig arealplan i slik tilfeller, som innebærer at staten kan fastsette de nødvendige planendringene for å sikre at tiltaket kan

realiseres i samsvar med konsesjonen. Ved behov for planendring har plan- og bygningsloven som nevnt omfattende krav til høring og medvirkning, uavhengig av om prosessen gjennomføres av kommunen eller staten. Departementet kan imidlertid velge å i stedet vedta at konsesjonen skal gjelde som plan, se § 6-4 tredje ledd.

Ved utbygging av vindkraft til havs gjelder havenergiloven. Før et område åpnes for vindkraft, gjelder det også etter denne loven et krav om melding med forslag til utredningsprogram, som deretter sendes på høring (§ 4-1), konsekvensutredning og høring av denne (§ 2-2) og konsesjonssøknad og detaljplan (§ 3-3). I forbindelse med de områdene som har vært åpnet til nå, har det vært omfattende offentlige høringsrunder, ikke bare om miljømessige konsekvenser og liknende, men også om prekvalifiseringskriterier, støttemodell og auksjonsmodellen for tildeling av områder, se energidepartementets tidslinje.

2.2 Regler som særlig fremmer lokal støtte

Et særtrekk ved norsk energilovgivning er kravet om at større vannfall skal være i norsk, offentlig eie, se vannfallrettighetsloven §§ 5 – 7. 88% av norsk vannkraft er offentlig eid, hvorav 42% er i kommunalt eie, og mange kommuner får derfor utbytte fra vannkraftselskap. Videre har kommuner som berøres av en vannkraftutbygging krav på konsesjonskraft og konsesjonsavgifter. I tillegg har vertskommuner for vannkraftverk inntekter fra naturressursskatt og kommunal eiendomsskatt på kraftverk. Mange norske kommuner har derfor store inntekter fra vannkraft. Se Kommunenes sentralforbunds oversikt over norske kommuners inntekter fra kraftsektoren og energidepartementets side om beskatning av vannkraft på energifakta for mer detaljer.

Det gjelder ikke tilsvarende eierskapsbegrensninger for vindkraft, og det kommunale eierskapet i denne sektoren er mindre fremtredende. Kommunene får heller ikke konsesjonskraft eller konsesjonsavgifter fra vindkraftverk. De kan derimot skrive ut eiendomsskatt, men verdsettelsesreglene er annerledes enn for vannkraft. Det er innført en produksjonsavgift for vindkraft som betales til statskassen, men er forutsatt tilbakeført til kommunene gjennom utbetaling fra NVE. Se energifakta for mer detaljer.

Utbygging av vindkraft på land har vært politisk omstridt i Norge, og har ofte møtt betydelig lokal motstand. I vindkraftmeldingen Meld. St. 28 (2019-2020) varslet den daværende regjeringen en rekke endringer i reguleringen av vindkraft, blant annet sterkere involvering av kommunene ved etablering av nye vindkraftverk og ny frister i søknadsbehandlingen.

En viktig oppfølgning av vindkraftmeldingen var en lovendring om kommunale planer for vindkraftverk, vedtatt i 2023. De viktigste endringene var innføring av et krav om at konsesjon etter energiloven ikke kan gis for vindkraftverk før tiltaket er planavklart etter plan- og bygningsloven (se plan- og bygningsloven § 2-2), og departementet kan for vindkraftanlegg heller ikke bestemme at konsesjonen skal ha virkning som plan, se § 6-4 tredje ledd. I forarbeidene til lovendringen beskrives formålet som følger, se Prop. 111 L (2022 – 2023) punkt 2.2.:

> *Det overordnede formålet med forslagene til lovendringer som foreslås i denne proposisjonen, er å styrke kommunenes rolle i prosesser knyttet til utbygging av vindkraft på land, jf. Innst. 101 S (2020–2021). Det er lagt til grunn at økt involvering av kommuner og lokalsamfunn er nødvendig for å gi økt legitimitet til prosessene, bedre forankring av vindkraft lokalt og bedre tilpassede løsninger. Endringene antas å redusere konfliktnivået, og dermed gi grunnlag for en videre utbygging av vindkraft, blant annet for å styrke kraftbalansen og nå de nasjonale klimamålene.*

Endringene innebærer at kommunens syn tillegges svært stor vekt, og at det bare helt unntaksvis vil være aktuelt å gjennomføre planlegging av vindkraft som en statlig plan.[3]

Energikommisjonen drøfter også mulige tiltak for å øke aksepten for ny kraftutbygging, se NOU 2023:3 punkt 10.4.5.

2.3 Regler og tiltak som skal fremme hurtig saksbehandling

Behovet for effektiv konsesjonsbehandling drøftes i energikommisjonens utredning (NOU 2023:3) kapittel 10.8.2. Kommisjonen peker på følgende faktorer i norsk regelverk og praksis som viktige for en effektiv konsesjonsbehandling:

- Konsesjonsbehandlingen i Norge er i stor grad samordnet, dvs. at der det kreves konsesjon etter ulike lovverk, koordinerer NVE arbeidet i meldings- og søknadsfasen. Dette bidrar i utgangspunktet til forenkling og effektivisering.
- NVE og departementet har utarbeidet veiledere for søkere og høringsparter for alle sakstyper.
- Det er utarbeidet standardiserte søknadsmaler som gjør det enklere å søke, og digitale løsninger for høringer.
- Mer effektiv saksbehandling der det er gitt tydelige politiske prioriteringer.
- For vindkraft foreslår vindkraftmeldingen nye frister i behandlingen av vindkraftsaker.

Konsesjonsbehandlingen kan likevel ta lang tid, og energikommisjonen foreslår en rekke tiltak for raskere saksbehandling, se kapittel 1.6.

Det er i utgangspunktet mulig for alle med «rettslig klageinteresse» å påklage en tildelt konsesjon eller planvedtak etter plan- og bygningsloven som er nødvendig for tildeling av konsesjon. Dette kan være andre som rettslig eller faktisk berøres av vedtaket, eller frivillige organisasjoner mv. der konsesjoner griper inn i de interessene organisasjonen skal ivareta. Det er likevel noen praktisk viktige begrensninger i klageretten:

- Det er ikke klagerett på de største vannkraftsakene, der konsesjon gis av Kongen i statsråd;
- Det er ikke klagerett på statlig arealplan etter plan- og bygningsloven § 6-4, jf. fjerde ledd.

Energikommisjonen anbefaler at behandlingen av klager på NVEs konsesjonsvedtak forenkles, særlig der klagen ikke inneholder nye, relevante opplysninger, se NOU 2023: 3 avsnitt 1.6.

Det er også mulig å utfordre vedtak om tildelte konsesjoner for domstolene. Som hovedregel vil imidlertid verken klage eller søksmål hindre konsesjonæren i å påbegynne utbyggingen. Hvis det er nødvendig å ekspropriere grunn eller rettigheter for utbyggingen, noe som ofte er tilfellet, og skjønnssaken (dvs. saken om vederlag til den ekspropriasjonen er rettet mot) ikke er rettskraftig avgjort, kan det søkes om førtidig tiltredelse til det eksproprierte området etter oreigningslova § 25, slik at utbyggingen kan begynne.

At en utbygging kan begynne før tvist om ekspropriasjonen eller konsesjonsvedtaket er rettskraftig avgjort, bidrar til at prosjekter kommer i gang, men kan volde store problemer dersom domstolene i ettertid skulle sette vedtakene til side. Dette ble særlig tydelig i den såkalte Fosen-saken, som gjaldt en vindpark i et samisk reinbeiteområde i Trøndelag. Saken kom opp for

[3] Se Prop. 111 L (2022 – 2023) punkt 4.6.2.

Høyesterett etter at vindparken var bygget og satt i drift, men Høyesterett (sak HR-2021-1975-S) fant at utbyggingen var i strid med samisk rett til kulturutøvelse i henhold til FNs konvensjon om sivile og politiske rettigheter, artikkel 27. Etter Høyesteretts dom oppstod vanskelige spørsmål om hvilke konsekvenser dommen hadde og hvordan den skulle følges opp. Regjeringen kom til enighet om en minnelig løsning med de to berørte reinbeitedistriktene henholdsvis i desember 2023 og mars 2024, dvs. nærmere tre år etter at dommen falt. Avtalene innebærer blant annet at reineierne får økonomisk kompensasjon. Se ellers Store norske leksikons oppsummering av saken.

Vi nevner for ordens skyld at EUs fornybardirektiv av 2018, samt endringene vedtatt i 2023, foreløpig ikke gjelder i Norge. Direktivene er merket som EØS-relevante fra EU-kommisjonens side, men er politisk omstridte i Norge, og er ennå ikke innlemmet i EØS-avtalen. Det er derfor pr. i dag ikke avgjort om, og i så fall når og hvordan, fristene for konsesjonsprosesser i disse direktivene vil bli tatt inn i norsk rett.