

Summary and Recommendations

Instruments for a more efficient land use in built-up areas

A more efficient land use in built-up areas has for several years now been an important issue at the municipal level, and many municipalities have focused on densification in the municipal structure plans. However, there has been less focus on the implementation of densification strategies. This is a complex and multi-faceted task where a high quality result requires a lot from both public and private sector actors. Complex land ownership patterns, conflict of interest, high real estate prices and heavy infrastructure investments renders implementation of densification strategies a highly demanding task. However, experience from completed projects indicates that high quality densification can result in a win-win situation with a positive macro-economic result.

Of practical reasons, different instruments have been assessed in relationship to three different categories of densification:

- *“Villa garden densification”, infill and densification in existing residential areas.*
- *Transformation and re-use*, for example transformation of an industrial area to a residential area.
- *Development of new, previously vacant, areas* within the building zone, for example areas adjacent to transport nodes and corridors .

The different categories are to a certain extent overlapping, and the categorisation is primarily intended as a conceptual tool for systematising a big and complex issue. The highest potential for development in cities and other built-up areas will be found in areas of transformation and previously vacant areas. In “villa garden” areas, densification will happen more gradually over a longer time span as a function of the ambitions of the different land owners. The

difference between the theoretical development potential and what turns out to be possible to implement, can thus be substantial.

Experience from the study areas of this project indicates that important challenges during implementation of densification strategies are related to distribution, public and private sector organisational issues, valuation and finance. These challenges constitute an important basis for understanding the need for, and application of, instruments for implementation.

The profitability of densification

Profitability is an important precondition for implementation of densification projects of necessary quality. Issues that can impact the profitability, and the relationship between macro and micro-economic profitability are important for implementation and the need for different instruments. Independent of the profitability criteria applied, profitability will be dependent on the market value. Furthermore, the densification costs will be more stable than the income at the project level. Generally speaking, densification can be more sensitive to the economic cycles than development of residential areas where the alternative land use often has a lower value.

Threshold investments are investments which will trigger further investment and development activities. In several of the study areas, threshold investments in public infrastructure has triggered densification. Especially public sector road and transportation initiatives have a great impact. In other connections, private initiatives can function as a trigger.

The profitability of densification projects varies substantially, but threshold investments and financing difficulties are often important factors determining whether such projects will be im-

plemented. In densification projects, public sector quality requirements, and balance between volume and quality, will often render public sector contributions to infrastructure a prerequisite for ensuring implementation. The municipal economy can in such instances suffer even though the macro-economic profitability will be positive. This is illustrated *inter alia* by economic assessments of six of the projects study areas. The profitability of densification is also impacted by organisational problems in both the public and private sector.

The review of critical aspects of the profitability of densification emphasises the importance of incentives which will encourage quality densification rather than command-and-control instruments and market regulations.

The municipality's role as facilitator

Densification can be characterised by high complexity with many stakeholders and interests, and time intensive planning and implementation processes. The need for co-ordination is significant within both the public and private sectors. Here the municipality is playing a key role. Experience from the study areas indicates that there is a clear connection between municipal facilitation of the implementation process and the results of the densification.

Land use planning in Norway has developed towards a practice where private developers to an increasing degree are responsible for planning and implementation of housing and commercial developments. In parallel, municipal implementation competence, generated during the time when the municipalities were responsible for both planning and implementation, is being reduced in several municipalities.

In a situation where an increasing degree of the production of housing units shall take place through densification, the importance of adequate municipal organisation and facilitation strategies is significant. Densification requires both different instruments and different public sector involvement than standard development of vacant areas. The responsibility for facilitati-

on must rest squarely with the municipal organisation. Both municipal roles – negotiator (with property owners, developers) and planning authority according to the Planning and Building Code – must be taken into consideration. Taking on the responsibility for facilitation is possible within the existing municipal organisation in most municipalities where densification is an issue.

The need for negotiation expertise and other expertise related to implementation will be important. Increased use of several important instruments, for example development agreements, requires that all actors – including the municipality – have the necessary expertise. If this is not the case, the result can be unpredictable processes, lack of implementation and lack of quality. This project has emphasised that organisational and expertise related problems in the municipalities can result in negative effects for the economy of the project and for project implementation.

Experience from this project indicates that municipal property can be an important instrument for stimulating efficient implementation processes and trigger private sector investments in densification. On this background, instruments increasing the municipal's ability for strategic acquisition of real estate should be enforced.

Governmental incentives

Governmental incentives directed at municipalities and developers, are important in densification. The instruments include command-and-control instruments and regulations which limit the municipal freedom of action, governmental investments in infrastructure and real estate, and incentives for influencing municipal considerations. Most of the instruments commonly used today can be classified as command-and-control instruments. There is also a substantial need for better co-ordination of governmental instruments. The impact of lacking governmental co-ordination is partly uncertainty related to municipal planning and implementation processes, and partly that possibilities for efficient densification initiatives remains hidden and unexploited.

There is a need for better co-ordination of governmental transport investments and implementation of development of urban areas. This project's study areas indicates that in many instances this is instrumental for implementation of the densification. In addition, the national level often behaves uncoordinated in planning and implementation processes both in the role as national authority with objection right in local planning cases, and as a significant property owner. The project recommends an increased focus on this need for enhanced co-ordination.

In order to stimulate implementation of quality densification, development of incentives which do not regulate adaptations in detail must be emphasised. In this connection it is recommended that a governmental mechanism for area specific support on a need basis for areas that are prioritised in municipal structure plans, is considered. Furthermore, governmental support and facilitation of strategic property transactions in municipalities as a part of urban development, should be considered.

This project has not carried out a broad discussion and examination of how municipal water and sewage fees and charges affect land use. However, there are indications that this is a complex issue. This is related to the fact that municipalities cover costs for construction of water and sewage infrastructure through development agreements and through fees and charges. It is thus desirable that the structure and set of fees and charges is charted and assessed in order to establish whether fees and charges can yield effects which stimulates densification and a more efficient land use.

Property tax presents itself as a possible incentive for densification in urban areas, but it is not widely applied. The framework for using property tax as an instrument for densification should be elucidated and studied in more detail.

Organising the stakeholders

To organise the different stakeholders (property owners, licensees, developers) is a substantial challenge in many densification areas since they often consist of multitude of proper-

ties and licensees. Good solutions which actually can be implemented often requires that the entire area is considered as a whole related to development concept, valuation and distribution of investments. In order to achieve this the stakeholders must be appropriately organised - either on their own initiative or through municipal facilitation. Important models for organising stakeholders include area specific limited companies and co-operation agreements. This project has also considered the Land Consolidation Authority's methods as a basis for organising stakeholders.

Both area specific limited companies and co-operation agreements are proven models for small and large development projects. Area specific limited companies are suitable for transformation areas with several land owners and for development of undeveloped areas, but this model will be difficult to use for "villa garden" densification. If the stakeholders do not agree about establishing a joint company, they could alternatively enter into an agreement. There is a need for a more comprehensive discussion of organisational models which should shed light on critical aspects related to establishment and relevance.

This project has specifically considered application of the Land Consolidation Authority's organisational approaches and work methodology towards stakeholders. In the "villa garden" areas, it is difficult to come up with implementation focused area specific solutions as a result of "traditional" planning according to the Planning and Building Code. The negotiation expertise and work methodology of the Land Consolidation Authority can in this connection provide important contributions. However, they will not be fully efficient before the other instruments of the Land Consolidation Act are made available. This Act contains a whole range of instruments that could have been relevant in organisation of densification projects.

Land Consolidation in urban areas

The instruments warranted in the Planning and Building Act have distinct limitations with regards to handling the relationship between

property owners and licensees. The experience from this project indicates that there is a need for improved instruments in this area.

The land Consolidation Court has substantial experience with transforming properties which cannot be utilised in an efficient way. The Court also has expertise on co-ordinating interests between different properties. So far, these instruments have primarily been applied in rural areas. The issues handled by the Land Consolidation Courts are nevertheless similar to many of those also found in urban areas. In several other countries similar models are implemented in urban areas.

Application of Land Consolidation together with regular planning according to the Planning and Building Act, could contribute to more implementation oriented processes and could ensure that the stakeholders are more strongly involved. This would contribute to *inter alia* issues related to quality being given higher priority in implementation because approved plans and distribution of costs and income can be considered within the same context. Several of the instruments warranted in the Land Consolidation Act thus constitute an alternative which could meet the substantial redistribution problems faced in many densification projects.

The instruments warranted in the Land Consolidation Act could be applied at several of the stages of the regular planning and implementation process. Simplified, they could be tied to the following main areas:

- Establishing adequate property structures as a basis for planning and implementation.
- Co-ordination of properties and licensees before launching the detailed Masterplanning process.
- Distribution of values and costs related to implementation of an approved detailed Masterplan.
- Establishing co-ordination schemes for operation of implemented development areas.

Development agreements as an instrument for implementation

A development agreement is one of the most important instruments for ensuring quality densification. In parallel with the fact that an increasing degree of planning and implementation is left to the private sector, utilisation of development agreements has evolved. Today, there is no single definition 'development agreement', and this type of agreement is not described in the statutory framework. The municipalities' application of development agreements varies considerably from municipality to municipality.

In this project, a development agreement is defined as an agreement between property owner, developer and the municipality pertaining to private development and implementation of an approved plan. The development agreement imposes on the different parties contractual obligations and rights that are as substantial - if not more so - than those imposed by the Planning and Building Act.

The development agreement can not be designed or entered into in a way that bind the planning authority. Here it is important to make a distinction between the municipality as regulatory planning authority -- who a development agreement cannot bind -- and the municipality as a party in negotiations and agreements.

The municipality's application of instruments in order position itself for requiring that a developer signs agreement vary. In particular, there is a difference between municipalities with an active property policy coupled with urban development, strategic property acquisition and expropriation, and municipalities which carry out negotiations and entering into agreements as a part of approving the detailed Masterplans.

A development agreement -- adapted to the specific situation -- will be an important instrument in densification projects, and can handle two roles when the municipality couples the use of such agreements to the design of the plan:

- Precondition for a specific Masterplan design-- the developer signs the agreement before the municipality approves the plan, the municipality afterwards.
- Follow-up and implementation of an approved detailed Masterplan-- the developer and the municipality signs the agreement after a Masterplan is approved.

The municipality will obtain a great degree of control of the development agreement, its content and the economic realities of the Masterplan when utilisation of a development agreement is a precondition for a specific Masterplan design. This requires that the parties holds the necessary competence that attention is paid to unintended effects. This latter would include informal binding of the planning authority, lack of predictability due to impaired communication between the administrative and political level in the municipality, and abuse of power towards the developer. Unfair distribution of costs, and unintended effects related to implementation and high unit costs, are raised as general problems by the developers in this project's reference group.

Adaptations to the statutory framework

This project has had as a main focus the need for adaptations in the Planning and Building Act, the Land Consolidation Act and the Concession Act. The Planning Law Committee has been an important addressee for the project, but it is, according to the project's recommendations, also necessary to launch processes in order to change the Land Consolidation Act. In addition, potential adaptations in the Cultural Heritage Act have been identified. These are related to whether the public sector should cover more of the costs of archaeological digs which now are usually covered by the developer.

The need for changes in the Planning and Building Act have to be seen in connection with the practices which are developed in connection with planning and implementation. The most important recommendations for adaptations in the Planning and Building Act are related to:

- A need to strengthen the implementation aspects and a stronger focus on the financial aspects of the planning process.
- "Densification area" is recommended as a separate land use zone if coupled with judicial, administrative and economic incentives.
- The project is divided in the question of introducing development agreements in the Planning and Building Act, but stimulating a better utilisation of development agreements will be important.
- Land Consolidation in urban areas is an interesting supplementing instrument for densification. The project recommends that the Land Consolidation Act is adapted for application in urban areas. This will have to be coupled with adjustments in the Planning and Building Act and a strengthening of the Land Consolidation Authority.
- The reimbursement mechanisms in the Planning and Building Act are complex and difficult to apply in densification projects. The project recommends that development agreements should be applied *in lieu* of these mechanisms.
- Mechanisms for paying as a compensation for other purposes than parking, is not recommended.
- The relationship between the planning system and the regulations should be clarified.

The Concession Act contains today rules pertaining municipal first refusal rights of property. In White Paper (St.meld. nr. 19. 1999-2000), the first refusal right is proposed removed. If this is approved, it should be considered if similar mechanisms should be integrated in the Planning and Building Act.

Issues for further consideration

This project has uncovered a whole range of issues which would require further research and consideration. These include *inter alia* issues related to development of instruments the statutory framework described above. In addition, for some issues the knowledge base also needs to be expanded. These include:

- *The interplay between transportation related policy efforts and land management.* This is due to the great impact from transportation initiatives on land use. The interrelationship should be identified and analysed and efforts for better co-ordination of transport and land use management should be considered.
- *Municipal negotiation practice.* This is a function of the ability to combine different instruments and agreements. A review of municipal negotiation practice should be launched focusing on aspects that influence the negotiation results.
- *Expanded knowledge about a co-ordinated planning and implementation process.* Based on the experience from this project, there will a need for further developing experience for a stronger connection between planning and implementation.
- *Expand the knowledge base related to different types company formations.*
- *Valuation of real estate.* This is a great challenge, especially in areas with several owners.
- *Municipal fees and charges and the importance of property tax in land utilisation.* Both instruments are primarily applied as a means financing municipal operations. Today, they are not considered as incentives for encouraging specific behaviour.