CULTURAL HERITAGE AND WATER MANAGEMENT IN URBAN PLANNING

OUT OF SIGHT, OUT OF MIND?

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Policy, legislation and regulations in practice in Norway

• Cultural heritage management
• Ground- and surface water management

A quick look at the Netherlands
Norwegian cultural heritage management is generally known for its leading role with regards to in-situ preservation of archaeological deposits and protection of individual monuments and sites.

However, Norwegian urban surface- and groundwater management is, from an international perspective, lagging behind on improvement of legislative issues and implementation of innovative sustainable solutions.

This leads to tension in local planning systems – especially in urban areas.
The Norwegian government regards cultural monuments and cultural environments to be important resources as a source of knowledge and experience, for the development of local societies and for industrial development.

The cultural heritage management resides under the Ministry of the Environment (MD).

The Department for cultural heritage management is responsible for following up the European Council conventions on cultural heritage.

- Convention on the Protection of the Architectural Heritage of Europe (the Granada Convention, 1985)
"The cultural heritage provides a physical record of our history. Historical buildings, burial mounds and cultural environments yield information about people’s lives and activities throughout history."

**Norway will protect and maintain a cross-section of its cultural heritage**

Anyone involved in planning processes and development projects must take the impacts on cultural heritage into consideration.
LEGISLATION IN NORWAY – CULTURAL HERITAGE

The Cultural Heritage Act (Kulturminneloven)

The Cultural Heritage Act describes the purpose of cultural heritage management, and lays down that it is a national responsibility to safeguard archaeological and architectural monuments and sites, and cultural environments.

Monuments and sites prior to 1537/1650 are automatically protected (kulml. § 4)

Norwegian Standard (NS9451: 2009) "Requirements for environmental monitoring and investigation of cultural deposits".
The Planning and Building Act (Plan og bygningsloven)

The Planning and Building Act shall promote sustainable development in the best interests of individuals, society and future generations.

The revised Act (2009) introduced the concept of zones requiring special consideration for municipal master plans.

Special consideration may e.g. be the protection of the natural or cultural environment. It enables municipalities to stipulate guidelines that adequately safeguard these considerations.
State of the Environment Norway (http://environment.no)

The EU Water Framework Directive was incorporated into Norwegian law at the end of 2006. However, the Regulation was not formally incorporated into the EEA-agreement until 2009 and entered into force in May 2009.

The EU Ground Water Directive is incorporated into the Norwegian Water Management Regulations (Vannforskriften).
The Water Resources Act (Vannressursloven) - 1

The Water Resources Act is the general statute governing fresh water resources including groundwater.

The purpose of the Act is to ensure socially proper use and management of river systems and groundwater. The Act defines groundwater as water in the saturated zone in the ground.

"...Development and other utilisation of land should preferably take place so that precipitation can still drain by infiltration into the ground. The water authorities may order measures that will improve infiltration into the ground, provided this can be implemented without unreasonable costs (Ch.1, § 7)."

"...Groundwater belongs to the owner of the land in the ground of which the water occurs."
The Water Resources Act (Vannressursloven) - 2

Relevant for Cultural Heritage management:

“After drilling for water [...] is completed, the party in question shall, as soon as possible and by three months at the latest, submit a notification of the drilling to the water authorities. (Ch. 8, § 46).”

“Anyone who conducts surveys of groundwater and prepares a report [...] shall send notification [...] to the water authorities as soon as possible and within three months at the latest.”

“Regulations may be issued concerning the implementation of drillings, including how surveys and samples are taken.”
The Water Resources Act (Vannressursloven) - 3

Relationship to older measures, before the Act came into force (Ch. 15).

“The Water Resources Act provides legal opportunities to apply corrective actions to older measures that did not require a permit […].”

“The developer may be held liable [...] for damage [...]. In assessing damage to real property or objects (thus including known cultural deposits), consideration shall also be taken of whether the property or the object is particularly sensitive to damage (Ch. 9, § 49).”
The Neighbouring Properties Act (Naboloven/Granneloven)

When it comes to groundwater level changes caused by drainage, there may occur private law claims [...] as a consequence of damage caused by groundwater extractions. If a causal relation between intervention and damage on the neighbouring property can be proven, the developer/owner is liable for the damage [...].

Municipal Guidance and information duty

If changes in groundwater levels and its effects influence municipal planning and building or other municipal responsibilities, the municipality should inform their inhabitants about groundwater level changes and their consequences. The information duty is strengthened by the fact that there is generally little knowledge about these circumstances.
EXAMPLE FROM THE NETHERLANDS

Cultural heritage management part of spatial planning
• Since 2012, all developments >50 m² need archaeological assessment, in line with other planning assessments, such as pollution and water.
• Developments < 50 m² are not protected.
• Archaeological assessments are done by consultants, based on guidelines made by consultants.
• Municipalities make “archaeological expectation” maps.
The Water Law

- The municipality is responsible for measures to avoid groundwater levels that cause structural negative consequences for the function of the public area.
- Private owners are responsible for groundwater management of their own property. Municipality provides connection and transport.
- Municipalities are not responsible for damage to wooden foundations due to lowered groundwater levels (also in case of leaking sewage, High Court decision Nov. 2012).
- New developments require Water Assessment (Watertoets)

Protection of monuments depends on ownership?
FURTHER READING

Evaluation of the Water Assessment at full speed

News article on the Dutch evaluation of the Water Assessment. The Dutch Water Assessment (Waterappraisal) is a legal instrument to improve the position of water-related themes in spatial plans. It has been evaluated. Main objective was to gain a better insight in the current position of water-related themes in strategic planning and in the principles for choosing the locations for urban development. This evaluation is part of the HRI regional activity: Reconciliation of Water appraisal policy with...