

# Construction activities on shore areas

*Do the local governments and the state protect public interests when planning buildings onto shore areas?*

Report of the National Audit Office to the Riigikogu, in Tallinn on 21 November 2007

## Summary of Audit Results

The National Audit Office assessed whether construction activities on shore areas have been arranged in a way which ensures efficient protection of public interests, avoids harming the environment and possibilities for illegal construction activities.

The auditees included local governments, the Ministry of the Environment, the Ministry of the Interior (incl. county governments) and the Ministry of Economic Affairs and Communications.

There are still lots of natural shore areas in Estonia. These are the wealth of the nation which is important as valuable habitats, provide animal paths, recreation opportunities, ensure spatial availability of natural areas and protection of the aquatic environment. A large part of the shores is included in the European Natura 2000 network of protected areas. In the Environmental Action Plan for 2007-2013 Estonia has set an objective to ensure that the number of natural shore areas would not decrease as compared to 2005. In order to achieve this objective and ensure protection of the values related to the shores, construction activities are allowed in these areas only in special cases.

The Estonian shore areas are in a better state than those in other European countries and we should keep it that way. The government of the United Kingdom, for example, has decided to spend about 50 million pounds in the upcoming decade in order to create accession to and recreational opportunities onto the shores for the public.

As a result the audit, the National Audit Office found that the natural values on the shores and other public interests are not adequately protected from illegal construction activities and these values may be harmed to the extent which is expensive or impossible to restore afterwards. The problem is that the public is not adequately engaged in the planning of buildings onto shore areas and construction activities are allowed there without considering the need for effects of making such an exception. The construction supervisory activities of local governments as regards shore areas are not efficient and no effective punishment will follow illegal construction activities.

The most important observations as regards shortcomings in construction and planning onto shores are as follows:

- **In planning construction activities onto shores local governments do not identify public interests or consider the environmental impact of these activities.** Many local governments do not have a comprehensive plan which directs development in a unified way and therefore, it is not possible to compare private and public interests and avoid harming public interests in preparing site plans. In preparing site plans which involve reducing building exclusion zones, local governments themselves do not assess whether the exception is justified or the environmental impact of these activities. The procedure of preparing site plans is tilted towards private interests, the public is not involved in this as actively as in preparing the comprehensive plan and it is not possible to assess the interaction produced by many buildings. Therefore, changing a comprehensive plan on the basis of site plans runs the risk of replacing the natural environment on the shores with the artificial one and the land and water environments are burdened so much as to damage the natural values.
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- **The restrictions for construction activities on shores are not uniform or clear.** The criteria specified in legal acts as regards reducing building exclusion zones have been applied in contradictory and non-transparent ways and radically different decisions have been taken in apparently similar situations. The Minister of the Environment has made several decisions to reduce building exclusion zones without any substantive

justification. Furthermore, the scope of the terms “densely populated area,” “improved area” and “building exclusion zone” are ambiguous in the legal acts which results in various parts of Estonia applying the restrictions for construction onto shores in different and random ways.

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- **The surveillance of county governments over site plans is inefficient.** Despite the legal requirement for local governments to submit all site plans which alter the comprehensive plan to the county governor for carrying out supervision activities, it is not done. Therefore, the state has no control to ensure that comprehensive plans, which have been prepared in cooperation with the public, are changed only if this is necessary and does not endanger the preservation of green zones and green channels which have been approved in county plans.
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- **Surveillance over illegal and unallowed buildings is inadequate and local governments make procedural mistakes in issuing building permits.** Many local governments do not check systematically whether construction activities follow the permit and the conditions stated there. Therefore, violations are not discovered and processed early enough to make it possible and justified to restore the prior situation. The surveillance activities of the Technical Inspectorate and the Environmental Inspectorate do not compensate the inactivity of local governments. Many unwanted buildings are erected onto shores due to procedural errors made by local governments. Local governments are not able to ensure that all procedural regulations are followed and they issue building permits which violate the law. The county governments do not carry out surveillance over building documentation and so the violations remain unnoticed. This allows for unallowed buildings to be constructed onto shores.
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- **Illegal or unallowed construction activities are not followed by a reaction which would express intolerance of the state as regards such illegal activities.** The fines and penalty payments are too small as compared to construction prices. Therefore, these do not help to prevent or stop illegal construction activities. Legalising unallowed and illegal buildings is easy, so in lots of cases construction activities are commenced before a building permit is issued or no building permit is requested at all. Demolition of unallowed buildings is demanded only in isolated cases but in most cases, the buildings will be legalised later. In issuing a permit to an already completed building, local governments do not assess whether constructing the building would have been allowed if the person had followed the law. The fact that legalisation is easy increases the sense of impunity.

#### **Responses from the Minister of Regional Affairs, the Minister of the Environment, the Minister of Economic Affairs and Communications and representatives of local governments:**

**The Minister of the Regional Affairs** agrees to the observations and states that several recommendations will be taken into account in the work of the committee which has been formed to amend the Planning Act and the Building Act. The Minister considers it especially important to make planning surveillance more efficient at the county level and to amend the arrangements for planning onto shores in a way that building exclusion zones can be reduced only on the basis of a comprehensive plan. Strategic environmental impact assessment should also be integrated into the planning process.

**The Minister of the Environment** agrees to the observations of the audit and is ready to implement several proposals of the National Audit Office in order to eliminate the shortcomings. As opposed to the Minister of Regional Affairs, the Minister of the Environment does not consider it justified to allow reduction of building exclusion zones only on the basis of a comprehensive plan. An important solution would be to make local governments more competent as regards planning and building surveillance; review the restrictions specified in the Nature Protection Act as regards construction activities on shores and involve the public more in the process of spatial planning.

In his response, **the Minister of Economic Affairs and Communications** analysed the feasibility of the recommendations and he is ready to carry out further analyses and make amendments to the Building Act on the basis of several recommendations. Improvements to the Building Register are under way as well. According to the Minister, he does not have the competence to devise solutions which would ensure that local governments have people who engage in building surveillance as this is in the competency of the Minister of Regional Affairs. The National Audit Office would still like to draw attention to the need to find solutions in this

area in cooperation between the ministers.

A large part of the audited rural municipalities agree to the conclusions and several of them explained the reasons for the present situation. In solving the situation, many local governments considered it important to clarify the terms in legal acts, provide training to local governments and prepare guidelines for them as regards planning, construction and environmental impact assessment requirements.

The National Audit Office also requested the Association of Municipalities of Estonia to submit their position. They agreed to the conclusions but did not make any additions to the recommendations made in the Audit Report.

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