

PUBLIC PARTICIPATION IN ALBERTA'S LAND-USE PLANNING PROCESS

Article by Monique Passelac-Ross ♦

Introduction

Why do we need public participation in environmental and resource management decision-making? Sherry Arnstein, who created one of the best known typologies of citizen participation in public policies, states that citizen participation is the “cornerstone of democracy”.¹ Many scholars have discussed the substantive and process rationales for public participation in resource development and environmental decision-making, noting that the two are hard to separate.² The main substantive justification is that public participation promotes better outcomes: decision-making is improved by a range of opinions, concerns, information and types of knowledge. The process rationale holds that public participation is a democratic and human right: it matters for its own sake, regardless of whether or not it produces better outcomes. In particular, it increases the accountability of decision-makers, it legitimizes decision-making and thus makes decisions more acceptable by citizens, it engenders public trust towards the government and empowers citizens.

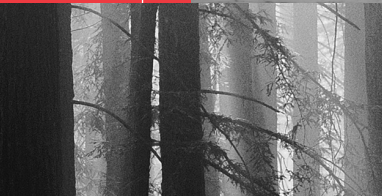
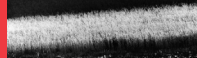
How is Alberta performing in allowing the public to effectively shape the decision-making processes pertaining to resource management and environmental protection? Recent *Resources* articles have discussed public participation opportunities at various stages in Alberta's energy and natural resources development process.³ They have pointed out the lack of opportunities for broad-based public participation at the mineral rights and surface rights disposition stage, and at the project licensing stage. This article explores further

the role of public participation at one critical stage in the natural resources decision-making process: that of land-use planning.

Scholars have suggested that broad, strategic policies are needed to resolve specific, local land-use conflicts, and that these are best made through broad public consultations.⁴ Land-use planning translates strategic policies into specific decisions regarding particular landscapes. Barry Barton suggests that strategic planning, which allows values and objectives to be explored and debated, and cumulative effects to be taken into account, is critical in environmental and resource management. The importance of public participation at this stage cannot be underestimated:

“Without it, regulation of individual projects as they are applied for results in a series of one-off decisions that do not get to grips with the ‘big picture’, and are unlikely to contribute long-term to successful resource management. [...] public participation in strategic planning is therefore just as important as participation in procedures for approval of specific development projects.”⁵

Indeed, given the limited opportunities for public participation at other stages in the energy development process, public participation in strategic land-use planning may well be the only avenue available for Albertans to effectively shape the future of land and resource development in their province.⁶





The Alberta government appears to share this view, asserting that “public consultation is an important part of the regional planning process”.⁷ To what extent and in which way is the public involved in the provincial land-use planning process? How effective are the mechanisms for public participation? This article first considers the legislative and policy framework for land-use planning and its implementation through the development of Alberta’s first regional land-use plan, namely the Lower Athabasca Regional Plan (LARP). It then evaluates how current public participation mechanisms measure up against certain criteria of effective public participation.

The Legislative and Policy Framework for Land-use Planning in Alberta

Comprehensive land-use planning is not a new concept in Alberta. In the 1970s, the province launched an integrated resource planning process which resulted in the drafting of various sub-regional integrated resource plans (IRPs). In the late 1990s and early 2000s, the province envisioned the development of regional strategies for resource and environmental management, examples of which included the Regional Sustainable Development Strategy for the Athabasca Oil Sands Area (RSDS Strategy) and the Eastern Slopes Sustainable Resource and Environmental Management Strategy (NES Strategy).⁸ These regional initiatives, however, did not have any legislative basis. They were purely policy-based, and lacked an overarching legal structure for integrated land-use planning.

The LUF and ALSA

In 2006, in an attempt to establish a better balance between economic growth and Albertans’ environmental and social values, Alberta embarked on a new land-use planning initiative. For a period of over two years, the government sought advice and input from various groups of “stakeholders” and also held public information and consultation sessions in various locations (15) across the province. In addition, the government invited Albertans to provide their views on the future of land use in the province by completing a workbook questionnaire.

The resulting Land-use Framework (LUF) was released in December 2008.⁹ One year later, the

government adopted legislation that entrenched regional land use planning into law in Alberta.¹⁰

The LUF “sets out an approach to manage public and private lands and natural resources to achieve Alberta’s long-term economic, environmental and social goals. It provides a blueprint for land-use management and decision-making that addresses Alberta’s growth pressures.”¹¹ The document acknowledges that “the ideas and opinions of Albertans have played a vital role in developing the framework” and notes that Albertans told the government that they wanted “increased consultation with [...] stakeholders and the public to ensure a fair opportunity to influence new policies and decisions”.¹² Nevertheless, the LUF does not clearly identify public participation as one of its guiding principles nor does it list it as one of its seven key strategies. A guiding principle of the framework is that land-use decisions will be “collaborative and transparent”, and that “Albertans, landowners, land users, and governments will work together”.¹³ The LUF also asserts that regional plans will consider “input” from the public and from stakeholders.¹⁴ But the LUF does not clearly explain the role of the public in plan development nor does it specify the process that will be used to seek public input. The only group of Albertans whose inclusion in land-use planning is specifically mentioned and forms the subject of one of the seven basic strategies of the framework is Aboriginal peoples.¹⁵

The LUF allows for some public involvement in the development of regional plans through the establishment of a Regional Advisory Council (RAC) for each of the seven planning regions it creates (Strategy 2).¹⁶ According to the LUF, members of a RAC “representing a range of perspectives and experience in the region” will be appointed by government, and “will include provincial and municipal government interests, industry, non government groups, aboriginal community representatives, and other relevant planning bodies (e.g. Watershed Planning and Advisory Councils) within the region”.¹⁷ The function of a RAC is to provide advice to government on the development of regional plans, notably on the trade-off decisions regarding land uses and on setting thresholds to address cumulative effects. In addition, the RAC will advise and participate in “public and stakeholder consultation” for the planning process.



In June 2009, the government adopted the *Alberta Land Stewardship Act (ALSA)*, legislation implementing the LUF.¹⁸ *ALSA* came into force in October 2009. The Act gives the regional land-use plans legal effect as legislative instruments and establishes their precedence over other Alberta regulations.¹⁹ Note that the Act has been amended to allow the government to specify which parts of the plan are enforceable as law and which parts are statements of public policy (new s. 13(2.1)). Regional plans are binding on the Crown, local government bodies, decision-makers and all other persons.²⁰ These provisions underscore the importance of the land-use planning process as a critical stage in land and resource development. Does *ALSA* establish public participation as a cornerstone of that process?

Similar to the LUF, *ALSA* does not refer to public participation as a foundation of the land-use planning process it entrenches in law. The recently passed *Alberta Land Stewardship Amendment Act* remedies to some extent the lack of explicit legislative mechanisms for public participation.²¹ Until then, the only mention of “public consultation” in *ALSA* was in subsection 50(1)(c), which allows Cabinet to describe the public and stakeholder communication and consultation required in the regional planning process. Under the new section 5, before a regional plan is made or amended, the Stewardship Minister must “ensure that appropriate public consultation with respect to the proposed plan or amendment has been carried out” and must report the findings of such consultation to Cabinet. Further, the proposed regional plan or amendment must be laid before the legislative assembly before it is adopted by Cabinet.

Another legislated opportunity for the public to provide input into the planning process is through the appointment of a RAC for a given planning region. However, Cabinet has absolute discretion to create a RAC, to decide who will be appointed on it, to set out the mandate and terms of reference of the RAC, and to determine what process rules will apply.²² Further, the role of a RAC is purely advisory.

ALSA does not allow the public to initiate judicial review of decisions that do not comply with regional land-use plans. Under section 61, complaints about non-compliance with a regional plan can only be placed with the Stewardship Commissioner, who

heads the Land-use Secretariat. This removes the opportunity for the public to appeal the lack of implementation of the plans.

The First Regional Land-use Plan: The Lower Athabasca Regional Plan (LARP)

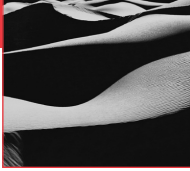
The LUF identified the regional plan for the Lower Athabasca Region as one of two priority regional plans to be developed (the other is the South Saskatchewan Regional Plan), with a scheduled completion date of 2010.

In December 2008, even before *ALSA* had been enacted, the government appointed a fifteen-member Regional Advisory Council (RAC) “comprised of members with a cross-section of expertise and experience” to provide strategic advice to Cabinet on the development of the Lower Athabasca Regional Plan (LARP).²³ The government released the Terms of Reference in July 2009, several months after the RAC had been appointed.²⁴ The government sought guidance on how to balance development and environment in four key areas: economic growth and development scenarios, land conservation objectives, regional air and water thresholds, and human development considerations.

The RAC was assisted in its task by the Land-use Secretariat and a planning team including government representatives and planning consultants. The RAC provided its advice to government in the form of advice sheets which were treated as confidential information to Cabinet. The RAC was disbanded in March 2010, and in August 2010 the government released a document entitled *Advice to the Government of Alberta Regarding a Vision for the Lower Athabasca Region* (Vision document).²⁵ The document consists of two main parts. First, it offers a vision statement and eight specific outcomes, along with a set of objectives and strategies to achieve each outcome. The second part of the document proposes a land-use classification system consisting of five main land uses: agriculture, conservation, mixed-use resource, recreation and tourism, and population centres, as well as three “overlays”.

The Vision document was intended to inform the development of the draft regional land-use plan by the Land-use Secretariat. On April 5, 2011, the government released the *Draft Lower Athabasca*





Integrated Regional Plan along with proposed regulations.²⁶

In addition to appointing a RAC to assist in developing the LARP, the government conducted public and stakeholder consultations at three different stages in the development of the regional plan:

- Phase 1 consultations: public information and awareness sessions were held in various local communities from May 20 to June 18, 2009. These took the form of public open houses (14) and stakeholder consultation sessions (10). The government published a summary of the comments received by the public.²⁷
- Phase 2 consultations: input and comments on the draft Vision, Outcomes and Objectives proposed by the RAC. This phase occurred in September 2010 and consisted of open houses, workshops and meetings with the public, stakeholders and municipalities. These meetings were held within the region as well as in Edmonton and Calgary. The public was also invited to provide feedback by completing a workbook either online or by submitting hardcopy versions.²⁸
- Phase 3 consultations: public input and feedback are being sought on the *Draft Lower Athabasca Integrated Regional Plan*. The government has announced that stakeholder and public consultations on the draft Plan will take place between April 18 and May 19, 2011.²⁹ In addition, the government is asking Albertans to provide feedback on the draft plan by completing a workbook by mail, in person or online, with a deadline for completion of June 6, 2011.

Assessing Public Participation in Alberta's Land-use Planning Process

Many scholars have developed sets of tools and criteria to assess the effectiveness of public participation processes. Some criteria focus on the processes of participation, some on the results, although it is safe to say that the two are intertwined, and that the quality of the process is bound to affect the quality of the outcome. A list of these criteria is included as an Appendix to this article.³⁰

As Macias remarks, the success of a public participation process cannot be measured only by its outcomes, since usually each group or individual involved in the process has a different preferred outcome. And measuring how well the outcome serves the collective will is made difficult by the fact that the notion of collective will is constantly changing.³¹ In the case of Alberta's land-use planning initiative, which has not yet produced a final regional plan, the outcomes of the public participation process remain unknown.³² However, some comments may be made concerning the *process* used by the Alberta government to develop its land-use plans, notably the LARP.

As noted above, neither the policy nor the legislative framework for land-use planning as set out in the LUF and ALSA spells out in any detail the role of the public or an actual process of public participation in the development of regional plans. The government has offered the public many opportunities to be consulted and to provide comments, both during the development of the LUF and during the development of the LARP. A similar pattern of public and stakeholder consultations is also occurring in the development of the South Saskatchewan Regional Plan. But the public participation process is not outlined in either the LUF or ALSA; it is *ad hoc*, discretionary and entirely defined and driven by government.

Further, a peculiarity of Alberta's approach to public participation is the distinction between "public" and "stakeholder" consultation. Different processes of consultation were used in developing the LUF, with "stakeholders focus groups" invited to play a more central role than the public at large in constructing the policy framework. The LUF itself distinguishes between public and stakeholder consultation, and the three phases of consultation that have been held during the development of the LARP have consisted of separate stakeholder and public consultations.

Nowhere in government documents related to the land-use planning process is the term "stakeholder" defined: are stakeholders representing vested interests? constituencies? sectors of society? Further, we do not know how a stakeholder is selected, and what role, if any, the public or groups of constituents may play in selecting these participants. What criteria



were used to identify and invite key participants in the “stakeholders focus groups” during development of the LUF, and in the stakeholders sessions during development of the LARP? This brings into question the inclusiveness and transparency of the process used by government to select participants to provide key strategic advice to government.

A former long-time participant in multi-stakeholder processes in Alberta stated her discomfort with this type of process in those terms:

“There is a huge difference between sitting around a table with “elite stakeholders” and talking directly to the people. Those elite stakeholders don’t represent Albertans; they represent their interests, and in fairness, that included us. [...] The problem with the multi-stakeholder process is the tendency is to get 30 people around a table to hammer out a policy and then go to the public. I think the real decision-makers should be the Alberta public.”³³

Because membership in one of the appointed RACs is a vehicle for public participation into the planning process, the question arises more acutely with respect to RAC members. Are the government-appointed RAC members “stakeholders”? Do they represent vested interests, or more generally the public in the region? In the case of the Lower Athabasca Region, the RAC members were told that they were not expected to represent the perspective of the company or organization they were affiliated with, but to “provide a perspective based on their own experience and expertise”.³⁴ According to the Vision document released by government, the RAC was appointed “to enhance the depth of local input”, and its work has been “informed by many people living, working and doing business in the region through feedback to the RAC, consultation meetings, workshops and written submissions”.³⁵ However, RAC members could not freely share the advice sheets they prepared for Cabinet with the public, and they were not allowed to report on their deliberations to their respective constituencies. This was not an open, transparent process involving the public.

As noted in an earlier *Resources* article, participants at a Round Table convened to discuss public participation in natural resources development in

Alberta noted a number of difficulties with the RAC process used in developing the LARP. These included the following:

- a) representatives were hand-selected by government;
- b) there were no clear instructions about what questions should be answered (therefore a lack of clarity on what was relevant or not);
- c) lack of access to the necessary information (including lack of necessary knowledge) to make recommendations;
- d) lack of clear understanding about how the recommendations would be used in developing the regional plan.³⁶

What then can we conclude about the effectiveness of the *process* of public participation in land-use planning in Alberta? The opaque and discretionary nature of the selection process of participants involved in stakeholder consultations and in the RACs does not meet the criterion of broad access, which is the first criterion of an effective public participation process listed in the Appendix. As far as stakeholder consultation goes, there are no clear and inclusive criteria for participation. Second, the absence of well-defined and accepted participatory mechanisms, and the fact that the process rules are not negotiated and understood in advance through participant input, do not meet the criterion of an effective process. This is true for both public and stakeholder consultations and the RACs. Third, questions have arisen with respect to access to information and the selection of knowledge available to participants.

The general lack of transparency and accountability is perhaps the greatest weakness in the current public participation process. There are undoubtedly many opportunities for the public to be informed and to react to proposals put forward by the government. However, as measured against Sherry Arnstein’s ladder, they are better defined as “tokenism”.³⁷

As noted earlier, we do not know how the views of the public and stakeholders have influenced the *outcome* of the land-use planning process in the Athabasca region. However, the secretive nature of the RAC’s deliberations and the confidentiality of the advice provided to government do not meet the criterion of accountability and transparency of the process. Some





participants at the Round Table expressed the opinion that Alberta's approach to public participation was not an example of citizen empowerment, because Albertans did not have the power to really affect the outcome of the process.³⁸

Conclusions

It has been stated that there are no guarantees that democratic procedures will generate ecologically friendly results, but democracy offers the conditions for the public to seek environmentally sound outcomes.³⁹ It is still early to assess the extent and effectiveness of public participation mechanisms in Alberta's land-use planning process. Recent amendments to *ALSA* may lead to greater public involvement in the development of regional plans and remove some of the discretionary powers of Cabinet. Further, the LARP is the first of the regional plans to be developed, and the government will presumably learn from experience and adjust its consultation process as it goes. Lastly, the LARP is not yet finalized. Although it has come under attack recently, the land-use planning process in which Alberta has embarked is to be applauded. From the standpoint of public consultation opportunities, this process could be strengthened and gain more legitimacy if the inefficiencies and weaknesses in current public consultation mechanisms that this article has outlined were addressed.

Appendix – The Criteria of Effective Public Participation Processes and Results

Criteria of effective *processes*:

- Access to the decision-making process should be broad, based on clear and inclusive criteria, and not founded exclusively on property or territorial approaches;
- The most affected individuals should have the chance to participate directly or to be represented in the event they are not able to attend the meetings;
- The rules of the process and the available participatory mechanisms should be defined by consensus in advance;

- Power relationships should be made substantively equal within the context of the decision-making process;
- All participants should have a chance to initiate speech and to get involved in the debate and in the dispute's resolution;
- All participants should have access to information and knowledge about the issues in debate;
- The best procedures, defined by consensus, should be used to select the knowledge and interpretations to be applied;
- Decision-making processes should be responsive to community knowledge;
- The process should be accountable and transparent.

Criteria of effective *results*:

- The process contributes to increase individuals' autonomy;
- The process contributes to increase the participants' empowerment and control;
- The process contributes to enhance social capital (reciprocity of trust and social learning);
- The process contributes to enhance political capital ('having something to bargain with');
- The process produces unbiased outcomes;
- The participants judge the results to be positive and available;
- Government is committed to the decisions made through public participation;
- The results are sustainable and accountable.

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Notes

1. Sherry R. Arnstein, "A Ladder of Citizen Participation" (1969) 35:4 J.A.P.A. 216.
2. Barry Barton, "Underlying Concepts and Theoretical Issues in Public Participation in Resources Development" in Donald N. Zillman, Alastair R. Lucas & George Pring, eds., *Human Rights in Natural Resources Development: Public Participation in the Sustainable Development of Mining and Energy Resources* (Oxford: Oxford University, 2002) 77. For a summary review of the literature, see Rebeca Macias, *Public Participation in Energy and Natural Resources development: A Theory and Criteria for Evaluation*, Occasional Paper #34 (Calgary: Canadian Institute of Resources Law, 2010).
3. Nickie Vlavianos, "The Issues and Challenges with Public Participation in Energy and Natural Resources Development in Alberta" (2010) 108 Resources 12 pp.; Shaun Fluker, "Public Participation in Project Licensing Decisions of the Alberta Energy Resources Conservation Board" (2011) 111 Resources 8 pp.; Nickie Vlavianos, "Public Participation and the Disposition of Oil and Gas Rights in Alberta" (2007) 17 J.E.L.P. 205.
4. E.g. Steven A. Kennett & Michael M. Wenig, "Alberta's Oil and Gas Boom Fuels Land-use Conflicts – But Should the EUB Be Taking the Heat?" (Summer 2005) 91 Resources 8 pp.
5. Barton, *supra* note 2 at 113.
6. See Vlavianos and Fluker, *supra* note 3.
7. E.g. Government of Alberta, "Land-use Framework and *Alberta Land Stewardship Act*", Quick Facts, November 2009.
8. For a review of these initiatives, see Steven A. Kennett, e.g. *Integrated Resource Management in Alberta: Past, Present and Benchmarks for the Future*, Occasional Paper #11 (Calgary: Canadian Institute of Resources Law, 2002) and *Closing the Performance Gap: The Challenge for Cumulative Effects Management in Alberta's Athabasca Oil Sands Region*, Occasional Paper #18 (Calgary: Canadian Institute of Resources Law, 2007).
9. Government of Alberta, Alberta Aboriginal Affairs and Northern Development, *Land-use Framework* (2008), online: <<http://www.landuse.alberta.ca>> [LUF].
10. For an account of the main features of both the LUF and ALSA, see Jenette Poschwatta-Yearsley & Adam Zelmer, "The Alberta Land Stewardship Act: Certainty or Uncertainty?" (2009) 106 Resources 9 pp.; see also Cindy Chiasson, "New Legislation Continues Changes to Alberta's Land Use Planning System" (2009) 24:2 News Brief at 5.
11. LUF, *supra* note 9 at 7.
12. *Ibid.* at 8.
13. *Ibid.* at 16.
14. *Ibid.* at 26.
15. *Ibid.* at 4, 21 and 41. Strategy 7, entitled "Inclusion of aboriginal peoples in land-use planning", rightly recognizes that First Nation and Métis communities hold constitutionally protected rights, and that Alberta has a legal duty to consult with these communities. Aboriginal consultation, which is not "public consultation", is excluded from the scope of this article.
16. *Ibid.* at 3 and 19: "The Secretariat will develop regional plans in conjunction with government departments and Regional Advisory Councils", and at 29: "The Government of Alberta will create Regional Advisory Councils for each region to provide advice and receive direction from the Cabinet and provide advice to the Land-use Secretariat on the development of the regional plan." [emphasis added].
17. *Ibid.* at 29.
18. *Alberta Land Stewardship Act*, S.A. 2009, c. 26.8 [ALSA]. ALSA came into force on 1 October 2009.
19. *Ibid.*, s. 13(2).
20. *Ibid.*, s. 15(1).
21. *Alberta Land Stewardship Amendment Act*, 2011, Bill 10, online: <<http://alberta.ca/home/1410.cfm>>. The Bill passed on May 10, 2011.
22. ALSA, *supra* note 18, ss. 51-52, 55.
23. Lower Athabasca Regional Advisory Council, *Advice to the Government of Alberta Regarding a Vision for the Lower Athabasca Region*, at 2, online: <<http://www.landuse.alberta.ca>> [Vision document].
24. Government of Alberta, Terms of Reference for Developing the Lower Athabasca Regional Plan (July 2009), online: <<http://www.landuse.alberta.ca>>.





Notes (Continued)

25. *Supra* note 23.
26. Government of Alberta, *Draft Lower Athabasca Integrated Regional Plan 2011-2021*, online: <<http://www.landuse.alberta.ca>>. For an outline of the documents released by government, see Nigel Bankes, "The Proof of the Pudding: ALSA and the Draft Lower Athabasca Regional Plan", posted 14 April 2011, online: <<http://www.ablawg.ca>>.
27. Government of Alberta, *Summary of the 2009 Phase 1 Consultation – Lower Athabasca Regional Plan*, online: <<http://www.landuse.alberta.ca>>.
28. Government of Alberta, *Phase 2 Public Consultation Summary; Phase 2 Stakeholder Consultation Summary*, online: <<http://www.landuse.alberta.ca>>.
29. Government of Alberta, News Release, "Regional plan supports conservation and economic growth" (5 April 2011), online: <<http://alberta.ca/acn/201104/30180270F6D1C>>.
30. The list was compiled by Rebeca Macias, *supra* note 2 at 28 and 34.
31. Macias, *supra* note 2 at 24.
32. In order to assess the extent to which the final LARP incorporates the input and comments provided by the public and by stakeholders, one would have to compare the Consultation Summaries released by government (see *supra* notes 27 and 28) with the actual contents of the plan.
33. Interview of Danielle Droitsch by Julia Ko (26 April 2010) in *Water Matters*, online: <<http://www.water-matters.org/story/366>>.
34. Government of Alberta, News Release, "Revised Lower Athabasca Regional Advisory Council Announced" (19 December 2008), online: <<http://alberta.ca/home/NewsFrame.cfm?ReleaseID=/acn/200812/250325077DCA0-9DBB-B78C-62D8CB4065D98526.html>>.
35. Vision document, *supra* note 23 at 2-3.
36. Vlavianos, *supra* note 3 at 3.
37. Arnstein, *supra* note 1.
38. Vlavianos, *supra* note 3 at 4.
39. John S. Dryzek, as cited in Macias, *supra* note 2 at 18.

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