

AMCHAM FDI VISION - ENVIRONMENTAL PERMITTING AND RED TAPE WORKING GROUP

**PROPOSALS TO IMPROVE  
ENVIRONMENTAL PERMITTING OF  
INVESTMENTS AND REMOVE RED TAPE**

# WHAT IS WRONG WITH THE FINNISH ENVIRONMENTAL LICENSING SYSTEM?

- **Finnpulp**, a billion EUR greenfield pulpmill project, receives its environmental permit but is caught by surprise when the Supreme Administrative Court rejects the permit.
- **Sokli**, a large phosphate mining project, gets its environmental and water permit, but the permit gets narrowed down by the Administrative Court and rejected by the Supreme Administrative Court
- **BASF**, builds a battery plant in Harjavalta, received its environmental permit but the permit gets rejected with reference to groundwater risks and sulphate emissions by the courts
- Cases where companies have invested into Rotterdam instead of Finland. Licencing is one of the criteria being assessed, also the ability of the industrial park to facilitate the new investment weighs in

# KEY SHORTCOMINGS OF THE FINNISH ENVIRONMENTAL LICENSING SYSTEM

1. Too slow of a system
2. Too unpredictable
3. Lack of party of contact who has the capability to facilitate the process and timetables
4. Industrial parks as an untapped resource
5. Lack of dialogue in the permitting process
6. Authorities' appeals against each other's decisions
7. Incoherent enforcement rights in the permitting system
8. The system is structurally unequal to project developers (timetables, additional studies)
9. Permit documentation is growing so large that is hard to manage
10. Resources are not sufficiently prioritized for larger projects

# OUR PROPOSALS

# **SPEEDING UP ENVIRONMENTAL PERMITS & REMOVING UNPREDICTABILITY**

Proposals no. 1–4

# 1. TOOLS FOR PERMIT AUTHORITY AND COURTS TO BETTER MANAGE FUTURE UNCERTAINTIES IN ENVIRONMENTAL PERMITS

- **Amend legislation/interpretation to manage uncertainty in environmental permits:**
  - Create legislative instruments to prevent the non-acceptance or revocation of permits on the basis of the precautionary principle or uncertainty factors (but not a return to a general periodical reassessment of all permits)
  - Possibility to approve environmental permits and order a deadline for further studies and a reassessment of a particular part of the permit

## 2. ALLOW VOLUNTARY ECOLOGICAL COMPENSATION TO IMPACT PERMIT APPROVAL THRESHOLD

- **Voluntary ecological compensation as part of the toolkit in environmental permits:**
  - Allow possibility to lower permit approval threshold through compensatory measures elsewhere (eg. same water basin area)
  - Implementation either by court interpretation or clarification of legislation

### 3. EARLIER INVOLVEMENT OF PERMIT AUTHORITIES AND DUTY TO ENGAGE

- **Early feedback from permit authorities:** Permit authorities required to give feedback on permit plans / draft application in advance and to take actively part in EIA process

## 4. DIALOGUE WITH ENVIRONMENTAL PERMIT AUTHORITY DURING PERMIT PROCESS AND CONSIDERATION

- Dialogue creates better functioning permits → Reduces the operator's need to appeal against the permit conditions & less interpretative permit conditions
- **Dialogue on permit conditions**
  - **The operator's proposal on permit conditions in environmental permits to form a basis**
  - Authority to comment proposals if the draft permit decision aims to deviate from proposal
- **Dialogue on uncertainties about the effects of the operation**
  - Allows possibility to find solutions that reduce the perceived risks as a part of permitting process

# INDUSTRIAL PARKS AS A WAY TO SPEED UP INVESTMENTS

Proposals no. 5 & 6

## 5. AMEND PERMIT CRITERIA AND FAST TRACK INVESTMENTS TO INDUSTRIAL PARKS WITH ADEQUATE INDUSTRIAL ZONING (TKEM / T)

- Go-to-thinking: Promoting industrial operations where they already exist
- EIA + environmental permit (1+2(+) = 3+ years) is not competitive and prevents further investments
- Add-on production lines and capacity increases should be made faster and easier
- New operations to industrial parks should be fast tracked / enabled with lighter environmental permitting criteria or with lighter EIA criteria
- Ability to licence the factory in advance e.g. by the industrial park (or in connection with large site closures) with a revision of permit conditions after a few years
- Ability to consider emissions from an industrial park as a whole (ceased operations, joint risk management measures, compensation projects). This would allow more operations and capacity increases in the industrial park

## 6. ENABLE NEW PRODUCT LINES / CAPACITY INCREASES SWIFTLY

- **Enable new product lines / capacity increases swiftly:**
  - Lower permit requirements for capacity increases and production line add-ons (something in between a test permit and a new environmental permit)

# **ENFORCEMENT RIGHTS COVERING THE ENTIRE PROJECT**

## 7. COHERENT ENFORCEMENT RIGHTS (FI: TÄYTÄNTÖÖNPANO-OIKEUS)

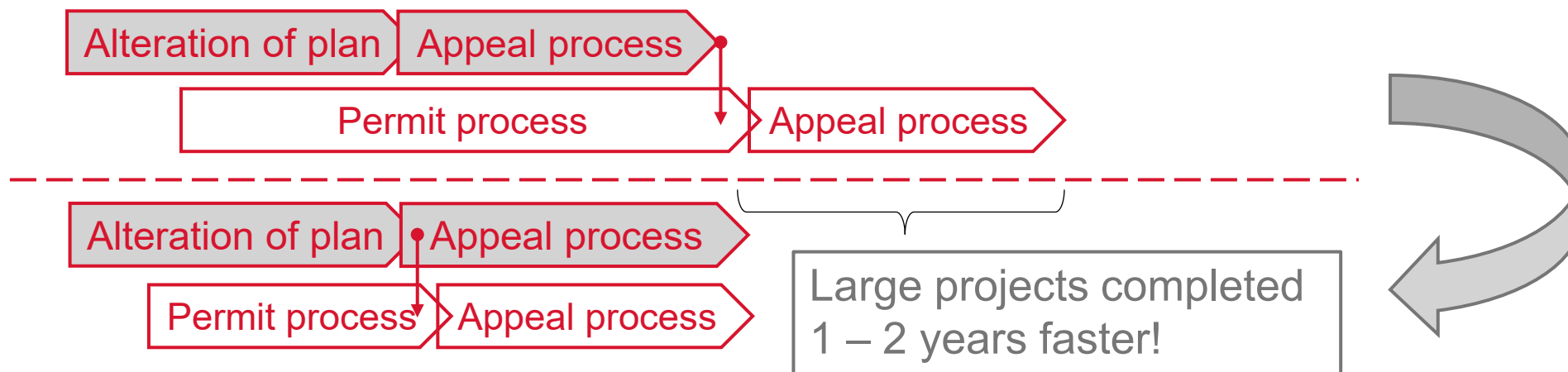
- **Speed up the process by coherent enforcement rights regarding permits and decisions**
  - Add enforcement orders to all relevant acts + clarify the scope of the administrative litigation act (Hallintoprosessilaki) to enable enforcement of all private investments despite of appeals
    - Currently a number of acts lack explicit possibility to issue enforcement orders e.g. Nature Conservation Act, questions re scope under Water Act, EEZ act...
    - Now the authorities apply the general rule of the administrative litigation act on a case-by-case basis
  - More clarity from administrative courts on internal decisions to uphold enforcement / cancellation of enforcement should not be done without consultation of permit holder

# **SPEED UP PROJECTS BY REMOVING BOTTLENECKS IN THE PLANNING SYSTEM**

# 8. PROJECT LAND USE PLANS FOR INDUSTRIAL INVESTMENTS + ACCEPT CONDITIONAL APPROVAL OF PERMITS

## A) The interplay of land use plans and permits to save 1–2 years out of the project timetable

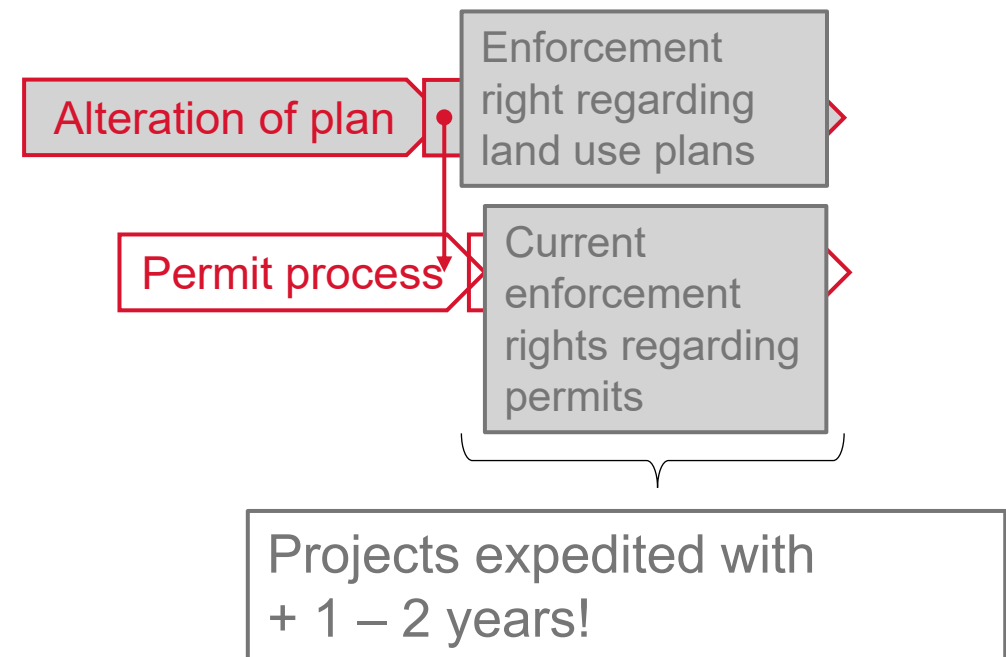
- In cases where the project requires a new or revised land use plan
- Environmental and other permits should not need to wait for appeals on such land use plans to be settled
- Conditional approval: permits could be approved conditional to certain simultaneously decided plans / permits / derogations to become legally valid
- Result: all appeals on the same grounds / project being tried in parallel + *saves 1-2 years out of the project timetable*



# 8. PROJECT LAND USE PLANS FOR INDUSTRIAL INVESTMENTS + ACCEPT CONDITIONAL APPROVAL OF PERMITS

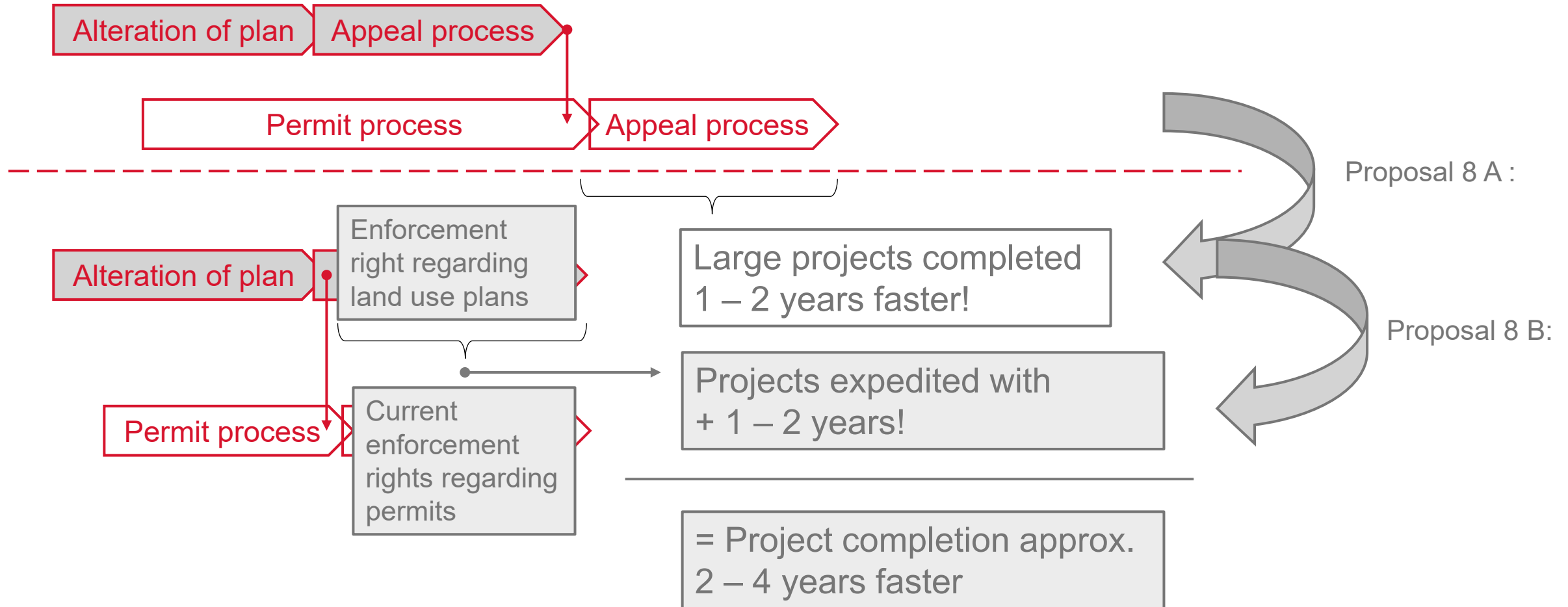
## B) Project land use plan and the enforcement of such regardless of appeal:

- Build on experience on wind power master plans: Possibility to combine all land use plans into one project land use plan addressing all zoning matters and enable integration with the EIA
- Add also possibility to order such a project land use plan enforceable as a whole or partially (with the conditions typical of enforcement orders, e.g. must not render appeal useless)



# ABILITY TO SAVE 2 – 4 YEARS OUT OF PROJECT TIMETABLE

Current situation:



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# **APPEALS FROM AUTHORITIES AND THE ASSESSMENT OF LEGISLATION**

## 9. AUTHORITIES' RIGHT TO APPEAL AND REGULATORY IMPACT ASSESSMENTS

- **Identify measures to reduce or limit authorities' appeals against each other's decisions**
  - All authorities are bound by the principle of legality
- **Analyse whether the impacts on business investments have been sufficiently assessed in the regulatory impact assessments** of draft environmental legislation
  - According to the assessment guidelines of the Ministry of Justice, the impacts of draft legislation on investments must be assessed

# OTHER PROPOSALS

# 10. ONE NATIONAL ENVIRONMENTAL PERMIT AUTHORITY

- **One national permit authority**
  - Can have regional offices, civil servants do not have to relocate
  - Build expertise with more specialized teams
  - Possible to substitute teams in situations where civil servants are conflicted

# 11. PROJECTS OF NATIONAL IMPORTANCE

- **Projects of national importance:** Possibility for Government to declare a project to be of national importance → fast track in both permit and appeal stages (currently the "Äänekoski model" is not based on law)
  - E.g. after consultation with Business Finland, TEM, Ministry of the Environment
  - Already exists for certain energy projects
  - Similar type of proposals limited to certain projects are already pending (the Government's minister group on preparation, 7 April 2022, draft is being circulated for comments in 3 June 2022)

## 12. IMPROVE COURT PROCESS OF CASES OF NATIONAL IMPORTANCE

- Allow for a **right to get a precedent ruling** from the Supreme Administrative Court (bypassing the Administrative Court) in certain important legal questions
- **Oral hearings:** Start arranging oral hearings in environmental matters in administrative courts
  - To go through the main issues of the matter and establishing a dialogue between the court and the parties
  - Offers courts a possibility to indicate where they see risks in the case

## 13. PUT RESTRAINTS ON THE EVER GROWING DOCUMENTATION

- **Limit the size of EIA:** Limit the currently continuously growing size and detail level of EIA material and studies and the scope and detail level of reporting. Clarity on what belongs to the EIA and what to the environmental permit.
- EIA reports have grown 10x in size in 10 years