

CASE STUDY - THE NETHERLANDS

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1. NEO-LIBERALISM AS THE BACKDROP OF PLANNING LAW REFORMS

The Netherlands is seen by many as a 'planners paradise', with great governmental powers in spatial planning.² However, since the mid-1980s many legislative reforms have taken place with the purpose to simplify the process of decision-making and speed-up plan-making. Simultaneously, the various tiers of government promoted a growing influence of private sector on spatial planning decisions. Therefore, the many changes in Dutch planning law following the crisis of the late 2000s, can be seen as a continuation of previous legislative reforms.

In broad lines, the legislative planning law changes since the mid-1980s up to and including the current crisis, must be seen against the backdrop of 'neo-liberal' policies. Neo-liberalism can be defined as:

'An approach to economics and social studies in which control of economic factors is shifted from the public sector to the private sector. Drawing upon principles of neoclassical economics, neoliberalism suggests that governments reduce deficit spending, limit subsidies, reform tax law to broaden the tax base, remove fixed exchange rates, open up markets to trade by limiting protectionism, privatize state-run businesses, allow private property and back deregulation.'³

The start of neo-liberal policies and subsequent legislative changes in the Netherlands lies in an economic crisis – not the current crisis, but the 1980s crisis. Western governments reacted to the 1979 oil crisis by using Keynesian economic principles. This implied anti cyclic economic policies to stimulate economy. This, however, led to enormous government budget deficits and inflation. As a reaction, new political leaders, such as Lubbers in the Netherlands, Thatcher in the UK and Reagan in the USA, made reorganisation of the finances a prime policy objective. A new vision on economic governmental policy grew. Contrary to Keynesian principles, the idea rose that government should minimally intervene in economy. Taxes were cut, governmental companies were privatised, serious deregulation started and governmental expenditures declined.⁴

From the 1980s to mid-1990s Dutch governments were led by prime minister Ruud Lubbers. Following neo-liberal principles, one of the main goals of his cabinets was to make the Netherlands more competitive. Retrenchments and cutting of governmental tasks became important policy instruments.⁵

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² A. Faludi and A. van der Valk, *Rule and order – Dutch planning doctrine in the twentieth century*. Kluwer Academic Publishers, Dordrecht, The Netherlands, 1994.

³ Definition taken from www.investopedia.com.

⁴ D. Harvey, *A brief history of neoliberalism*. Oxford University Press, Oxford, UK, 2005.

⁵ W.J.M. Kickert, Beneath consensual corporatism: traditions of governance in the Netherlands. *Public Administration*, Vol. 81, no. 1, 2003 (119-140).

In the Netherlands and elsewhere in Europe, these basically economic policies, exerted major influence on spatial planning as well. During the 1980s and 1990s, the private sector entered the realms of urban planning and governance.⁶ Here, all countries witness a diminishing role of national governments and a rearrangement of planning powers across a diversity of (semi or non-) governmental bodies.

This neo-liberal shift in urban planning and development has fostered an increasing amount of new public-public and public-private relations and interdependencies, particularly in efforts to realise spatial projects that cut across different disciplines, government sectors and administrative jurisdictions. In The Netherlands, by the end of the 1990s, the preponderant top-down designation of land-uses by government bodies made way for more entrepreneurial, market-led approaches, which Dutch spatial planners termed 'development planning' (*ontwikkelingsplanologie*). Project development companies and real estate investors showed an increasing capacity and interest to scope-up their projects, integrating the development of infrastructure and other public works into large-scale urban development proposals. As a consequence of the rise of private parties significance, gradually the heart of spatial planning moved from 'plans' to 'projects'. Planning law changed accordingly.

An example from environmental law may demonstrate the type of the changes in legislation leading to relaxation of obligations for private parties and reduction of governmental costs at the same time.

Initially virtually all activities that led to environmental nuisance (noise etcetera) needed an individual permit. All applications were individually assessed by the competent authority. Later, the act was changed. Nowadays, the law (*Activiteitenbesluit milieubeheer*) discerns three types of companies, depending on their environmental impact. Type A companies need to comply with certain environmental rules, but do not need to report their activities to government in advance. Type B companies merely need to report their activities (once) in advance. The company itself performs the input of data. There is no prior check by government. Only type C companies need an individual environmental permit. Needless to say that businesses are greatly served by this type of legislation.

In summary, the 1980s crisis gave way to the rise of neoliberal politics. Neoliberal policies since effected whole society: welfare, employment etcetera.⁷ It also exerted great influence on planning and planning law. Deregulation, relaxation of land-use regulations, removal of 'unnecessary planning burdens and regulations' for businesses, simplification of planning regulations and speeding-up of plan-making can all be seen in the light of neoliberal politics. Hence, the strong Dutch legislative changes in planning law following the economic crisis of the late 2000s – notably the new Crisis and recovery act – can be seen as a continuation of long-established neoliberal politics.

It is now possible to answer the conference's first question. Question a) reads:

Which, do you consider, to be the main effects of the economic crisis, if any, on your country's planning law and policy? Has your national planning law experienced, during last years, a minor or major reform as a result of the crisis or for other reasons and in which directions? Would you say that

⁶ For an elaborate description of the growing influence of the private sector on urban development, see chapter 1 in E. Heurkens, *Private Sector-led Urban Development Projects – Management, Partnerships & Effects in the Netherlands and the UK*. Doctoral dissertation, Delft University of Technology, 2012. <http://abe.tudelft.nl/article/view/Heurkens/heurkens>.

⁷ R.S. Turner, *Neo-liberal ideology – History, concepts and policies*. Edinburgh University Press, Edinburgh, UK, 2008.

new attitudes to planning law have emerged as a result of these changes and, in a positive case, which?

Summarising answer to question a):

The economic crisis in the late 2000s has had a major effect on Dutch planning law. The crisis was the impetus to a new act: the Crisis and recovery act (*Crisis- en herstelwet*). This planning act was drafted as a direct effect of the economic crisis.

The planning law reforms since the crisis are directed toward simplification, speeding-up of plan-making and decision-making, relaxation of 'restrictive' (environmental) regulations and limitation of (citizen's) power to delay. Insofar, they can be seen as a continuation of a direction that was taken earlier.

Since the introduction of new 'crisis legislation', gradually Dutch municipalities became used to the new instruments. National government, in its evaluations, is positive regarding the effects of the new legislation.⁸ It emphasises that the Crisis and recovery act is not only a crisis instrument, but also 'new thinking'. Some legal scholars, however, are less positive. Their concerns primarily relate to the limitations of legal protection against governmental decisions.⁹

2 RECENT EFFORTS FOR SIMPLIFICATION AND SPEEDING-UP

The past five years (since 2008) have witnessed many changes of planning law in order to simplify and speed-up. The new Spatial Planning Act got into effect on July 1st, 2008. However, now, in 2013, we cannot consider it a 'new' act anymore. That is why I will concentrate on more recent changes in legislation instead. These changes are divided into two categories: changes in general law of administrative procedure (section 2.1) and changes brought about by the Crisis and recovery act (section 2.2).

2.1 CHANGES IN GENERAL LAW OF ADMINISTRATIVE PROCEDURE

The recent changes in general law of administrative procedure affect the whole of administrative law. This includes spatial projects and plans. That is why it is relevant to take a look at those changes. The changes are effected through a special act, the 'Act amending law of administrative procedure' (*Wet aanpassing bestuursprocesrecht*). It is a recent act; it is in effect since January 1st, 2013. The act means that the existing General Administrative Law Act (*Algemene wet bestuursrecht*) is amended on many points. In essence, the goal of the new rules is to create more decisive legal proceedings at the administrative court. Thus, the legislative changes can be seen in the light of pursuit of efficiency and effectiveness. The idea is that the administrative judge must be able to settle a dispute fast and definitively.

This section will give an overview of some of the changes in general law of administrative procedure that are of most effect to planning law issues.¹⁰

⁸ The latest evaluation of the Crisis and recovery act is from July 2013. Ministerie van Infrastructuur en Milieu, *Praktijkervaringen Crisis- en herstelwet – Voortgangsrapportage 2012-2013*. Ministerie van Infrastructuur en Milieu, Den Haag, juli 2013.

⁹ Discussion between legal scholars and members of parliament during the Second Chamber of Parliament Roundtable on February 29th, 2012 in the framework of legislative proposal nr. 33135.

¹⁰ For a more complete overview in Dutch, see M. Blokvoort, *De Wet aanpassing bestuursprocesrecht vanuit vastgoedperspectief*. *Vastgoedrecht*, 2013 – 2, p. 43-49.

(a) Administrative loop

Prior to the 'Act amending law of administrative procedure', a separate improvement was introduced: the administrative loop (*bestuurlijke lus*). It is enacted in section 8.2.2A General Administrative Law Act. The administrative loop may be appropriate when the judge observes a defect in an administrative decision. In such a case, he can deliver an interlocutory judgement in which he invites (or requires) the administrative body to repair the defect. The advantage of this loop is that the judge does not need to nullify the administrative decision. Nullification would lead to a new administrative decision (and possibly a new procedure before court) and would require a lot of time. Since its introduction, the administrative courts use the administrative loop frequently.

(b) Definitive dispute settlement

Article 8:41a General Administrative Law Act stipulates that the administrative judge will settle the dispute definitively as much as possible. This article aims to prevent that the judicial decision is just an intermediate step and that parties, after the judicial decision, need again follow all kinds of procedures to get a definitive decision.

(c) Disregard of defects

Article 6:22 General Administrative Law Act specifies that the court may disregard defects of the administrative decision. This means that administrative decision can be left intact (that is: need not be nullified by the judge) despite breach of a formal rule or a material legal norm, provided that interested parties are not put in a disadvantage. If the court disregards defects, the appeal will be denied.

(d) Upholding of legal consequences

If a defect cannot be disregarded, the court will have to nullify the administrative decision. However, the court will have to examine whether, in combination with nullification, the legal consequences of the administrative decision can be upheld. If the legal consequences are upheld, the nullification is of no use to the applicant. Article 8:72, section 3, under a, General Administrative Law Act, gives the legal basis for the court's decision to uphold legal consequences.

(e) Protective norm theory

In the Netherlands, legal standing before court (*locus standi*) is only possible for 'interested parties' (*belanghebbenden*). Once a party is qualified as an interested party, it is limited in the grounds it can bring forward. This is due to the so called 'protective norm theory' (*relativiteitsvereiste*). The applicability of this theory is laid down in the new article 8:69a General Administrative Law Act as a consequence of the 'Act amending law of administrative procedure'. The protective norm theory can be described as follows:

'violation of a provision of public law results in a violation of a person's subjective right(s) only when the violation aims to, besides protecting the public interest, protect the person's interest'.¹¹

¹¹ Definition taken from K. Relve, Standing of NGOs in relation to environmental matters in Estonia, *Juridica International*, XI/2006, p. 166 et seq.

In essence this means that a person (X) cannot invoke violation of a rule if the rule did not intend to protect X. An example from case law may make the protective norm theory clear.¹²

Appellant X lives in the vicinity of a site where new houses are to be built. For this project a new land-use plan has been adopted. To enable the project, the municipality took a 'decision to set a higher noise standard' (*vaststellingsbesluit hogere waarden*). This decision makes it possible to build houses that will be subject to more noise than preferred.

X argues that the project is in conflict with the Noise Abatement Act. To this end he brings forward (among other things) that the municipality left behind to examine the effectiveness of certain measures to reduce noise.

The Administrative Jurisdiction Division of the Council of State finds that X does live in the vicinity of the project. But he is not going to live in one of the new houses. Nor is he the owner of one of the houses for which the decision to set a higher noise standard was taken. Furthermore, the land-use plan does not enable the construction of a new road that could lead to noise nuisance for X.

In addition, the council rules that the rule (i.e. the Noise Abatement Act) did not intend to protect X. Thus X cannot invoke this rule. Therefore, the municipal decision will not be nullified.¹³

2.2 CHANGES BROUGHT ABOUT BY THE CRISIS AND RECOVERY ACT

The Crisis and recovery act (*Crisis- en herstelwet*) got into effect on March 31, 2010. It was intended to be a temporary act, with a life span of four years. However, before the term, the act is extended for an indefinite period of time. The 'permanent' Crisis and recovery act is in effect since April 25th, 2013.¹⁴

The Crisis and recovery act can be seen as a twofold experimental garden. First, some of the instruments in this temporary act got permanent anchoring through insertion in the (later) 'Act amending law of administrative procedure' (see section 2.1). Second, because, in future, the achievements of permanent Crisis and recovery act will be incorporated in the new Environmental Planning Act (*Omgevingswet*). The Environmental Planning Act is a huge legislative project, aiming at integration of (almost) all current Planning and Environmental acts.¹⁵

The Crisis and recovery act is a response to the economic crisis that hit the Netherlands and many other countries since 2008. The Explanatory Memorandum to the draft Crisis and recovery act leaves

¹² Administrative Jurisdiction Division of the Council of State 30 November 2011, nr. 201011839/1/R3, LJN: BU6355. Annotation by A.G.A. Nijmeijer in *Ars Aequi*, March 2012, p. 222.

¹³ One could argue that X stood up for the future residents of the housing project – to prevent that they would be subject to more noise than preferred. But the protective norm theory prevents X to do so. Even if it could be concluded that the project *is* in conflict with the Noise Abatement Act, it cannot lead to nullification of the municipality's decision if it is brought forward by X.

¹⁴ I will refer to the 'original' Crisis and recovery act, which came into effect in 2010, as 'Crisis and recovery act'. I will refer to the later Crisis and recovery act, which succeeded the original act in 2013, as 'permanent Crisis and recovery act'.

¹⁵ For a brochure regarding the Environmental Planning Act in English, see *Simple and better – the Environmental Planning Act: the main changes*. Ministry of Infrastructure and the Environment, The Hague, August 2013. Available through <https://omgevingswet.pleio.nl/pages/view/9262692/publicaties-eenvoudig-beter>. The main reasons for the new Environmental Planning Act are explained in another brochure: *Main points on simplifying environmental planning legislation in The Netherlands*. Available through: <http://www.government.nl/documents-and-publications/reports/2012/06/28/main-points-on-simplifying-environmental-planning-legislation-in-the-netherlands.html>. Ministry of Infrastructure and the Environment, The Hague, 28 June 2012.

no doubt that the economic crisis is the cause of the act.¹⁶ The aim is that the provisions of the act make it easier (= faster) for building projects and infrastructural projects to finish administrative and legal (= court) procedures. The line of thought is as follows: if barriers to projects are removed, they can be built shortly and thus stimulate economy.¹⁷

However, as so often, it may very well be that certain politicians, as it were, 'waited' for a crisis to occur. In this line of reasoning, some political powers had, for a longer period of time, plans to introduce instruments to simplify and speed-up decision-making. But they knew that under normal circumstances, there would be no support in parliament and society for relatively far-reaching legislative measures. The crisis, however, was the opportunity to press the new instruments. The expression: 'a solution waiting for a problem' may apply here.¹⁸

The Crisis and recovery act does not apply to all building projects and infrastructural in the Netherlands. For instance, a small project consisting of the building of less than 12 houses does not fall under the act. Nevertheless, we can rest assured that all major projects fall under the act. In short, the act applies to certain *categories* of activities (like construction of a new motorway), to (many) *projects* that have been named explicitly (like windfarm Second Maasvlakte) and to *areas* that have appointed later by council in order (like the redevelopment of the city harbours of Rotterdam).

For analytical purposes, we can divide the provisions of the Crisis and recovery act in two parts: changes in law of administrative procedure (section 2.2.1) and new instruments (section 2.2.2).¹⁹

2.2.1 CHANGES IN LAW OF ADMINISTRATIVE PROCEDURE

The Crisis and recovery act holds a number of changes in the law of procedure which come on top of the changes introduced by the 'Act amending law of administrative procedure' (section 2.1). As said, these 'extra' facilities only apply to categories and projects that fall under the Crisis and recovery act. The facilities are aimed at speeding-up (court) procedures.

(a) Legal standing

Usually, municipalities have the power to appeal against national government's decisions. However, under the Crisis and recovery act, municipalities do *not* have legal standing in case of national decisions. This is laid down in article 4.1 the Crisis and Recovery Act. An example is the decision of national government to deviate from municipal land-use plans, in order to enable the construction of a new motorway.

The purpose of this provision is to make for swift decision-making. In the past, before the Crisis and Recovery Act came into effect, it was not unusual for local government to lodge appeal with the Council of State against, for instance, infrastructure track decisions. The legislators, however, were of the opinion that branches of government (for instance minister and municipality) should not fight each other in court, but should settle their disagreement through consultations.

¹⁶ Kamerstukken II, 2009-2010, 32127, nr. 3.

¹⁷ The Crisis and recovery act also holds provisions to promote ecological innovation. Basically, all kinds of experiments are granted permission to deviate from existing regulations. These existing regulations otherwise hinder the experiments that are of benefit to the environment. I will not elaborate on this part of the Crisis and recovery act.

¹⁸ W.C.T.F. de Zeeuw en F.A.M. Hobma, Crisis- en herstelwet: megaproject in turbotempo. *Tijdschrift voor Bouwrecht*, nr. 1, januari 2010, p. 2-9.

¹⁹ For the sake of overview, not all provisions of the Crisis and recovery act will be discussed in this paper.

(b) Time period for judgment

Another way to make for swift decision-making is that the Council of State must come to a ruling within six months (article 1.6, para. 4, Crisis and Recovery Act).

(c) Appeal pro forma

An appeal pro forma (that is: an appeal where the grounds are given at a later stage) is not possible in cases that fall under the Crisis and recovery act (art. 1.6, section 2).

(d) Re-use of examinations

For spatial decisions, usually a lot of examinations have to take place: soil survey, noise measurements, protected species etcetera. The Crisis and recovery act stipulates that the examinations need not to be redone – thus can be re-used – in case a decision that was nullified by the court is repaired by the administrative body (art. 1.10).

2.2.2 NEW INSTRUMENTS

The Crisis and recovery act has introduced a number of new instruments. All have the purpose to simplify and speed-up decision-making. Two most relevant instruments are discussed in this section: development areas and project implementation decisions.

(e) Development areas

Development areas (*ontwikkelingsgebieden*) are specifically appointed areas (chapter 2, section 1 Crisis and recovery act). In these areas, local authorities can create scope so that new projects, such as the construction of houses, can be realised – which otherwise would have been very difficult or impossible due to (environmental) limitations. Development areas are located in existing urban areas or existing industrial areas. So far, more than twenty areas have been appointed.

‘Create scope’ means that environmental limitations are redistributed or decreased. For instance a noise nuisance zone in an area – where the project has to be realised – is made smaller, so that there is ‘room’ for the project. In order to create scope, for instance far-reaching demands can be made on companies. In the example of a noise nuisance zone, the company causing noise can be required to build a wall that would diminish the noise zone. Also, temporary deviation of environmental norms is possible (maximum 10 years). However, the deviation of environmental norms cannot be in conflict with European legislation. An example may clarify this.

The city of Rotterdam wants to build many houses in the existing city harbour area. There is a fair amount of vacant space in the city harbours, because many companies moved to the new Second Maasvlakte (a huge project of land reclamation). However, not all companies have yet moved to the Second Maasvlakte. So, there still is noise nuisance from these companies. The city of Rotterdam does not want to wait building the new houses until all companies have moved and there is no longer noise nuisance. Under the status as ‘development area’, the city is allowed to build the new houses now, although there will be too much noise according the Noise Abatement Act. A condition is that the municipality can prove that within ten years, the noise norm will be observed.

(f) Project implementation decision

For construction projects holding more than 12 houses a special legal instrument is available. This instrument is called the project implementation decision (*projectuitvoeringsbesluit*). Actually, this special instrument is not only available for housing projects. It also applies to 'projects of societal relevance', such as building projects for care institutions and hospitals. The project implementation decision is regulated in art. 2.9 et sequens of the Crisis and recovery Act. So far, it has been used in less than twenty cases.

The essence of a project implementation decision is that just one governmental decision satisfies to allow the whole project. This decision, the project implementation decision, is taken by the municipal council. The project implementation decision replaces all permits, exemptions, authorisations etcetera that otherwise would have been necessary for the project.²⁰ Thus, once the project implementation decision has been taken, the project can be executed without the need to follow the usual permit procedures, such as the environmental permit. Should the project implementation decision be in conflict with the land-use plan in force, the project implementation decision will count as a deviation from the land-use plan.

Notwithstanding the fact that only one decision is needed for the project, all the assessment frameworks (*toetsingskaders*), that usually apply to the project, will have to be used by the municipal council in taking the project implementation decision. This means, for instance, that the design of the project still has to be tested against the stipulations of the Building Decree, being one of the assessment frameworks.

The project implementation decision is an optional instrument. It is not imperatively to be used for projects above 12 houses. Municipalities can choose to apply the normal procedures to such projects. This means that not one, but several individual governmental decisions need to be taken to allow the project.

There is one possibility for interested parties to appeal: they can lodge an appeal against a project implementation decision with the Administrative Jurisdiction Division of the Council of State.

It is now possible to answer the conference's second question. Question b) reads:

Are there any recent efforts (2008 onwards) in your country for the simplification and speeding-up of plan-making (including the revision of existing plans) and in what direction? How does planning legislation in your country deal with projects that are not in conformity with existing land-use plans? Are there any provisions for, large-scale or minor-scale, deviations from existing land-use plans and under which conditions? Are there any provisions in your planning legislation for 'projects plans', that is, plans tailored to specific, public or private, land-development projects? After all, do you consider planning law in your country as flexible and responsive or not and why?

Summarising answer to question b):

After 2008 legislation has been adopted by parliament in order to simplify and speed-up decision making. Two acts stand out: the 'Act amending law of administrative procedure' and the Crisis and recovery act.

²⁰ This is not completely true. In some instances, one or more separate permits may still be necessary, next to the project implementation decision.

Projects that are not in conformity with existing land-use plans usually are made possible by granting an environmental permit to deviate from the land-use plan. This is a normal and often used procedure that is laid down in the Environmental Licensing (General Provisions) Act (*Wet algemene bepalingen omgevingsrecht*).

However, national infrastructure projects (motorways, railways and waterways) that have followed procedures under the Infrastructure Planning Act (*Tracéwet*) overrule local land-use plans by law. Furthermore, the Crisis and recovery act holds a 'project implementation decision', which is a one-decision project plan tailored to a specific project (housing or 'projects of societal relevance').

In the 1970s it took 33 months from the initiative to the start of construction of a housing project. Around 2008, it was increased to more than 70 months. Of course, this cannot fully be attributed to (new) procedures, but for a major part it can.²¹ In my opinion, if a housing project takes over 70 months, the planning law in a country is not flexible and responsive. Attempts to simplify and speed-up, while maintaining high quality of decision-making, therefore must be welcomed.

3 RELATIONSHIPS BETWEEN DIFFERENT PLANNING LEVELS

Municipalities actually have the most important powers in Dutch spatial planning. Not surprisingly, therefore, the Dutch Spatial Planning Act is characterised by a large measure of decentralisation, which is particularly evident in the link between the environmental permit and the land-use plan. The Municipal Executive decides on environmental permit applications (art. 2.4, para. 1, Environmental Licensing [General Provisions] Act). An environmental permit is not granted if the building plan is in conflict with the land-use plan (art. 2.10, para. 1, under a, Environmental Licensing [General Provisions] Act), which is adopted by the Municipal Council (art. 3.1, SPA). The land-use plan designates to which end the land can be used. It also includes regulations concerning the use of the land and any structures located on it (art. 3.1, SPA).

The conference's question c) relates to the relationships between the different planning levels and reads:

Are there any institutional changes in the relationships between different planning levels/authorities in your country during last years? Are these changes indicative of a more decentralized or more centralized system of planning-making? According to your planning legislation, do more levels of government make legally binding plans and, if so, are there any mechanisms to ensure co-ordination between them? How can national government influence the content of regional or local land-use plans? Which authority is responsible in your country to deliver planning permission for public and private projects of national, cross-regional or supra-local significance?

Summarising answer to question c):

The economic crisis of the late 2000s did not really affect the decentralised character of Dutch planning law. Actually, recently national government rather withdrew from spatial planning – apart from a number of topics that have been found to be of national interest.²² So we cannot say that the crisis caused a more hierarchic or more centralised spatial planning system. The new instruments created by the Crisis and recovery act (see section 2.2.2) are instruments to be used by municipalities – not by national government. However, it must be admitted that some of the elements of the Crisis

²¹ H. van Harssel, *Procesduur van het ontwikkelingstraject en woningproductie*. *Opinar*, mei 2008.

²² *Structuurvisie Infrastructuur en Ruimte*, Ministerie van Infrastructuur en Milieu, Den Haag, maart 2012.

and recovery act do have a centralising effect, notably the rule that municipalities do not have legal standing in case of national decisions (see section 2.2.1).

In the Netherlands, only municipalities make legally binding plans – that is, legally binding for applicants of permits to build. However, national government or provinces can take over the power to make a local land-use plan from the municipal council. Thus, it is possible that a province adopts a land-use plan ‘where provincial interests are involved’ (art. 3.26 Spatial Planning Act). The minister responsible for spatial planning may also adopt a land-use plan ‘where national interests are involved’ (art. 3.28 Spatial Planning Act). Such a land-use plan is called an ‘imposed land-use plan’ (*inpassingsplan*). If a province or minister decides to exercise their powers to adopt an imposed land-use plan, the municipal power to adopt a land-use plan is taken away for that area.

One of the other instruments that can be used on the provincial tier is the adoption of *general rules* (*algemene regels*). Such general rules are laid down in the legal form of a provincial bye-law (*provinciale verordening*). The general rules are primarily directed towards the municipal governments. The general rules are an instrument to influence the content of local land-use plans. Article 4.1 Spatial Planning Act stipulates: ‘If necessitated by provincial interests in order to achieve proper spatial planning, rules regarding the content of local land-use plans (...) and of management regulations may be issued by or by virtue of provincial bye-law’. An example, relating to the protection against high tide, may clarify this.

A provincial bye-law could hold the stipulation that land-use plans must make the construction of new houses within a certain distance to the winter bed of the river impossible. The municipal councils, subsequently, are obliged to adapt their land-use plans to this stipulation within one year (art. 4.1, para. 2, Spatial Planning Act).

Just like provinces, national government has the power to set general rules. The municipalities have to adapt their land-use plans to the general rules. General rules from national government are not laid down in a bye-law (like provinces do), but in an order in council (*algemene maatregel van bestuur*) (art. 4.3 Spatial Planning Act).