Legislation and regulation in spatial planning for multifunctional flood defense design

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Can the recent rise of Dutch multifunctional flood defenses be explained by the increased integration between the water and spatial planning sectors, which compels Water Boards to collaborate with municipalities? An enquiry into the changing relations between water managers and municipalities as a result of changes in spatial and water-management regulations starting in the 1980s, and particularly since 2000s, indicates this hypothesis to be wrong.

In the Netherlands, the responsibility for spatial planning is officially assigned to the three levels of government (Kingdom, provinces and municipalities). The responsibility for water management, on the other hand, is assigned to the single-purpose authority of an independent water manager. This can be the regional Water Authority or the national agency Rijkswaterstaat. The Water Authorities formally do not possess spatial planning competences. In 2003, the national policy agreement on water management in the 21st century (Nationale Bestuursakkoord Water 21e eeuw) led to changes in regulations. The policy agreement aimed to safeguard space for waterstorage, a goal of the Water Authorities that required the assistance of spatial planning competences that exclusively belong to the municipality.

In theory, increased interdependency between water and spatial planning sectors could have forced Water Authorities to negotiate with municipalities. Municipalities, in exchange for accommodating the Water Authorities’ needs, would expect them various interests to be accommodated. This “spatial track” followed by water interests in pursuit of their goals may explain the construction of recent multifunctional flood defenses like the Schwarenpingen Boulevard, Vlaejik’s parking garage at Rotterdam’s Roof Park. The water sector would not have been unique in this approach. Other sectors, such as heritage conservation, also addressed their goals using an integrated spatial planning approach in this period (Janssen et al., 2014).

Legislation and regulation regarding water management and spatial planning. However, the historical record presents a different story of the changing relations between water managers and municipalities. In the nineteenth century, a series of acts laid out the foundations for the relations between the Water Authorities with the other governmental entities of the Kingdom, the provinces and the municipalities (Oorsprong, 2004). In 1850, the Provinciewet (Provincial Act) formally established that the Province should supervise flood defenses managed by regional Water Authorities. ‘Waterstaats -werken’ (national water works), water, flood defenses and road infrastructure of national concern were managed by the Kingdom, and thus exempted from Provincial supervision. The Kingdom was given many powers in the 1881 Wet Beheer Waterstaatswerken (Management of National Water Works Act).

The Kingdom’s executive agency regarding these matters, Rijkswaterstaat, could make decisions independent of the Province. Moreover, the Act explicitly prohibited use of the flood defense other than for flood safety, unless the responsible Minister granted permission. At the time, the municipality had no official role in water management, though local governments were authorized to regulate land use in the 1860s. Where local and regional Water Authorities had to deal with supervision by the Province in general, Rijkswaterstaat only had to gather approval for the creation of new land, a provision arranged in the 1900 Waterwet (National Water Works Act).
Relations between the different government entities and their responsibilities remained unchanged in the first sixty years of the 20th century. The 1912 Zuiderzeewet (Southern Sea Act) and the 1938 Delta Act (Delta Act) were both executed laws, enabling the construction of the Dutch grand feats of engineering: the Zuiderzee Works and the Delta Works. Both acts were rescinded in 2005, well after the works were completed. The 1968 Wet op de Ruimtepeil Ordering (Spatial Planning Act) represented a change, though, at the time it did not affect water management. The act permitted the government to intervene in societal developments that had a spatial dimension, balancing and coordinating spatial claims in designated land uses (Driesing, 2004). These land uses were to be recorded in mandatory land use plans issued solely by the municipality (Hidema & Schutte-Potsma, 2012). The act focused primarily on the procedures to be followed in spatial planning, and established a hierarchy of plans. Within the plan hierarchy only the local land use plan was binding for citizens. The local land use plan had to be adapted to the spatial or single-issue policy documents of higher-tier authorities.

Up until the late 1980s, spatial planning and water management developed separately; they were yet to integrate. In the 1990s, a revolution in flood safety and water management regulation took place. The combination and management of flood defense was addressed in a series of Acts (like the 1992 Waterschapswet (Water Authority Act), 1995 Deltawet (Delta Act), 1996 Wet op de Waterkering (Flood Defense Act), complemented by Zweed- Nida Waterhuishouding, 1988 and Weste- Nida Waterhuishouding, 1998 (the third and fourth Memoranda on Water Management) (Driesing, 2004). The Flood Defense Act introduced a number of concepts that remain central to contemporary Dutch water management: the difference between primary and regional flood defenses, the introduction of nationalChunks with designated safety standards, the Basic Coastal zone, national Dutch boundary conditions, and mandatory reporting by both Rijkswaterstaat and the Water Authorities.

Taken together, these acts had a significant impact on the relations between municipal- ity and water manager, while the organization and obligations of the Water Authorities were increasingly regulated (limiting their independence since the 1993 Act). Water managers could evade mandatory procedures regarding consultation and objections, directly issuing permits when flood defenses had to be strengthened, using the regulations from 1992 and 1995. The 1995 act regarded the large rivers, and the 1996 act addressing flood defense, both responded to the near- flood events in the early 1990s. High water on the Maas River demanded the evacuation of many citizens, and prompted awareness that flood defenses had to be strengthened to prepare for an emergency. The 1995 and 1996 acts formalized this quick route, which permitted lengthy spatial planning procedures to be skipped. The 1992 Water Authority Act stated that the Water Authority could issue requirements and prohibitions, using a policy known as the ‘meér’. In practice, the meér provided a legal tool with which Water Authori- ties could regulate land use in three spatial zones on and surrounding flood defenses. This tool was to guarantee that any new structures in these three zones would not jeopardize the integrity of the flood defense, nor the possibilities to broaden the structure in the future, should the need arise (Stowa, 2001, 2016).

Thus, the 1992 act gave Water Authorities a tool that Rijkswaterstaat had possessed since 1983, whereas they had previously only had to rely (at least in theory) on the municipal land use plan. Anyone wanting to build anything on or near the flood defense had to request at least two permits: one from the Water Authority, and one from the municipality. So, in sharp contrast to the assumptions, by the end of the twentieth century regulations strengthened the water manager’s authority over land use on and near the flood defense.

In the first decades of the twenty-first cen- tury, water interests have been even more intensively integrated into spatial plans. This has, in turn, increased the ability of water managers to influence spatial plans to ac- commodate their goals. First, in 2001, the Rijkswaterstaat (Administrative Memorandum ‘Water Assessment’) made consulting water managers when drafting land use plans mandatory. Second, there has been a clear move towards simplifying and integrating regulation into a few comprehen- sive acts. In 2005, the Waterstesten (Water Act) replaced the Water Authority Act, the Flood Defense Act and the Delta Act on the large- riers. The Water Act also formalized the 2002 requirement to consult water managers during the design of spatial plans, and intro- duced a variety of bureaucratic documents enabling collaboration between different governmental agencies. For the spatial plan- ning sector, the 2008 Wet op de ruimtepeil Ordering (Spatial Planning Act) and the 2011 Bekluit algemene regels ruimtepeil ordering (Decree general regulations for spatial plan- ning, also known as ‘Bekluit’) aimed to simplify procedures, by combining different permit systems. The permit systems of the water manager and the municipality were merged into the single omgevingsvergunning (en- vironmental permit). Bekluit also requires the protection zones of primary flood defenses to be translated into land use plans.

Concluding remarks
The exploration of the changed dependency between water managers on the one hand and the municipality on the other does not confirm the hypothesis of an increasingly de- pendent water board that has to compromise in order to use municipal planning compen- sates. Rather, water managers have used provisions in the new acts to become increas- ingly independent from municipalities. While these provisions require that water managers be consulted in spatial procedures, they also offer the opportunity to bypass the municipalities’ powers when flood safety may be compromised. Spatial tools within the land use plan add another layer of spatial protection to the integrity of flood defenses. An example is the mandatory translation of protection zones into zoning overlap (dubbe- lbestemming). Originally these were only protected by the assessment process of the permit system.

What factors have been decisive for the rise of multifunctional flood defenses in the first fifteen of the new millennium remains out of scope. It could be that lack of space in Dutch waterfronts has encouraged the combination of functions at sites that used to accommodate only one function, flood safety. It is also possible that multifunctional uses of flood defenses have been made explicit - as is the case with the Scheveningen Boulevard. However, a broader phenomenon could also be at work: the weakening of Modernism as the defining way of looking at the world around us (Canssen et al., 2014). Modernist planning and architecture have been associated with functionality, uniformity and separation of functions. This was not only the case with spatial designs, but the way government was organized, with different ministries pursuing separate goals (Meyer et al., 2014). Although modernist thinking was challenged by the late 1970s democrati- zation movement (Canssen et al., 2014), the shift in paradigm seems to have become more pronounced in the new millennium (Meyer et al., 2014). This is partly due to a growing awareness of quality and the environment we live in (Canssen et al., 2014), but also a move- ment towards plurality. In an interview about the planning process of flood defenses, a water manager at the Dielands Water Author- ity stated: “We do not accommodate multiple interests because it’s mandatory, but because it is the right thing to do.” Maybe, instead of looking at regulatory issues and the integra- tion of water interests into spatial regulat- ion, we should consider the recent rise of multifunctional flood defenses in the context of this larger phenomenon of increasing inter- action and plurality.