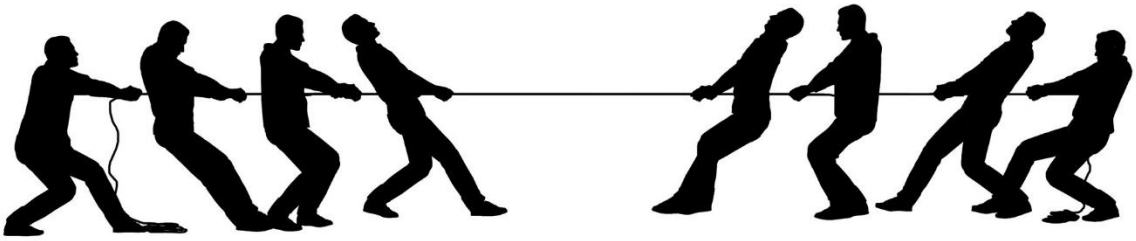
NEIGHBOURS IN THE OMGEVINGSWET

Securing third party's interests in the Omgevingswet of 2021



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Voor Jonate,

Sinds wat er met jou gebeurde,
weet ik hoe pijnlijk onverwachte, ongewenste veranderingen kunnen zijn
en hoe belangrijk het is om daarbij goed begeleid te worden.

ABSTRACT

In this thesis we answer the question what effect the introduction of the Omgevingswet *(the Environmental and Planning Act; planned to be in force in 2021) has had and will have on the levels of protection of third party's interests and methods through which these interests may be secured. We identify four possible aspects of social impacts of this policy change*: *procedures, public consultation, participation and systems of legal certainty. Through an assessment of current and future policy, adverse effects of the policy changes are identified. For example, while participation in early stages of plan making are incorporated in Dutch national planning policy for the first time, the conditions for correct participation have not been developed properly and will likely lead to uncertainty with third parties as well as initiators. Based on literature and ideas of interviewees, we then propose a number of possible mitigations to the policy change, in order to decrease the number and gravity of these effects.*

KEY WORDS

Omgevingswet (Environmental and Planning Act); spatial planning; social impacts; third parties; policy change; participation

PREFACE

Often, when planners try to create balance in spatial planning, they call for 'harmony' in the planning process. To me, also a singer, this actually makes lots of sense. Harmonies are the products of the tuned input of many actors.

Creating basic harmonies is fairly easy and nearly anyone can do that. However, when the harmonies are dependent on more actors, like in a choir, or when the harmonies themselves are more difficult, you often need an external person who sees what the harmonising group is trying to achieve and helps them to get there. So, a good planner is like a director. Harmonies also require that every actor attunes to the other actors, or the harmony will sound flat. There must always be interaction between the different actors to create the purest harmony.

The Environmental and Planning Act changes the way how harmonies are created within the domain of spatial planning. Before, it was the government who undoubtedly was the actor to which all other actors need to attune. Now, with the new Act, more often it is the private parties who give the key-note. This means that spatial planners need to reassess their role as the director of spatial planning processes.

Planners still are responsible for deciding which harmonies prevail; they can either choose a chord with an accent for the private parties or a harmony that sounds good for interested third parties. But no matter how you look at it, planners must choose. In this thesis, it is argued that planners should not forget the interests of third parties. It is their harmony that rings with most people.

Daan Haanstra
Groningen, May 2019

WORD OF THANKS

It has taken a long time before I finally could finish this thesis. What normally would only take several months, took me a few turbulent years. During this period there have been many who have supported me throughout this process.

For example, I think of my supervisor Frank Vanclay, who supplied me with new insights. I think of the interviewees who reserved their time and energy to provide me with information. Also, I think of my friends who gave my advice on writing my thesis. Furthermore, I think of my parents who have shown the patience of angels with my progress. And finally, above all, I think of my girlfriend, who has inspired me so many times – both consciously and unconsciously – to finalise this thesis.

I want to thank you and any other who have helped me, for your support and encouragement throughout the years.

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LIST OF ABBREVIATIONS

AMvB	Algemene Maatregel van Bestuur, executive order or governmental regulation
Awb	Algemene wet bestuursrecht, General act administrative law
Bal	Besluit activiteiten leefomgeving, Decision on activities in the living environment – one of the four AMvBs of the EPA
Bbl	Besluit bouwwerken leefomgeving, Decision on buildings in the living environment – one of the four AMvBs of the EPA
Bkl	Besluit kwaliteit leefomgeving, Decision on the quality of the living environment – one of the four AMvBs of the EPA
Chw	Crisis- en herstelwet, Crisis and Recovery Act
DSO	Digitaal Stelsel Omgevingsrecht, Digital System Environmental Law
EIA	Environmental Impact Assessment (milieu-effectrapportage)
EPA	Environmental and Planning Act (Omgevingswet)
FPIC	Free, Prior and Informed Consent
m.e.r.	milieueffectrapportage, the researching of environmental impact
NIMBY	Not In My Back Yard
SIA	Social Impact Assessment
VNG	Vereniging Nederlandse Gemeenten, Society for Dutch Municipalities
Wabo	Wet algemene bepalingen
Wro	Wet ruimtelijke ordening (2006), Spatial Planning Act
WRO	Wet Ruimtelijke Ordening (1965), Spatial Planning Act

ENGLISH TRANSLATIONS OF DUTCH TERMS

Because of the recognisability of certain Dutch terms, the original Dutch terms or abbreviations are used in the text, shown in italics. Any Dutch words – no abbreviations – used in this thesis are listed below and provided with an English translation.

beschikking	specific decision; official decision to an individual case
besluit	decision; official decision by a public authority
inspraak	public consultation
Nota Ruimte	Memorandum on Space; policy document on national planning strategies
Omgevingsbesluit	Environmental Decision; one of the four AMvBs of the EPA, concerning procedures
Omgevingswet	Environmental and Planning Act

SECTION 1: INTRODUCTION

1.1 BACKGROUND

The traditionally restrictive Dutch planning system faces a great change. Where the system has traditionally been a top-down, government-centred system, based on a modern rationale (Gerrits et al., 2012), with the introduction of the new *Omgevingswet*, in English the *Environmental and Planning Act* (EPA[1]) in 2021, it will change towards a system of facilitative governance. The government will no longer lead by prescribing what other actors should do, but by inviting actors to do what they can.

The introduction of the new EPA is part of a broader trend in Dutch governance, following the global development of governance at the local level. The national government has decreased its role in spatial planning, and has given municipalities the role of leaders of local spatial strategies, because of the principle of subsidiarity and municipalities' local expertise. This is concisely stated in a recurring mantra, stemming from the Policy Document on Spatial Planning of 2004 (Boelens, 2009, p. 146): '*Centralise what you must, decentralise what you can*'.

The new Act's goals are to simplify the legal system through combining the current *Wet ruimtelijke ordening* (Wro, Spatial planning act), *Wet algemene bepalingen omgevingsrecht* (Wabo, *General provisions for environmental law act*) and other acts concerning the environment, and through simplifying procedures for authorities and applicants, by combining the current several permits into one, all-encompassing environmental permit.

A secondary goal of the new EPA is to decrease the workload of authorities and applicants and to provide opportunities for entrepreneurship in the spatial arena the current Wro and Wabo do not. Provisions will become less restrictive and procedures are shortened. Applying for environmental permits will be easier and less time-consuming, both in amount of work and length of procedure.

The main focus of the EPA lies on initiators (companies, developers and other applicants) and the government. The focus of laws and procedures will shift away from the interests of third parties. How can they, especially the smaller actors, protect their environmental and spatial rights when the EPA is in force?

In more general terms, the introduction of the EPA signals a shift in the balance all planning practices try to regulate: choosing between protecting and developing an area, as Meijdam et al. (2015) put it. Also, the EPA's introduction puts forward the normative question who should be leading in spatial development: the government or market forces?

With the EPA, the importance of the local government as leader of spatial strategy will decrease, while the role of the initiator will grow. Applying for a permit will become easier, better and also cheaper. However, in announcements, promotions and other official communications on the Environmental and Planning Act, is very little information on the concerns and interests of local, impacted citizens will be taken into account in the EPA. This raises a question that is central to this research: what about the citizens?

1.2 PROBLEM STATEMENT AND RESEARCH QUESTIONS

The objective of this research is to investigate how social interests of third party actors will be protected within the context of the new EPA. Will the interests of (small) third party actors be protected well enough against the interests of developing parties and local government within the new context of the EPA?

[1] In this paper, *Environmental and Planning Act* is used as translation for the Dutch term *Omgevingswet*. This translation is derived from its use in the (unofficial) English translation of the Act (I&M, 2017a) and on the English website of the national government of the Netherlands (Government, 2017). In this paper, the *Environmental and Planning Act* will be abbreviated as *EPA*; this is not an official abbreviation.

The main research question will be:
How will the spatial interests of third party actors be protected in the new Environmental and Planning Act?

The sub-questions will be the following:

a) How is the protection of third party interests currently organised?
b) What changes will occur with the introduction of the new EPA?
c) What are the consequences of these changes, both positive and negative?
d) How can the adverse effects be mitigated?

1.2.1 Operationalisation

As a way of ordering the results, a number of categories has been chosen to signal changes in environmental law. These are: a) procedures, b) public consultation, c) participatory processes, and d) legal certainty.

1.3 Relevance of the research

Since the announcement of the Environmental and Planning Act in 2011 and the publication of the first draft versions of the act 2013, there has been much debate on the goals, the procedures and possible side effects of the new act. Many applaud the act's main goal to simplify and harmonise environmental law in the Netherlands. However, while the introduction of the new act ought to be 'policy neutral' (Schultz van Haegen, 2014) – meaning without a substantive change of policy – the new Environmental and Planning Act does provide a new procedural approach that is prone to criticism, including concerning the safeguarding of interests of third party actors.

As of the moment of writing – May 2019 – all the components of the act have passed through the House of Representatives (Tweede Kamer) as well as the Senate (Eerste Kamer)). Between this moment and the planned entry into force of the act in January 2021, it is up to municipalities to establish functioning procedures for environmental planning in the new system. The municipalities have a great responsibility to create procedures that value and protect the various interests they, as a governing public body, need to represent.

1.4 Outline of the thesis

This thesis is divided into several sections. Section 2 gives an overview of the theoretical framework that supports the approach into this subject. Section 3 covers the research questions, as well as the methodology used in this research. Section 4 covers the results and it subdivided into the results for the four research sub-questions. Section 5 covers the conclusions from this research. In section 6 there is room for remarks on the research and recommendations for further research.

SECTION 2: THEORETICAL FRAMEWORK

In this section, a number of relevant terms and ideas is explained in order to create a comprehensive theoretical framework that helps frame the research question and methodology.

De Roo and Voogd (2007, p. 13) describe spatial planning as 'the systematic preparation of policy making and implementing actions, that are aimed at conscious intervention in the spatial order (…) in order to maintain and improve spatial qualities'. Later on, the authors question whose interests are served by maintaining and improving qualities. This emphasis shows that planners should be open to reconsider whether they have included all relevant actors and interests, and should question why these interests in the first place. Nevertheless, in essence, spatial planning is managing the spatial impacts of different actors and their interests.

De Roo and Voogd's question on whose interests are served by planning, indicates there are several different actors, with different interests. In this research we distinguish several types of actors when referring to spatial developments. The initiators and their contractors are considered first parties. Various levels of government and other public bodies, the organisations that issue building permits, are seen as second parties to spatial developments. Third parties are those natural or legal persons that want to be involved or are already involved in relevant decision making.

2.1 THIRD PARTIES

Even in the smallest project of spatial change, a number of actors will be involved: the person that has the idea for a new development, the organisation that develops the idea into a design or plan, the (local) government that controls this plan and approves it, the builder that builds the plan, the user that will use the plan. An often forgotten actor, however, is the neighbour, that may experience adverse effects from the new development, during its building period or, when finished, when it is in use.

In the Netherlands, many neighbouring actors in principle can participate in the planning process when a proposal for development is to be judged by the permit issuing (often local) government. They are considered to have an interest in some way or another, they are called 'interest-haver' (*belanghebbende*). The definition is broader than just 'neighbours': other persons or organisations that have (ideological) interests in a planning process are also called *belanghebbende* and are eligible for participation in planning processes.

In this thesis, I will consider initiators as well as their service providing organisations such as developers and builders) as 1st party actors. The proposal controlling and permit issuing (local) government are 2nd party actors. The aforementioned 'interest-havers' are 3rd party actors.

2.2 THIRD PARTY'S INTERESTS

By the nature of the reasons why third parties become involved in spatial planning, they are protecting or enforcing their interests. These interests generally are not gains, but can rather be seen as preventing adverse impacts of (spatial) developments. Often, the environmental impacts are easily shown in numbers and plotted as graphs in environmental impact assessments (EIAs). However, often the impacts that are not graphed easily, are the impacts third parties experience. It shows a discrepancy between the interests that are traditionally incorporated in such models and the impacts third parties actually fear will happen.

Vanclay (2003) argues that all types of impacts – be it environmental, cultural, or heritage impacts – will ultimately always result in social impacts. Vanclay also conceptualises (p.8) possible social impacts as changes to a) people's way of life, b) people's culture, c) people's community, d) people's political systems, e) people's environment, f) people's health and wellbeing, g) people's personal and property rights, and h) people's fears and aspirations.

2.2.1 Not In My Back Yard (NIMBY)

Often, citizens' dismissive behaviour towards spatial development in a certain location is referred to as NIMBY opposition: Not In My Back Yard. In most definitions of NIMBY-ism it specifically refers to the development of public goods. Several authors (e.g. Wolsink, 2000; Gibson, 2005; Feldman and Turner, 2010; Haggett, 2010) have pointed out that there are two sides of NIMBY-ism. Most times, NIMBY is used as derogatory term for selfish opposition by citizens who do not want their environment changed. Using the term NIMBY devaluates their claim and position in public debates. On the other hand, NIMBY-ism may be seen as an example of civic interest towards protecting the current environment. In the context of his research on resistance against wind farms, Wolsink (2000) concludes that the best remedy against NIMBY and NIMBY-like resistance is building up institutional capital and planning in a collaborative manner.

2.3 Methods for impact assessment and mitigation

According to Allmendinger (2009, p. 197) collaborative planning is a way planners can 'make sense of what is happening and plan for the future within a dynamic and increasingly complex society'. Allmendinger and other authors (e.g. Berman, 2017) are deeply aware of power relations in planning, and advice that planners use appropriate communication techniques in order to incorporate all the different interested parties into the planning process, including that of third parties. Berman (2017), for example, points towards participation processes.

Social Impact Assessment

This research is heavily influenced by the terms and ideas of Social Impact Assessment (SIA), an *ex ante* policy evaluation method through which social issues of spatial and environmental developments may be recognised, assessed and prevented or mitigated (Esteves et al., 2012). According to Burdge et al. (2003) a social impact is *'the consequence to human populations of (…) actions that alter the ways in which people live (…)'* (p. 231).

Social Impact Assessment was originally developed alongside the Environmental Impact Assessment, in order to assess the impacts of environmental planning and, as such, was implemented in the United States in the 1970s (Esteves et al., 2012). Since then it is has been implemented or used in other countries with an 'Anglo-Saxon' planning culture, such as Australia, South Africa and Brazil, mostly used in the contexts of infrastructure and mining projects and the like.

Most authors in the field would agree that SIA is not only an instrument, but also '*covers a wide variety of tasks associated with the interaction between a company/project and its local communities* (Vanclay et al., 2015, p. 4). Other authors would ideally see that SIA is able to point out possibilities for positive social impacts, enhancing the local community (João et al., 2011). One of the key instruments in SIA is the participation of the impacted community in the decision-making process.

Citizen participation

An important aspect of planning processes considered in this thesis is participation, the inclusion of third party actors in the planning process. Starting in the 1970s, planning processes have changed to include more participatory approaches, in what Allmendinger (2009) calls 'communicative rationality'.

Participation has many characteristics of a buzz word and is a container term; it encompasses many different approaches. In the context of policy making in the Netherlands, it may refer to citizen's initiatives, social participation in (local) networks, people's participation in the workforce, or in voluntary work, but also – most relevant to this research – as citizen's participation in spatial plan making (e.g. Denters and Klok, 2010).

In this research we use an important distinction between *participation* and public consultation (*inspraak*). Not only is this in line with a distinction in the Environmental and Planning Act, this distinction is also made by several authors (e.g. Arnstein, 1969; Maier, 2001). Participation in the context of this research can have

an impact on decision making (in Arnstein's terms: partnership) and public consultation often takes the form of informational meetings (in Arnstein's terms: informing).

Many authors point towards the positive effects of participatory processes in planning, such as the incorporation of local knowledge into planning, the possibilities for creating locally rooted support for community development or the empowerment of certain groups in society (Webler et al., 1995; Stolp et al., 2002; Mansuri and Rao, 2013). Successful participation requires careful attention by all actors involved. Some authors emphasise that process leaders need to be well prepared in order to effectively and productively manage participatory processes (Denters and Klok, 2010; Miedema et al., 2016), others draw attention to power differences between those in charge and those participating, as well as information deficits and unrealistic expectations with participants (Ianniello et al., 2018). Others give warnings about the 'selection' of participants (Nienhuis et al., 2011).

Citizen participation in the Netherlands
There has been ample research in citizen participation in the Netherlands. Nienhuis et al. (2011) report that a person's lifestyle and preferences (e.g. community-mindedness) has a great influence on his choice to participate. Others (e.g. Hurenkamp and Tonkens, 2011) emphasise the classic idea that participants of collaborative processes are mostly the higher educated. In some cases (for example the Ganzedijk case in this research; Van Rossum et al., 2011) citizens were outraged by disorderly communication by (semi-) public bodies, they demanded citizen control, which was consequently supported by the provincial government.

2.4 A HISTORICAL PERSPECTIVE ON PLANNING SYSTEMS IN THE NETHERLANDS

According to Faludi (2018) we can assess changes in planning doctrines in terms of historical institutionalism: under the pressure of both great shocks or accumulated small, slow and gradual changes a certain movement surpasses a threshold and leads to changes in the way public administration is organised (Kickert and Van der Meer, 2011). Voermans and Waling (2018), too, note that the current state of Dutch democratic practices is best viewed through looking at historical developments. Through recalling what challenges Dutch planning faced, we can see why certain choices in environmental law and planning practice have been made and why the Environmental and Planning Act stands in a long tradition of Dutch planning and the general broader context.

2.4.1 OVERVIEW OF RECENT AND CURRENT DUTCH PLANNING

For a long time, Dutch spatial planning has been known for its characteristic thoroughness and extensive scope, based on a modern rationale and capable of '*moulding society*'. In the past, the Netherlands was considered to be a '*planner's paradise*' (Faludi and Van der Valk, 1994) where the possibilities, instruments and policies supported a successful technocratic approach, with planners in the driver's seat. This planning system has effectively reduced the post war housing shortage and, through comprehensive regulations, it has created legal security for residents and private parties, in spite of its delaying and complex procedures (Van der Valk, 2002).

Since then, however, the planning doctrine has been changing slowly but steadily (Van der Valk, 2002; Gerrits et al., 2012). In the last twenty years, the modern rationale has made way for a post-modern worldview. For example, the extensive set of regulations 'felt to be unnecessarily restrictive to spatial initiatives' of locals and private parties (Gerrits et al., 2012, p. 337). In planners' postmodern views planning ought to focus on creating possibilities, rather than enforcing restrictions.

This shift from modern, top-down planning towards a more bottom-up, post-modern rationale has already had its effects on the Dutch planning system, but is still ongoing. This change has most to do with changes in society (Gerrits et al., 2012). Because of democratisation and societal protest, among other causes, Dutch planning might not be as efficient as it has been before. Boelens (2009) states a number of reasons: people are becoming more individualistic, with personal interests; also, because of the rise of the network society, communities are not necessarily connected to a certain location. Extensive, general, top-down planning is

not applicable anymore. These developments resulted in several new approaches within the planning discourse such as integrated area-based approaches (e.g. De Roo, 2003; De Zeeuw, 2007; Arts, 2007). Gerrits et al. (2012) also mention a new focus on tailor-made, communicative and process-oriented planning. Since the Policy Document on Spatial Planning of 2006, the national motto for Dutch spatial planning has become *´Centralise what you must, decentralise what you can'* (Boelens, 2009, p. 146). In short, the local and the individual levels of space have become more relevant to Dutch spatial planning. The introduction of the EPA consolidates this trend towards tailor-made spatial solutions on the lowest administrative level.

Gerrits et al. (2012) argue that Dutch planning discourse started to shift from the 1990s onwards, due to several societal trends. Firstly, spatial developments became more and more international, in a globalising world. This meant that the focus on networks and international collaboration grew and many of the decisions concerning the creation of international networks were made at the European level. Secondly, as the post-war modern planning effectively reduced the housing shortage and creating the framework for future development, other spatial issues and developments manifested themselves at the regional level, making the national level mostly obsolete, along with the planning instruments, intended for national spatial planning. And thirdly, the planning process was becoming more and more democratised. As societal demands changed and citizens became more interested in the spatial environment, they asked to be included in the planning processes. So, where regulations and zoning plans had been implemented to create generic conditions throughout the country, at the end of the century, 'these conditions were felt to be unnecessarily restrictive to spatial initiatives' (Gerrits et al., 2012, p. 336).

Zonneveld (2005) argues that – at the time – there was a surprising discrepancy between the European planning agenda and its programmes, procedures and instruments that the Dutch helped promote and install throughout the EU, on the one hand, and the Dutch national planning systems on the other hand. Although Zonneveld mainly points towards the EU's arguments for transnational spatial strategies, contrasted by the Dutch inward-looking perspective of the (last) Policy Document on Spatial Planning of 2004, the same could be said of the inclusion of participative procedures.

Against this background, Gerrits et al. (2012) argue, Dutch spatial planning has shifted fundamentally. Locally, interest grew to experiment with more open planning processes, such as area-oriented approaches and tailor-made project management. Even with infrastructure projects of a greater scale, traditionally just a technical solution of bringing transport from point A to point B, planners increasingly felt the need to include the environmental and social context into the planning (Struiksma and Tillema, 2009). Also, where environmental impact assessments (*milieueffectrapportage*) has been a part of planning and permits since the 1980s, social impact assessments often were not included (Stolp et al., 2002), leading actors on different levels to create instruments to incorporate those effects in plan making. Examples of these instruments are Citizen Value Assessment (Stolp et al., 2002), finding local support through stakeholder involvement in Strategic Environmental Assessments (Van Buuren and Nooteboom, 2010) and promoting and using active citizenship (Van de Wijdeven et al., 2013).

The last major change in spatial planning in the Netherlands – before the announcement of the EPA – was the introduction of the *Crisis- en herstelwet* (Chw, 'Crisis and Recovery Act') of 2010. While the Elverding Committee proposed streamlining processes ordered by national or regional government, the same would now be applied to types of private initiatives as well. The act's idea was to increase possibilities for economic growth in times of financial crisis and in the period of recovery from this crisis by shortening plan-making procedures and appeal possibilities and accept temporary diversions of environmental norms. This way, projects of national importance for the economy, mainly great infrastructure projects, could be realised in a short time.

So, to conclude, Gerrits et al. (2012) distinguish four distinct changes in Dutch planning approaches, that started with the Nota Ruimte: 1) alongside with the presentation of the Nota Ruimte, the Spatial Planning Act of 1965 (WRO) was revised; 2) decentralisation was achieved by moving responsibilities from the national government to regional and local governments; 3) regulatory pressure was decreased and the

length of procedures was shortened, through revising and combining several acts on environmental law; 4) since many responsibilities of the national government have been transferred to other actors, the ministries traditionally involved with spatial planning have been reorganised into new ministries with a focus on infrastructure.

A next step in this process of institutional change is the further decrease of regulatory pressure in environmental law. Meijer et al. (2016) point out that the House of Representatives already ordered the Minister to develop a new system of environmental law back in 2009. This development lead to the formal announcement of the new Environmental and Planning Act in the policy letter 'Eenvoudig beter' ('Simply better'; Schultz van Haegen, 2011), introducing a more decentralised approach to spatial planning. This was one of the goals of the coalition agreement of the new administration (VVD and CDA, 2010). Furthermore, the 2011 policy letter proposed to simplify and combine the different acts in environmental law. For a more extensive overview of developments in Dutch planning tradition, see Appendix A.

2.4.2 The new Environmental and Planning Act

The implementation of the Environmental and Planning Act is a part of a greater trend: societies and social issues have become more complex. Top-down, rectilinear rules and directives provide too little support or constrain possibilities. Many responsibilities of the national government have therefore been deferred to lower levels in order to make tailor-made solutions to complex local issues possible; the Spatial planning act (Wro) of 2005 had already brought spatial planning to the domain of municipalities. However, in her policy letter 'Simply better', the Minister (Schultz van Haegen, 2011) referred to the advice of the Elverding Committee (Elverding et al. 2008), asking for a reconsideration of environmental law and procedures.

The explanatory memorandum to the EPA acknowledges this and adds that if a local government would like to develop tailor-made solutions to spatial issues, the rules that still need to be applied need to be clear and concise. However, the current system is a product of years of development (Meijer et al., 2016); it is comprised of acts on general processes (e.g. the Spatial planning act) or specific subjects (e.g. the Soil protection act), historical acts (e.g. the Expropriation act of 1851) and fairly new acts (e.g. the Nature protection act of 2016). This current system is considered needlessly complex and the great number of different relevant acts causes problems with coordination and implementation (Schultz van Haegen, 2014). Therefore, the new EPA will combine 26 current acts and over 100 executive orders into one act and four executive orders – see appendix B for an overview of these acts and executive orders. Schultz van Haegen, the then minister for Infrastructure and the Environment underlines that introduction of the EPA is 'above all a judicial reform, (…) it is not a change of policy; that would be something for future administrations.' In reducing the number of relevant acts in spatial planning, the minister expects to shorten procedures and decrease the workload of municipal civil servants. Even though it is not the goal of the new act to change policies concerning environmental laws – for example, current emission standards will be maintained – the changes in the act caused municipalities to reassess their current local regulations. In order to be prepared for the EPA, local authorities often already used the framework from the proposed EPA.

The new system of environmental law built around the Environmental and Planning Act consists of one official act (the EPA), that functions as a so-called 'framework act' or 'process act', and four Algemene Maatregelen van Bestuur (AMvB's, 'executive orders'), in which the quantitative and qualitative norms for the environment are set. Table 2.1 shows the configuration of the act and the executive orders and their subjects.

New system of environmental law			
	Actor: government	Actor: citizens and companies	
General and procedural regulations	Environmental decision		
Material regulations	Decision quality living environment	Decision activities living environment	Decision buildings living environment

Table 2.1: New system of environmental law (after: Informatiepunt Omgevingswet, 2018a).

Another element in the introduction of the EPA is the *Digitaal Stelsel Omgevingswet* (DSO, Digital System Environmental and Planning Act). The DSO is an IT system where initiators, governments and other interested parties may enquire what is permitted at a certain location (e.g. environment plans), may apply for permits, or may consult data on the quality of the living environment (e.g. data on water quality). The DSO replaces and combines three current 'digital counters', including the website www.ruimtelijkeplannen.nl, where current designation plans and permits are shown (I&M, 2017b).

The EPA is considered to be a great legislative change; it is no surprise that its development and implementation takes time – for an overview see table 2.2. Since its announcement in 2011, the act has been written and proposed to the two Houses of Parliament, as well as the Council of State. The same applies to the corresponding executive orders. Minister Schultz van Haegen has often expressed to not want to rush the legislation, as that may constrain careful evaluation of the act in parliament and may cause municipalities to not be fully prepared for the act's implementation. That is why the entry into force of the EPA, that originally had planned to be by the end of 2018, had been postponed to spring 2019 (Schultz van Haegen, 2016) and most recent to January 2021 (Schultz van Haegen, 2017a). With the new coalition, the responsibility for the further implementation of the EPA has been transferred from the Ministry of Infrastructure and the Environment to the Ministry of the Interior and Kingdom Relations (State Paper, 2017).

A textual summary of Dutch planning – given in section 2.4 above and Appendix A – is shown in Table 2.3.

Development process of the EPA	
June 2011	Announcement of new act in policy letter 'Simply better'
June 2014	Bill sent to House of Representatives (Tweede Kamer)
July 2015	House of Representatives (Tweede Kamer) agrees with bill
March 2016	Senate (Eerste Kamer) agrees with bill
April 2016	EPA accepted
July-September 2016	Public consultation on concept-executive orders
December 2016	House of Representatives agrees with concept-executive orders
June 2017	Senate agrees with concept-executive orders
December 2017	Advice on concept-executive orders by the Council of State (Raad van State)
June 2018	Executive orders accepted in Senate
(January 2021)	Formal entry into force of the EPA and corresponding executive orders

Table 2.2: Development process of the EPA

Development of Dutch planning	
1600s: i.a. medieval city expansion	Local government becomes spatial actor
1810: Mining Act	Responsibility for land use
1901: Housing Act	Standards for living environment; municipal expansion plans
1965: (First) Spatial Planning Act	Top-down, technocratic spatial planning system
2006: Memorandum on Space	Introduction of ideas of subsidiarity in spatial planning
2008: (Second) Spatial planning act	Subsidiarity implemented; local, still regulatory planning system
2008: Report Elverding Committee	Advice: integrate planning sectors, decrease regulatory pressure
2010: Crisis and recovery act (Chw)	Temporary act: shorter procedures, room for experimentation
2021: Environmental and Planning Act	Local, discretionary planning

Table 2.3: Development of Dutch planning

2.4.3 TRANSITIONS IN DUTCH PLANNING IN A MODEL

In a model, introduced by Zijderveld (1999), the government, civil society and market forces are placed in a triangle, representing configurations of power relations in the democratic arena. In terms of this research, private initiators can be seen as the 'market, and other involved citizens can be seen as the civil society. The transitions mentioned above can be placed in this configuration of power relations in planning practices.

Figure 2.1 conceptually shows the changes in power relations in Dutch planning, throughout (recent) history. It is important to know that the model must be read as shifts from one phase to another; it is not meant to be read between phases further apart than directly adjacent. Also significant to note is that this two-dimensional model does not reflect the increasing levels of power of different actors and, consequently, the rising stakes in spatial planning.

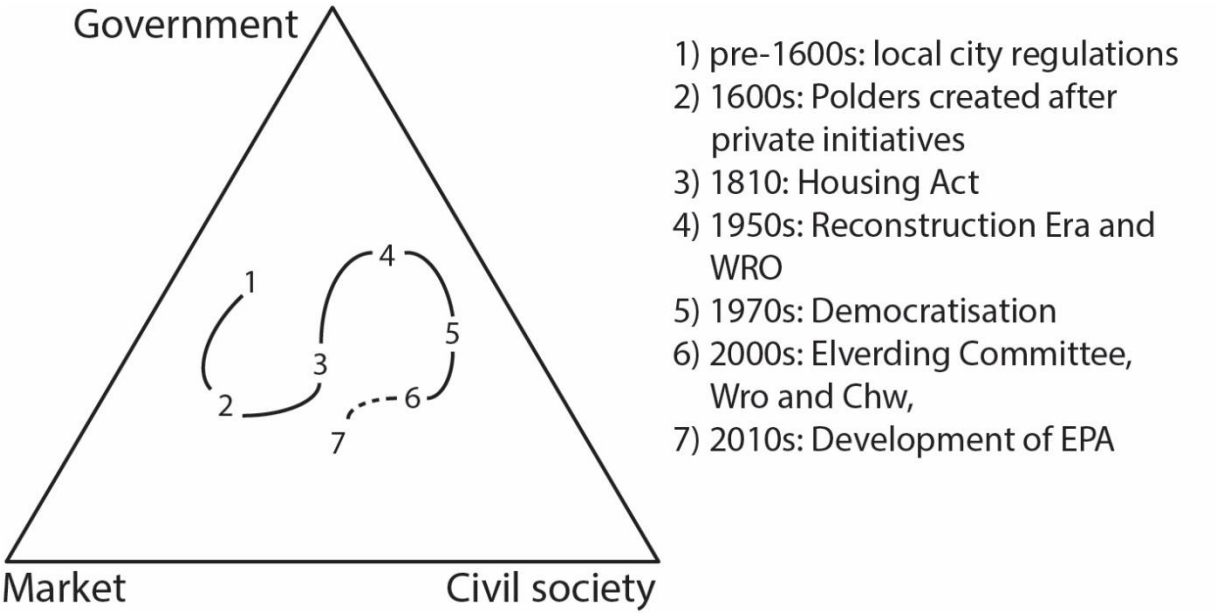

Figure 2.1: Changes in power relations in Dutch planning

SECTION 3: METHODOLOGY

3.1 RESEARCH PHILOSOPHY

In geographical studies, there always is a dichotomy – or at least a scale – between positivistic and humanistic approaches (Rodaway, 2006). Aitken and Valentine (2006) argue that a researcher's philosophical ideas on a subject are not always based on logic and reasoning. Rather, knowledge as well as personal values may also be constructed through personal emotions and experiences. Rodaway (p. 263) argues that humanistic approaches ultimately result in very personal research approaches and subjective results: *'[perhaps t]he interpretation (…) tells us as much about the researcher as what is researched (…).'* In the less descriptive, more prescribing practices of socio-spatial planning it is equally valuable that researchers acknowledge and clarify their philosophical stances, in order to create transparency. Ultimately, one of the most prevalent values in this research is something along the line of 'unnecessary powerlessness should not exist'.

Central to socio-spatial planning stands the deeply rooted concern for the ideas and interests of the different actors involved in processes of spatial change, and for the ways these interests could be balanced. If one would approach this concern for actors' interests prescriptively, this would create the responsibility for socio-spatial planners to investigate all possible actors with all their possible interests and to judge these actors and interests for their relevance to the process of spatial change. Several authors discuss views on power relations in planning (e.g. Tsubohara, 2010) and conclude that spatial planning processes are inherently political (e.g. Flyvbjerg, 1998; Ovink, 2011).

If spatial planning is inherently political, political views of the researcher on the matter do also apply. The subject of this thesis, the new Environmental and Planning Act, is the product of three consecutive centre-right, neo-liberal coalitions. The main question of this research 'What are the effects of the EPA on 3rd party actors?' is already based on concerns and values that are not prominent in neo-liberal discourse. Rather, in this thesis, many of the criticisms on the EPA are derived from a set of social-democratic values.

3.2 RESEARCH APPROACH

The methodological approaches will differ per research sub-question because of their different characteristics. For example, the methods for the question on how securing social interests is currently organised, are focused on empirical research, while the methods for the question on what effects the EPA will have for social interests are less so: these effects lie in the future, therefore it is difficult to find empirical evidence. A mix of research methods therefore is necessary. Below, an overview of the different research methods per sub-question is given.

3.2.1 METHODOLOGY QUESTION 1: HOW IS THE PROTECTION OF THIRD PARTY INTERESTS CURRENTLY ORGANISED?

The methodology for this research questions falls into two distinct categories: a general track, based on the political and academic discourse, and an empirical track, based on empirical findings on current practices on securing social interests. The general track consists of literature research of current laws and practices and interviews with academics on the subject. In the empirical track, two case studies provide insight in current planning practices and their development since 2008. These case studies will be introduced in section 3.4.

3.2.2 METHODOLOGY QUESTION 2: WHAT CHANGES WILL OCCUR WITH THE INTRODUCTION OF THE NEW EPA?

Again, though less distinctly, the research question is answered through two tracks: a general track based on political and academic discourse, as well as an empirical track. The general track again consists of literature research of the proposed EPA and interviews with academics on the subject.

The empirical track is helped by the ongoing development of the EPA. Although the EPA has only been in development since 2011, the main goals of the new Act have been clear from the start. In order to check the proposed instruments and processes, as well as the *spirit of law*, a number of test projects for the EPA have taken place that functioned as 'crash tests'. These experiments focused on a range of aspects of the EPA. Only a few, however, have focused on the interaction between government and citizens. One of the latter is a pilot in the municipality of De Bilt, where the municipality is creating an Environmental Planning Vision for the village of De Bilt, together with citizens. This case in De Bilt will be researched through a case study. The case will be introduced more elaborately in section 3.4.

3.2.3 Methodology Question 3: What are the consequences of these changes, both positive and negative?

In this part of the research, finding empirical evidence to answer the research question is difficult, as the effects have not yet taken place. Only in a number of cases, there has been experimentation with the EPA. An example of this is the De Bilt case that will be used in answering this research question. Otherwise, the information in this part of the research comes from interviews with experts and a literature study of articles reviewing the EPA.

3.2.4 Methodology Question 4: How can the adverse effects be mitigated?

The information for this research question is derived from interviews with experts, as well as a literature study of articles reviewing the EPA. Also, the national government itself has, through an agency, informed professionals and citizens with articles, guides and informing videos. These communications will serve as sources of information as well.

3.3 Aspects of social impacts of policy changes

This research focuses on the social impacts of policy change, in particular changes to environmental law. As a way to operationalise the social impacts specific attention is given to several aspects of policy. For this research, these aspects are a) procedures, b) public consultation, c) participation, and d) systems of legal certainty.

The changes in procedures refer to alterations in the way legal procedures are organised, in terms of duration, involved actors and other possibilities. Furthermore, in terms of the Dutch system there is a distinct difference between public participation and public consultation. Along the line of definitions by Van Helden et al. (2009), participation is the involvement of citizens into policy making before decision-making, while public consultation refers to *inspraak*, the specific term and typical organisation of public consultation in the Netherlands, which takes place after the initial decision-making. This has more to do with grievance procedures than citizens' influence of policy making.

3.4 Case study research

In order to see the effects of current and future regulations and legislations concerning the safeguarding of social interests, a number of case studies has been executed. Within these cases, the planning processes and the moments social impacts are considered are reconstructed. This is achieved by having interviews with those involved in the processes.

Two of these cases are included because of the planning processes in the past. These cases, Ganzedijk and Musselkanaal, are coping with the effects in rural decline in eastern part of the province of Groningen. Because the decreasing and ageing local population the demands for housing are changing. This development calls for changes to the local housing stock in numbers and types of houses. To address the surplus of certain types of housing, demolition of part of the housing stock was (part) of the plan in both cases.

The third case, De Bilt, has been included because of the local municipality's efforts to include the *spirit of law* of the EPA.

3.4.1 Case 1: Ganzedijk

In 2008 the municipality of Reiderland (since 2010 part of the municipality of Oldambt) acknowledged the effects of rural decline in its area, which led to a rise in the number of vacant houses in certain villages. The local government, with local housing association Acantus, set out to make a spatial strategy in order to mitigate the adverse effects of rural decline, including vacancy and deprivation of buildings. The joint organisations asked KAW Architecten, a spatial planning consulting agency, to research possible measures against the effects of rural decline in the village of Ganzedijk, which at the time had 100 inhabitants and where one in ten houses was vacant. In short, KAW concluded that Ganzedijk had little future in its current form; in order to create a sustainable future for Ganzedijk, the structure of the village had to be reformed, through the gradual demolition of the outdated local housing stock. When media (e.g. Nu.nl, 2008, *'Groningen ghost town wiped of the map'*) reported that the whole village would be demolished within a few years, the misunderstanding over the plans and the village's future lead to an outrage with the local community and their protest became national news. This escalation made it difficult to come to a satisfying solution for all actors. Thanks to the mediation of the provincial government a new, less provocative plan was set in motion. As of 2016, a smaller amount of houses throughout the village had been demolished and the whole project was reviewed as a test case of how (not) to develop plans for places in rural decline.

The original plan proposed to demolish 25 outdated and insufficiently maintained houses from the 1950s over an undefined period of time in the first phase. In the second phase, the remaining 1950s houses in the village were to be demolished. When finished, 75% of the houses in the village would be demolished, a process that would take place over a number of decades (Van der Kooi and Adema, 2008). All these houses were owned by Acantus or had been sold by Acantus to private owners in the past; the last sale dated from before 2006 when Acantus stopped selling their housing stock in Ganzedijk (Van der Kooi and Adema, 2008). Several experts commented that, essentially, the plan was straightforward and aimed to reinforce the (rural) identity of the linear village (e.g. Haartsen, 2008).

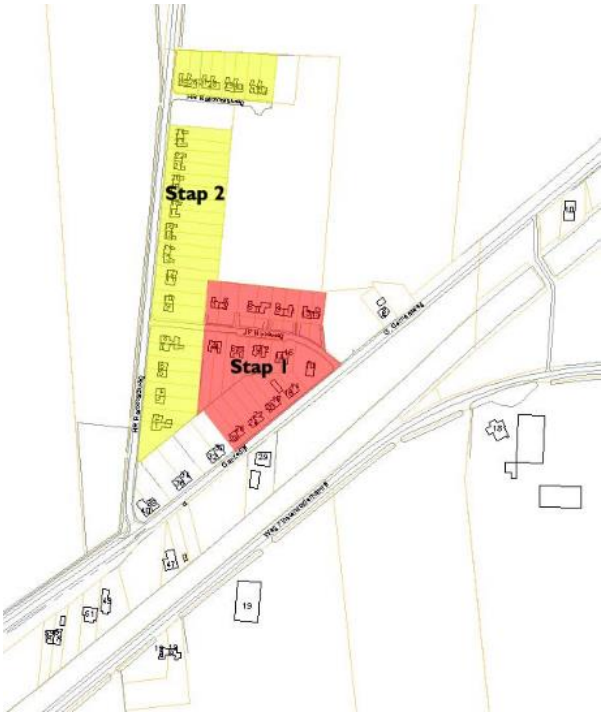

Fig. 3.1: The KAW proposal for the demolition phases in Ganzedijk, starting with phase 1 (in red) and, if necessary, phase 2 (in yellow) (Van der Kooi and Adema, 2008, p. 36).

In the methodology of the research KAW states that there were many contacts with inhabitants of the village, through house visits and an informal evening with the young residents of Ganzedijk. Subject of these meetings were people's opinions on living in Ganzedijk, their housing requirements and their ideas on improving the situation in Ganzedijk (Van der Kooi and Adema, 2008). However, the interviewed residents of Ganzedijk do not remember to be interviewed at all (Interview Lich and Loorbach). When the results were presented, many residents were surprised by the long-term demolition plans. They understood, that demolition would start immediately. Media also covered the story as if there was no future for the village and therefore it would be demolished a few years (Van Rossum et al., 2011); the local alderman for spatial planning confirmed this idea.

Also, residents were simply informed that the plan would take place, without prior attention for the likely personal effects of this proposal. Consequently, the local residents did not accept the plans and started protesting. At its peak even national media covered the question. The affair resulted in the resignation of an alderman, a bad name for the consulting agency, and, after organising protests, stronger ties within the local community (Zembla, 2009).

In the end, after extensive conversations with residents, the plans were changed: about a quarter of the houses (14 on 57) has been torn down, at several locations throughout the village, and other houses have been refurbished (Ellenbroek, 2011; Uyterlinde and Visser, 2011). Also, a small children's playground was built. All these measures eventually turned to be economically unprofitable and inapplicable to similar cases (Van Rossum et al., 2011; Zembla, 2011).

3.4.2 Case 2: Musselkanaal

At its core, the problems and interventions in Musselkanaal, in the municipality of Stadskanaal, are fairly comparable to that for Ganzedijk. There is a surplus of houses that is expected to increase. The privately owned houses on the village main street are owned by low income home owners, who are unable to repay the mortgages and do maintenance on the buildings. Because of this, they are 'locked' into their houses, which are poorly maintained. Also, the houses in the 1950s/1960s neighbourhood are outdated, do not comply with current demands and all need restauration. These houses are at risk of vacancy.

Within the pilot project Gronings Gereedschap (Groningen Tools – against the effects of rural decline), these houses in Musselkanaal were part of an experiment from 2014 onwards. A number of houses in the 1960s neighbourhood were torn down, while privately owned houses were bought by the housing association to rent out to the original owners again. Also, vacant shops and offices on the village main street were bought, rebuilt and rented out as public housing. This development is meant to emphasise the original village structure.

This program/experiment is managed by the Stichting Waardebehoud Onroerend Goed (Foundation Value Retention Realty). Participants are the municipalities of Vlagtwedde and Stadskanaal, housing associations Lefier and Acantus, Rabobank, VNO-NCW Noord (interest group for employers in the Northern Netherlands), and the province of Groningen (Gronings Gereedschap, 2016). Often involved, but not formally participating, are local residents, as well as certain key figures from for example Dorpsbelangen (Village Interests) and community workers (Borstlap, 2015). Advising consulting agencies are Bureau Pau and KAW Architecten.

3.4.3 Case 3: De Bilt

The municipality of De Bilt, in the province of Utrecht, is not comparable to the two cases in eastern Groningen in terms of population developments and economic possibilities. Rather, it has been selected for the purposes of investigating the functioning of the EPA in practice. In 2016 the municipality acknowledged the far-reaching effects of the EPA and the local council expressed to actively prepare for its introduction in all municipal activities. The council chose to utilise the EPA's introduction to further renew their spatial policy, a process that the council had started before (Kragting, 2016). One of the goals was to experiment

with the new instrument of the *omgevingsvisie* (environmental vision) n for the village of De Bilt. This project started in April 2017.

The municipality may be considered a part of the greater urban area of the city of Utrecht. The municipality's main villages (De Bilt and Bilthoven) are, in many aspects, commuter towns for Utrecht. Its population is comparably wealthy.

3.5 INTERVIEWS

Much of the information of the processes in cases is derived from interviews with key informants. Also, interviews helped to find expert opinion on Dutch spatial planning in general, the Environmental and Planning Act, and for the importance of participation and hearing third parties' interests. Table 3.1 shows an overview of the interviewees.

Interviewee	Function	Date
dr. F. van Kann	Lecturer Planning practices; University of Groningen	18/04/2016
N. Beck	Policy advisor spatial planning; Municipality of Stadskanaal	21/04/2016
A. Dammer	Project leader neighbourhood renewal; Municipality of Oldambt	28/04/2016
S. Lich & G. Loorbach (double interview)	Founding members; Action Committee 'Ganzedijk blijft! ('Ganzedijk stays!')	09/05/2016
K. Smit and family	Inhabitants Musselkanaal	14/06/2016
E. de Groot, BSc MA	Assistant professor Management of social and political risks; Technical University Delft	17/06/2017
M. van Ammers	Project leader Pilot environmental planning vision De Bilt Municipality of De Bilt	10/07/2017
J. Kragting	Program manager Environmental and Planning Act; Municipality of De Bilt	03/08/2017

Table 3.1: Overview of interviewees

These qualitative interviews have not been conducted on a fixed set of questions, but were based on several interview guides. The guides differed for the various contexts (case studies or theory) and the position through which the interviewee are involved in the context (as a professional or as an inhabitant). See Appendices C.1 through C.5 for the interview guides for the 'residentially' involved, the professionally involved and the theoretically involved respectively.

3.6 RESEARCH ETHICS

In any research, especially those regarding social issues, there should be room for discussion on specific considerations towards ethical issues. Fisher (2008) argues for careful methods in impact assessment, even under the pressure of creating favourable results to the assessment's commissioning party. Vanclay et al. (2013) summarise five goals for ethics: 1) stimulating and broadening the moral imagination, 2) recognising ethical issues, 3) developing analytical skills, 4) eliciting a sense of moral obligation and responsibility, and 5) coping with moral ambiguity. In this research, that does not fundamentally questions moral and ethical stances, but rather focuses on implications of a specific policy change, no specific ethical stance has been taken to the research subject as a whole. There is, however, an ethical statement regarding the research methodology, see below.

3.6.1 ETHICAL CONCERNS REGARDING METHODOLOGY

Some authors (e.g. Valentine, 2005) argue that there are specific ethical concerns regarding interviews. These concerns have been taken into account in this research. Firstly, Valentine notes that interviewing is a form of social interaction, in which pressurising interviewees should be avoided. Also, an interviewee's

privacy should be maintained as much as possible; an example of this is explicit agreement to recording interviews. Secondly, Valentine mentions the importance of an interviewer's clear stance on offensive views of interviewees: either challenge and correct these offensive views, or stay neutral and objective to these views. In this research, where the offensive views are not central to the subject, there has been chosen for a less invasive approach of neutrality to possible offensive views. An additional benefit to this stance is that conversations show the interviewee's views on the case more explicitly.

3.7 REMARKS ON THE METHODOLOGY

In an earlier state of this master thesis, the research focused on the social impacts of municipalities' and housing associations' actions for coping with rural decline. It was in this stage that the cases Ganzedijk and Musselkanaal were selected and interviews took place. Since then the focus of this research has broadened to the more general subject of the effects of a government's action in any spatial intervention, with special attention to the introduction of the Environmental and Planning Act. Only then the third case of De Bilt was identified and were interviews planned. This means that the interviews in Ganzedijk and Musselkanaal originally had a different subject, but could be reinterpreted very well regarding the current legislation and good practice, as researched for research question A.

SECTION 4: RESULTS

4.1 On a) How is protecting third party interests currently organised?

The protection of the interests of third party actors is currently organised in two distinct ways: legal protection through the ability to appeal and commonly used participatory approaches to spatial planning practises.

4.1.2 Safeguarding of interests through legal protection

A main source of the protection of third party interests is through protection in the law. Traditionally it has been the main source of protection (Janssen-Jansen and Woltjer, 2010). A number of national acts, international treatises and local policy documents prescribe how (local) governments should communicate with initiators, residents and other stakeholders and shape the processes towards policy decisions. The international framework is set by the Convention of Aarhus on i.a. public participation in decision-making that was signed in 1998. National regulations are set in the *Algemene wet bestuursrecht* (Awb, *General act administrative law*).

The *Awb* prescribes the general principles for the actions of all public authorities: a public authority should fulfil its task without a preconceived opinion (Awb 2:4 clause 1), a public authority should research relevant facts and interests (Awb 3:2), a public authority should compare various interests, while adverse effects of a decision should not be disproportionately disadvantageous to (one of) the stakeholders (Awb 3:4). These are some of the articles that codify the principles of good governance into law.

4.1.2 Decisions

These principles are examples of the requirements of an official decision *(besluiten)* by a public authority. A decision, although used in a much broader sense in daily language, has a strict judicial meaning: the *Awb* (Art. 1:3) states it as follows: *'A decision is: a written decision by a public authority concerning an act in public law'*. Such a decision should be the result of careful judgement and should comply with existing law, regulations and approved policies. Foremost, these decisions are appealable. This ability to appeal decisions currently is at the heart of the legal protection of third party actors in spatial developments.

According to Verheugt (2011) decisions are divisible in several types of decisions for the general public as well as a decision for an individual (party), the *beschikking*. Verheugt (2011) argues that the specific decision *(beschikking)* is the most common type of decision. General decisions apply to greater groups of people, but most of the interactions between government and individuals are decisions; issuing a passport, or receiving housing benefits are all examples of the thousands of specific decisions made every day. See Table 4.1 for an overview of the different types of decisions.

Decisions in terms of the *Awb*	
General decisions *(Besluiten van algemene strekking)*	1) General committing regulations *(Algemeen verbindende voorschriften)* 2) Indicative decisions *(Aanwijzingsbesluiten)* 3) Policy rules *(Beleidsregels)*
Specific decisions *(Beschikkingen)*	

Table 4.1: Decisions in terms of the Awb (after: Verheugt, 2011, p. 149)

Nearly all governmental decisions in environmental law are decisions in terms of the *Awb*. Only the acts themselves (e.g. *Wro*, *Wabo*, *EPA*, etc.) are not considered to be decisions; the legislator (i.e. the government and States General combined) is not considered to be a public authority in terms of the *Awb*. Confusingly, *Algemene Maatregelen van Bestuur* (AMvB, Executive Orders) are considered to be decisions.

Examples of general decisions in environmental law are Executive Orders on the environment (general committing regulations), zoning plans (indicative decisions) and regulations to, for example, the allocation of housing benefits (policy rules). A building permit is an example of a specific decision.

4.1.3 Municipal participation regulations (Inspraakverordeningen)

The above refers to decisions. However, these decisions are often grounded in standing policies, also at the local level. These policies need preparation as well. The Municipality Act (article 150) prescribes that every municipality should establish regulations on how they plan to involve inhabitants and other interested parties in preparing municipal policy, and that the local mayor watches over the quality of citizens' participation in the municipality (article 170:1d). The VNG has made a model for participation regulations that is used by most municipalities. Department 3:4 of the *Awb* is also applied to the making of policy, creating a situation that policy preparation is de facto identical to a decision, in the sense that it is equally appealable. Depending on the subject, the municipality may choose for different participation procedures.

4.1.4 Decision making in environmental law: the Wabo and the Wro

Department 3.4 of the *Awb* (*Uniform public preparation procedure)* prescribes the appeal process of a *besluit* and the *Wet algemene bepalingen omgevingsrecht* (Wabo, *General provisions act environmental law*) often refers to the *Awb* for the general procedures to be used in the context of spatial developments. The decision making procedures in the *Wabo* are based upon the EU guidelines from the Aarhus Convention on public consultation in environmental decision making.

4.1.5 Different procedures for different scales of spatial initiatives and interventions

For different scales of spatial interventions there are different procedures: the regular and the extended preparation procedure. These procedures differ in the length of the decision making process and the possibilities for appeal. See Tables 4.2 and 4.3 for an overview of the regular and the extended procedures.

The regular preparation procedure in the *Wabo* is used for smaller interventions in the spatial domain, where policy rules are already put in place. There is little room for balancing interests and there is little to no controversy in these cases. Applying for a building permit in accordance with the current zoning plan will be processed through the regular preparation procedure (Van Doorn and Pietermaat-Kros, 2010).

The extended preparation procedure in the *Wabo* is meant for planning interventions with a greater impact and/or more controversy, where a balance of interest is required. The extended procedure has longer decision making terms and has the possibility for submitting views by interested parties. Examples of specific decisions where the extended procedure would be used are (Van Doorn and Pietermaat-Kros, 2010):

- Building permits not corresponding to current zoning plans
- Demolition permit for national monuments
- Permit for activities with possible environmental impacts

The procedures are also applied to general decisions (Van Doorn and Pietermaat-Kros, 2010, p. 39), such as the zoning plan. Since these general decisions are more often greater in scope and scale, it is more likely that the extended procedure is applied.

According to Van Doorn and Pietermaat-Kros (2010) in both procedures the process is divisible into two phases: the preparation phase and the phase for legal protection. The preparation phase starts with the application for a permit by a party. The relevant public authority will decide of the application is admissible and, if so, will be allowed. If the application is allowed, the concept-decision is published and interested parties can submit views on the decision. The public authority will answer to these views and will alter the decision on the application, if necessary and possible. Afterwards an official decision is made and published.

Van Doorn and Pietermaat-Kros (2010) mention that the phase for legal protection starts at this moment. Interested parties, who have submitted views earlier, may now (twice) appeal the decision in court.

Remarkably, Van Doorn and Pietermaat-Kros do not consider the viewing period in the extended procedure to be within the legal protection phase, even though the viewing period is the first moment interested parties can express their grievance. The importance of the viewing period is also underlined by the submission of a view as a condition for appellation in the legal protection phase.

Regular preparation procedure *Wabo* with legal protection
Obligatory confirmation of receipt of the application [for a permit]
Publication of the concept-decision: - publication in one or more (daily) newspapers and (municipal) door-to-door-media or any other appropriate method; publication within 10 weeks if an EIA report is required.
Assessment of the application's admissibility: - if necessary, a request by the appropriate authority to supplement the application with further information - a decision of inadmissibility of the application will be announced to the applicant within 4 weeks after supplementation or the appropriate regular time period has elapsed.
Decision on the environment permit: - within 8 weeks of the application - time period is extendable once with at most 6 weeks; decision on the extension within 8 weeks after receiving the application; - publication according to the publication of the application
Environment permit by right in case of time period transgression: - also the environment permit by right should be published as soon as possible, in any case within 2 weeks
Entry into force of the decision: - starting on the day after the day of the publication
Legal protection and adjournment of the decision's entry into force: - for interested parties a possibility for appeal at the relevant public authority within 6 weeks of publication of the decision. In certain situations, named in the law, the entry into force will be adjourned. - for interested parties who have submitted a view, appeal at the court during an appellation period of 6 weeks after the publication of the decision; afterwards possibility of appeal at the Division for administrative justice; - appeal has no adjourning effect, but with a request for preliminary injunction during the appellation period, in certain situations, named in the law, the decision will not enter into force before a decision has made on the request.

Table 4.2: Regular preparation procedure Wabo with legal protection (after: Van Doorn and Pietermaat-Kros, 2010, p. 140)

Extended preparation procedure *Wabo* with legal protection
Obligatory confirmation of receipt of the application [for a permit]
If an EIA report is mandatory, publication within 10 weeks in one or more (daily) newspapers and (municipal) door-to-door-media or any other appropriate method;
Assessment of the application's admissibility: - if necessary, a request by the appropriate authority to supplement the application with further information - a decision of inadmissibility of the application will be announced to the applicant within 4 weeks after supplementation or the appropriate regular time period has elapsed.
Possibility for inspection of the concept-decision with accompanying documents during 6 weeks: - publication of the possibility for inspection conform uniform public preparation procedure in the *Awb* and in the State Paper; the latter if there is a deviation of the zoning plan or management ordinance with spatial explanatory basis;

- if there is a deviation of the zoning plan or management ordinance with a spatial explanatory basis: announcement to i.a. registered owners in case of fast-tracked expropriation; - if another public authority than the municipality council is authorised: possibility for viewing of the plan will also be in the municipality where the relevant activities will mostly take place; - possibility of submitting views by any one, also with regard to concept-statement of no objection, but not regarding parts of the concept-decision that flow directly from indicative decisions of the State or provincial government aiming at a specific location (proactive indication based on *Wro*.
Decision on the environment permit and exploitation plan (if mandatory): - within 6 months, with possibility for submitting views during 6 weeks, after receiving the application - time period is extendable once with at most 6 weeks; decision on the extension within 8 weeks after receiving the application; - publication conform the uniform public preparation procedure *Awb*; - in case of an environment permit with spatial explanatory basis as well as a view of the Provincial-Executive or the inspector for Spatial Planning: publication 6 weeks after sending the decision to them (possibility for reactive indication based on *Wro*).
Entry into force of the decision: - starting on the day after the day of the transgression of the appeal period of 6 weeks; - immediate entry into force after publication if the public authority establishes so; - environment permit in phases: the specific decisions enter into force on the same day; - if a permit based on the Monuments Act is mandatory; entry into force not earlier than entry into force of the monument permit; - in case of a residential building on possibly polluted soil: entry into force of the environment permit for building only after Act soil protection has been observed.
Legal protection and adjournment of the decision's entry into force: - for interested parties who have submitted a view, appeal at the court during an appellation period of 6 weeks after the publication of the decision; afterwards possibility of appeal at the Division for administrative justice; - appeal has no adjourning effect, but with a request for preliminary injunction during the appellation period, the decision will not enter into force before a decision has been made on the request.

Table 4.3: Extended preparation procedure Wabo with legal protection (after: Van Doorn and Pietermaat-Kros, 2010, p. 141-142)

4.1.6 PUBLICATION OF THE DECISION

An important moment in decision making is the publication of the (concept) decision through various media. Each governing body publishes their decisions in its governing paper; the national government publishes in the State Paper, municipalities will publish in their respective municipal paper. However, these papers are not to be read by laymen; rather, they serve a judicial-procedural function. Therefore, it is common for municipalities to also publish (appealable) decisions through other media, most often through a free, local door-to-door newspaper, although each municipality may choose how to do it. This leads to a number of different ways of distribute publications of (concept-)decisions.

- Some municipalities publish a near complete announcement of the location and nature of the permit. For a complete overview of each permit, they refer to the official online municipal paper. This is the case in, for example, the municipalities of Leeuwarden, Onstwedde and Steenwijkerland.
- Other municipalities directly refer to the online municipal paper, without any announcements of specific permits. This is the case in, for example, the municipalities of Groningen and Oldambt.
- Even though there is a door-to-door paper, the municipality does not publish any announcements, even though other government institutions do. This is the case in, for example, the southern district of the municipality of Amsterdam.
- Other municipalities have no door-to-door paper altogether and directly refer to their respective websites and municipal papers. The municipality will try and find other ways to contact affected

households, for example by sending letters. This is the case in, for example, the municipalities of De Bilt, Utrecht and Zwolle.

However, in the case of spatial permits, these (concept-)decisions are also to be published at an official online GIS, covering the whole of the Netherlands, called Ruimtelijkeplannen.nl. This website gives the option to send alerts if new plans at the national, provincial or municipal level are coming up. There is no possibility to only focus at the local (town or neighbourhood) level.

4.1.7 APPEAL PROCESSES IN ENVIRONMENTAL LAW

Tables 4.2 and 4.3 describe how the regular and extended procedures of the *Wabo* work. In the regular procedure, there is only room for legal protection after the public authority has made the (concept-)decision. This means that the *Awb* and the *Wabo* prescribe that a *besluit* is appealable within eight weeks after the decision was made, but only by those who are an interested party (*belanghebbende*, literally 'interest-haver'). Only those who have submitted a view during the viewing period may become an official interested party, eligible for making appeal.

Principles of good governance, prescribed in the Awb, guide how public officials should manage the weighing of interests and work with citizens. The Awb also prescribes (Art. 3:12) that decisions as well as the explanation to submitting views should be announced in papers or other relevant media. In the case of spatial planning decisions, the website www.ruimtelijkeplannen.nl is also one of the channels through which decisions are published, although, on its own, it is not considered to be sufficient publication.

4.1.8 PARTICIPATION AND PUBLIC CONSULTATION

In the current system, there is no legal obligation for the inclusion of citizen's participation in plan and decision making (Interview Van Kann). Because the Awb prescribes that the public should have the opportunity to submit their views on decisions made by the (local) government, many municipalities have established a municipal ordinance on public consultation (*gemeentelijke inspraakverordening*), offering their citizens possibilities for submitting views. This system of public consultation, only applied to projects of a certain scale, often takes place after the concept-decision has already been made. At these public consultation meetings, spokespersons of the initiator or builder gives further information to the project and the (local) government can explain the reasoning behind the concept-decision. It also serves as an additional moment at which 'interest-havers' can submit their view on the project orally.

There are, however, criticisms on this type of consultation. Winsemius et al. (2004) – from the Scientific Board for Government Policy (WRR) – for example, acknowledge that the position and attitude of citizens is changing towards a more proactive and involved citizen. They argue that this typical way of 'obligatory consultation – seven evenings in the community centre, with a meal for the organising committee that did not need to change anything in the plans – has become obsolete through the confrontation with the articulate and more difficult citizen' (p. 40). The authors emphasise that governments should take citizens' involvement seriously, especially at the neighbourhood level, where most of their interests are located. That means active responses by the municipality to signals of citizens and supporting citizens' own responsibilities towards neighbourhood safety and other amenities. Other proposals by Winsemius et al. (2004) include a less sectoral, more holistic approach for solutions to problems at the neighbourhood level and a new local electoral system that should increase citizens' interest in local politics.

Tops et al. (2008), in their final report on their research for new forms of public consultation, signal a shift from 'procedure to process thinking' (p.2) and propose that participation should change with it. The then current regulations prevented form-free forms of public consultation and made tailor-made participation impossible. '(…) Appropriate public participation contributes to the professional conduct of the government and should be a default part of plan-making of spatial-economic plans and projects where the national government is involved' (p.3). They have formulated five principles of appropriate public participation:

1) participation serves decision-making
2) good joint effort by administrators and policy-makers
3) tailor-made participatory forms
4) correct attitude, competences and knowledge
5) clear and reliable communication

Although the principles for participation as signalled and proposed by Tops et al. are mainly addressed at policy- and plan-makers within the (national) government, it has found its way into other places as well. It fits in well with the advice of the Elverding Committee (Elverding et al., 2008), as well as the Omgevingsbesluit, the Executive Order on the procedures for the EPA.

However, even nowadays, thinkers like Soeterbroek (2017), think that recent attention for and improvements in participatory processes by municipalities are not sufficient yet. The professionalization of participatory forms have increased public support for plans and policies, but have not necessarily increased the quality of tutelage of participants and the legitimacy and representativeness of local government.

Some of the proposals by Winsemius et al. (2004) and Tops (2008) have resulted more recently in policy changes: under the term 'participatory society', the government is retreating from many sectors, in order to leave space for citizens to employ their involvement and develop their sense of responsibility, not unlike the 'Big Society' movement in Great Britain. Verhoeven and Tonkens (2011) point out that, although governments and citizens agree about the main direction of change, there is still an (academic) debate on the precise interpretation of the participatory society: should the government only facilitate or also activate citizens' involvement in participation? Based on their research, they conclude that activating government policy has a positive effect on participants' representativeness, participants' view on the quality of the (local) government and an increase of participants' competences. Although the Verhoeven and Tonkens paper is mostly about citizens' initiatives, it may also support the notion that active citizens' involvement in plan and decision making has positive effects on their view of the planning process and the planning result.

More recently, there are concerns for the representativeness of people partaking in public consultation, much in line with the research by Nienhuis et al. (2011). Others, such as Van Houwelingen et al. (2014, p. 63) conclude that even though participants often are not a demographical representation of the population, they are representative of the issues and concerns present in that population.

Another concern with participation is the amount of information involved with decisions. There is a publication at the time of the application, at the concept-decision and with the final decision. Decisions, great and small, are made so often that it may be difficult to be aware of applications for a citizen's own environment. People may subscribe to a service at www.ruimtelijkeplannen.nl, sending messages when a local application has been made. However, not many people have done so.

4.1.9 The Chw: a definitive paradigm shift

At the moment, the Wro – that formulates the instruments and norms – and the Wabo – that prescribes the procedures– define most of the current situation in environmental law. In 2010, following the 2008 global financial crisis and the consequent recession, the national government proposed the temporary so-called Crisis and Recovery Act (*Crisis- en herstelwet, Chw*). The Chw, in effect since 2010, had two clear goals. Firstly, it shortened procedures for specific great infrastructure projects – such as the widening of motorways, doubling of railway tracks, restructuring of vacant industrial and logistics areas, building 'zero-emission' neighbourhoods – in order to accelerate the realisation of these projects to increase the resilience of the Dutch economy. Secondly, since the first announcement of the development of the EPA in 2010, the Chw was used to experiment with other, shorter procedures in environmental law. The Chw can therefore be considered a precursor of the EPA. In 2013, this originally temporary act was made permanent, so experimentation with less strict procedures could continue, also with projects outside of the projects that were specifically mentioned at the Chw's introduction. It also offered the opportunity to test how the

procedures in the new EPA would work in practice in the form of 'crash tests'. The experimenting with environmental visions in the De Bilt case study was also made possible within the framework of the Chw.

4.1.10 CURRENT ENVIRONMENTAL LAW IN PRACTICE

In practice, all of the communication on changes in the spatial environment should go via the (local) government. When a first party applies for a building or demolition permit, it does so with the local government, the second party. In practice, however, these clear distinctions do not exist. Often, municipalities work together with other actors to develop spatial strategies. This greatly increases the chances of a successful – in terms of exploitability and swift completion – project. In these cases, however, the local government plays both the role of a first and a second party actor, both initiator and controller.

Sometimes, it is the other way around, and a private actor is the one initiating spatial strategies, as was the case with both housing association Acantus in Ganzedijk (case 1) and housing association Lefier in Musselkanaal (case 2). Especially when, like in these cases, the private actor has a great spatial 'footprint' they can influence municipal spatial strategies, and the local government is not leading the process. In these cases, in practice, private actors can be both first and second party actor.

In both examples third parties are kept outside of the planning process – either unintentionally or intentionally. This means there is a discrepancy between what ideally should happen and what in practice happens. For example, in Ganzedijk, Acantus wanted to demolish the buildings in the village and the municipality approved. In this case there is a number of interested parties that have not been heard yet: not only Acantus's renters, but also the private home owners in the village, who see their living environment changing profoundly. In this case, all principles of good governance have been applied, but nothing more, while for such an impactful plan that should have been different. Alderman Hietbrink's words ('It's best to conclude the society in Ganzedijk and return the village to nature'; Volkskrant, 2008) were personal, but as an alderman and as part of a governmental organisation he should have been more careful. He posed himself against the local Ganzedijk community, which lead to Marc Calon (deputy for the province of Groningen, for i.a. spatial planning) stepping in in order to return to an orderly process. In the end, it were the Ganzedijk residents' plans that eventually became the backbone of the Ganzedijk project.

The same applies to the Musselkanaal case, where housing association Lefier proposed to demolish a number of dwellings in the Florawijk neighbourhood in Musselkanaal. However, both Lefier and the municipality – who both had learned from the mistakes in Ganzedijk – opted to issue a town planning research first and then include interested parties like Dorpsbelangen (Village Interests) Musselkanaal and the local entrepreneurs' association. Dorpsbelangen, responsible for the development of new collective spaces, organised a meeting where inhabitants of the neighbourhood could propose ideas. On the basis of these proposals the plan for public gardens was drawn. In the summer of 2018, the newly developed collective spaces have been opened (figure 4.1).

Figure 4.1: Photo of the newly developed collective space in the Florawijk neighbourhood, summer 2018, Musselkanaal. The text reads 'Musselkanaal shows character'. (Source: Dorpsbelangen Musselkanaal)

In practice, however, it is not easy to satisfy the local community's wishes for more influence on decision making. According to many authors (e.g. Voermans & Waling, 2018), this has to do with a lack of political or communal interest in local cases, or a trust deficit in able local policy makers. For example, De Groot (Interview De Groot) mentions that a large share of the population has little confidence in government officials and civil servants. Numbers by the OECD (2015) also show this: even though the level of confidence in national politics is above average, this level has dropped. If turnout percentages at elections for various government levels are seen as an indicator for citizen involvement, it seems that local, municipal politics is seen as less important. Municipal elections generally have lower turnout numbers than national elections, while the numbers have continually declined for the past decades. Some authors fear a weakening of legitimacy of local public governments, which is especially undermining since the local government is becoming responsible for more and more subjects.

4.1.11 Criticisms on current environmental legislation and procedures

An increasingly more pressing issue in spatial planning processes – especially regarding the involvement of citizens – is the time citizens must invest in getting involved in planning processes against the time needed

for work and other domestic duties. The increasing labour participation of women, as well as men, leads to the transfer of domestic tasks and informal caregiving to the evening or the weekend. This leaves less time for societal involvement or activism by citizens (Emmelkamp et al., 2013). The Ganzedijk protest group was led by two women work part time. If a community cannot manage investing the time necessary for the continuation of its existence, a local government should create those possibilities for the community or should take care of hearing and acknowledging those interests as much as possible. Space for local discussions gives a genuine significance to local politics and possibly higher appraisal for local government.

4.1.12 Conclusion

Currently, procedures are multi-faceted, complicated and inconvenient, compared to the proposed procedures from the EPA. Rules on the environment are spread throughout different sets of regulations, procedures are unclear for laymen, and they take a relatively long time. Public consultation often is organised in an unsatisfactory manner, while participation does occur, but only in cases where residents and other citizens exerted themselves. Current legal protection, however, is organised in such a way that developments can only occur if there are no probable adverse effects.

As many authors argue, the current legal environmental system is ready for an overhaul, because of its rigid and inflexible set of regulations. Currently, centralised regulations, dating from a less complex era limit possibilities. The tests with more liberal regulations – held within the context of the Chw – show interesting developments. The example of Marc Calon in Ganzedijk also shows the power of tailor made solutions. Developing a new system of environmental law that accommodates these characteristics is not inherently wrong. However, the current system also offers protective regulations to prevent adverse developments.

4.2 ON B) WHAT CHANGES WILL OCCUR WITH THE INTRODUCTION OF THE NEW EPA?

In the Explanatory Memorandum to the Environmental and Planning Act, Minister Schultz van Haegen (2014) emphasises the need for the reconstruction of environmental law: the current model with its tangled set of laws should be simplified into one environmental act. Also, the current model is considered to be dated, and should be modernised in order to be able to combat future environmental challenges efficiently. While the introduction of the EPA is promoted as 'policy neutral', and focusing primarily on simplifying and the shifting of responsibilities, there are some changes that have an effect on the position of third parties.

The changes in this part have been identified through literature analysis and interviews. The categorisation and ordering of the changes does not have a significant meaning, other than that the more elaborated – and with a need for extra explanation – are discussed first.

4.2.1 CHANGE 1: A SYSTEM OVERHAUL

The new Environmental and Planning Act will combine (parts of) about 26 acts and 117 current *Algemene Maatregelen van Bestuur (AMvB's,* Executive Orders) into a set of one Environmental and Planning Act and four executive orders. Although there are no substantive changes in the content of the Act and the executive orders – making the introduction of the Act 'policy poor'– there is a change in the position of different policies within the new EPA system. Some aspects of current legislation will no longer be part of an official act that has come into being through a democratic process, controlled by two Houses of Parliament. These aspects have now been placed into the executive orders, which are sets of policy set out by ministers and are not eligible for ex ante evaluation by Houses of Parliament. The Minister argues that this standardises the location of the environmental norms within the legal system; before the EPA, the norms on one subject are found in the act itself, on other subjects within an executive order, on other subjects within ministerial regulations (Eerste Kamer, 2017, p. 25).

A) Simplification of acts and regulations

The EPA drastically reduces the number executive orders concerning environmental law. In the new system there is room for four Executive Orders. These are (after Schultz van Haegen, 2014, p. 29; and Omgevingswet, 2018a):

1) Omgevingsbesluit (Environmental decision). This AMvB contains general and procedural regulations for a correct execution of the act. It addresses citizens, companies and governments.
2) Besluit kwaliteit leefomgeving (Bkl, Decision on the quality of the living environment). This AMvB contains regulations for the execution of tasks and jurisdiction of governments. It addresses governments.
3) Besluit activiteiten leefomgeving (Bal, Decision on the activities in the living environment). This AMvB contains regulations concerning activities in the physical living environment. It addresses anyone who wants to perform these 'activities'.
4) Besluit bouwwerken leefomgeving (Bbl, Decision on building in the living environment). This AMvB contains regulations on the building, restructuring, using and demolishing of buildings. It addresses anyone who wants to perform these 'activities'.

New system of environmental law			
	Actor: government	Actor: citizens and companies (initiators)	
General and procedural regulations	Environmental decision		
Material regulations	Decision quality living environment	Decision activities living environment	Decision buildings living environment

Table 4.4: New system of environmental law (after: Informatiepunt Omgevingswet, 2018a).

In principle this rearrangement of acts and executive orders does not have a direct impact on the position of third parties. However, there is criticism on the arrangement of the act and the executive orders, for example from the Senate (Eerste Kamer, 2017). These executive orders can be changed by ministers more easily than regular acts. The Minister argues that this increased flexibility enhances the possibilities for quick

changes to the norms, for example because of changing environmental contexts, or for complying with EU environmental laws. 'Of course, it is nice if you can change [norms] quickly within an executive order, because an amendment of an act would take so much longer. (…) It can be changed quickly in what really is a democratic process. The House of Parliament is involved in a different way, but is involved nevertheless.' (Eerste Kamer, 2017, p.25)

The Minister refers to a different kind of legitimisation of the norms. The House of Parliament officially is the legislative power, but now cannot function that way, since these norms are not in an act – for which, as legislator, the House is ultimately responsible – but in an executive order – for which the Minister is ultimately responsible. The House of Parliament only has a controlling role over the Minister. In terms of Montesquieu's *trias politica*, the setting of norms has been transferred from the legislative power to the executive power.

The most important acts that are replaced by the EPA are the Wro and the Wabo. For a complete overview of the acts the EPA replaces, see Appendix B.

B) New terminology, new instruments

Part of combining the several current acts into one act is the synchronisation of terminology. 'This prevents any confusion that may occur if a term has a slightly different meaning in one act than in another. This increases the understanding and usability of environmental law.' (Schultz van Haegen, 2014, p. 72). This also applies to different definitions of the same term within different (parts of) zoning plans.

A new development in the EPA is the broadened understanding of activities that have an environmental impact, compared to the current Wro. Not only permanent buildings and functions have an environmental impact; temporary activities have an impact as well. So, in the new definition an activity also entices the building process of a building, temporary buildings (e.g. emergency buildings, festival infrastructure, seasonal camping places) as well as temporary activities (e.g. a meadow as landing place for parachutists affecting breeding birds).

Another change of terminology is function instead of zoning (*functie* instead of *bestemming*) and location instead of grounds (*locatie* instead of *gronden*). The Explanatory Memorandum argues this reflects the change of scope between the current Wro and the new EPA. The Wro's goal was to create a 'good spatial planning', the EPA's goal is to make 'a balanced allotment of functions to locations'.

C) A simplified flow of environmental policy: vision, values, plan and permission

In practice, the integration of the various environmental acts into one EPA, aims for and results in integrated zoning plans. This means there is an overhaul over the policy instruments regarding spatial and environmental planning. The new EPA proposes a new and simplified procedure for the way environmental policy is established and enforced. In this procedure it distinguishes four phases, while within each phase several policy instruments are established for different layers of government (figure 4.2). In each phase of the policy cycle, different layers of government have different instruments.

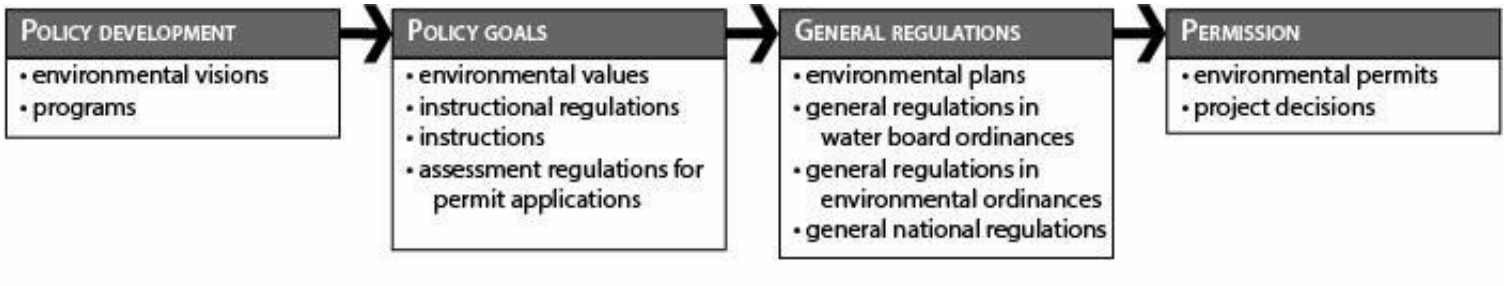

Figure 4.2: Flowchart for environmental policy development (after: Schultz van Haegen, 2014, p. 8)

C.1) Policy development: environmental vision and the program
In the policy development phase, policy makers will identify spatial and environmental ideas, based on societal values and political views. These views are solidified into an *environmental vision* (omgevingsvisie), an official policy document.

Another policy developing instrument is the *program*. All layers of government – possibly also in collaboration – can set up programs in order to improve aspects of the living environment within a certain period. An example of a relevant aspect is river and flood risk management. Often these programs are instituted by EU regulations.

Layer	Current instruments		Replaced by EPA instruments	
	Dutch term	English translation	Dutch term	English translation
NG	Waterplan; Verkeers- en vervoerplan; Structuurvisie Infrastructuur en Ruimte; Natuurbeleidsplan Milieubeleidsplan	Water plan; Traffic and transport plan; Structural vision Infrastructure and Space; Nature policy plan; Environmental policy plan	Nationale omgevingsvisie (NOVI)	National environmental vision
P	Gebiedsdekkende structuurvisie; Natuurvisie; Verkeer- en vervoersplan; Waterplan; Milieubeleidsplan	Area covering structural vision; Nature vision; Traffic and transport plan; Water plan; Environmental policy plan	Omgevingsvisie	Environmental vision
M	Gebiedsdekkende structuurvisie; Verkeers- en vervoerplan' Milieubeleidsplan	Area covering structural vision; Traffic and transport plan; Environmental policy plan	Omgevingsvisie	Environmental vision

Table 4.5. Overview of current policy developing instruments replaced by EPA instruments.
Legend: NG = National government, P = Province, WB = Water board, M = Municipality

C.2) Policy goals: environmental values and instructions
The environmental vision forms the basis for the next part of the policy cycle, the establishing of policy goals. The vision is translated into quantifiable, objective goals, the so-called *environmental values* (omgevingswaarden), that makes it possible to do quantitative research on the feasibility and success of policy. These environmental values often find their place in environmental plans and other general regulations as minimal standards for the living environment.

Each layer of government may set up environmental values. However, if these values are sent to a lower layer, they become *instructions*. The lower level government, most often the municipality, needs to incorporate the instruction into its own environmental values and plan. Another example of a delegating instrument is what is called *assessment regulations for permit applications*. This way, the permission procedure will be similar throughout the country.

C.3) General regulations

The environmental visions and values are put together in general regulations. The main instrument in this phase is the *environmental plan* (omgevingsplan) that functions as the official policy document for spatial developments in a municipality.

Layer	Current instruments		Replaced by EPA instruments	
	Dutch term	English translation	Dutch term	English translation
NG			Algemene rijksregels over activiteiten	General national regulations on activities
P	Milieuverordening; Planologische verordening; Ontgrondingen-verordening; Landschapsverordening; Grondwaterverordening	Environmental ordinance; Planning ordinance; Earth removal ordinance; Landscape ordinance; Ground water ordinance	Omgevings-verordening	Environmental ordinance
WB	Keur; Beschermingszones waterstaatswerken	'Inspection'; Protection zones waterworks	Waterschaps-verordening	Water board ordinance
M	Bestemmingsplan	Zoning plan	Omgevingsplan	Environmental plan

Table 4.6: Overview of current regulatory instruments replaced by EPA instruments.
Legend: NG = National government, P = Province, WB = Water board, M = Municipality

C.4) General regulations at the municipal level: the omgevingsplan (environmental plan)

Where before regulations on various aspects of the environment (e.g. spatial planning, environment, nature, cultural heritage, trees and streetscape) would be set in different ordinances, now regulations on these aspects will be combined in this one integrated *omgevingsplan* (environmental plan), covering a government layer's whole geographical jurisdiction. This stimulates the synchronisation of separate regulations and creates less ambiguity for initiators (Schultz van Haegen, 2014, p. 88). The environmental plan is the most influential spatial policy document, as it is the definitive decision on how areas will be used.

A major change in the new system of environmental law is the difference in details levels between the current zoning plans and the new environmental plans. The level of detail in current zoning plans often is considered to be rigid; procedures for building activities in deviation of the plan as well as changes to the plan are often understood to be extensive and hindering (Schultz van Haegen, 2014). The new paradigm – see also section 4.2.2 – in environmental law is one of 'invitational planning': governments should create more liberty and possibilities in the environmental plan (Schultz van Haegen, 2017b). This paradigm shift has started as early as 2010, with a publication of the former Ministry of Public Housing, Spatial Planning and the Environment on 'generalised zoning' (VROM, 2010). VROM argues a strict zoning plan offers a false sense of legal certainty, since a strict plan needs to be changed more often. A less detailed zoning plan offers less restrictions and creates possibilities more for spatial initiatives. Another advantage of generalised zoning is the lesser rigidity of the zoning plan; this increased flexibility makes that the plan more resilient towards changing contexts.

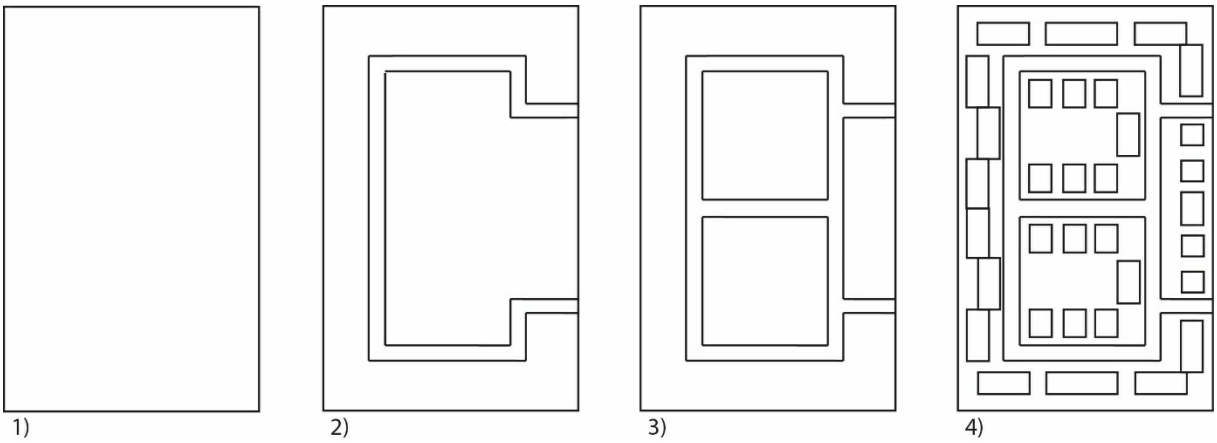

Figure 4.3. Various levels of details in zoning plans. After: VROM (2010, p. 11).
1) Only the function is determined. 2) Function is defined, as well as the major traffic arteries. 3) Zoning, with for example specific building regulations, and major traffic arteries are determined, as well as the traffic tributaries. 4) Zoning and traffic is determined, and so are the building surfaces.

C.5) General regulations at other levels
While the environmental plan is the definitive policy document on spatial development at the local level, there are several other instruments introducing general regulations for the environment. Firstly, there are general national regulations (*algemene rijksregels* or *ARR*). Secondly, both the water boards and provinces develop their own versions of environmental plans. These are the water board ordinance (waterschapsverordening) and the environmental ordinance (*omgevingsverordening*), respectively. These ordinances provide spatial frameworks that are incorporated into the municipal environmental plans.

C.6) Permission: the environmental permit and the project decision
Referring to the environmental plan a municipality may or may not allow certain spatial developments and give *environmental permits* (omgevingsvergunningen). *Project decisions* (projectbesluiten) are instruments for national governments, provinces and water boards to allow environmental activities at a regional or national level, such as the building of national roads or the reinforcing of waterworks.

C.7) Relations between layers of government
The EPA also dictates how environmental regulations are synchronised between the various layers of government. There is a repetitive pattern between visions (policy development), values (policy goals), plans (regulation) and permits (permission). Also, the more general environmental ideas of higher levels of government filter through into more specific environmental ideas in lower level governments. For an over view, see figure 4.4.

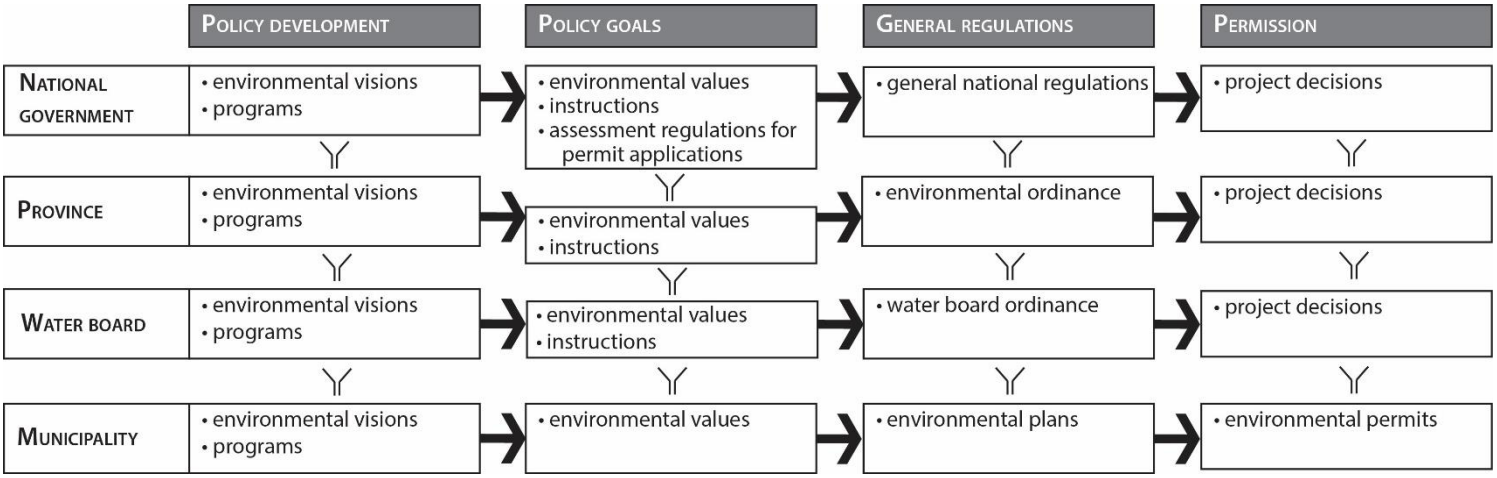

Figure 4.4 Relations between layers of government and their instruments.

D) Conclusion changes system overhaul
In general, the flow of ideas and values through the system remains the same, as the construction where higher levels of government formulate general rules to be enforced at the lower level will remain. In other aspects, however, the system is simplified: the terms and meanings of planning instruments at different levels are made congruent throughout the system, which increases comprehensibility. The combination of several acts and executive orders into one set of regulations will also increase legibility and comprehensibility. New in the system is the explicit request for more generalised environmental plans, compared to the more detailed zoning plans in the current system.

4.2.2 Change 2: Invitational planning: a new paradigm for spatial initiatives

With the introduction of the EPA, there is a shift in the relative importance of spatial actors. Local governments used to refer to detailed zoning plans when assessing permits and other spatial developments. With the EPA, this strong position will decrease because environmental plans will, in general, be less detailed than the current zoning plans. Instead, the emphasis of spatial development lies with private initiators, who can develop their own spatial vision on an area. Still, it should be noted that the municipality still has a great influence through assessing environmental permit applications and evaluate procedures.

In this new paradigm of 'invitational planning', as opposed to the current system of 'authorisation planning' and 'development planning', the government is not the leading actor. Rather, it invites other spatial actors to take responsibility for the environment. The role of the government is reduced to managing the processes dealing with actors and their interests. Schippers (2014) calls this 'directed own responsibility'. This change in paradigm is also often referred to as a change from 'no, unless' (no spatial development, unless they are in line with the zoning plan) to 'yes, if' (spatial development are allowed, as long as they are in line with the environmental plan). Schippers (2014) phrases it as a shift of confidence: away from an all-controlling government towards the confidence that market parties can identify and design spatial development as well as, or better than, governments.

Compared to current legislation, the EPA and its instruments offer less rigid guidelines and regulations, which leads to the situation that there is more liberty and flexibility for diverse types of spatial developments. Through environmental visions, values and plans – instruments that are established by governments in close cooperation with (local) market parties and communities – there still is a framework for spatial developments, although the EPA aims to decrease the level of detail in environmental plans compared to zoning plans.

4.2.3 Change 3: New procedures

In her commentary on the Environmental Decision, as well as her explanations in the senate, the Minister explained that the regular preparation procedure from the Awb will be the standard approach to applications for environmental permits, while the extended procedure will only be followed if there is an obligation for it through international law – for example, the Aarhus convention – or if significant effects for the environment are expected – which already leads to an EIA requirement (*m.e.r.-plicht)* (Eerste Kamer, 2017; Schultz van Haegen, 2017b). Other instruments are, such as project procedures, in which the government (often several layers of government) are the initiator, are considered to be formal decisions, but do not fall under the regular or extended preparation procedure.

So, the shorter general procedure will be applied more often than is the case now, mainly because environmental plans will offer more liberal possibilities, which leads to less out-of-plan permit applications. The short procedure in the EPA, based on the Awb, will take 8 weeks, which may be extended once with 6 weeks to 14 weeks. If there are more authorities involved, the original procedure takes 3 weeks longer, in order to give the possibilities for different local authorities to consider different visions, values and plans and synchronise them into one formal decision.

In cases where the Aarhus convention applies or where there is an EIA requirement, the extended general preparation procedure will be applied. This is the same longer procedure as is currently being used in the Wabo, which was based on the Awb. The main difference between the current Wabo version and the Environmental Decision version is the earlier incorporation of participatory processes in the procedure, alongside the existing viewing and appeal system.

For project procedures, for projects initiated by government(s), a procedure similar to the extended general preparation procedure will be applied.

4.2.4 Change 4: New sources for legal certainty

As descriptions of possibilities in environmental plans are becoming broader, the legislator has chosen to incorporate the principle of 'duty of care' into the EPA (Department 1:3), see Table 4.7. Although this idea has not been present in the Wro, it already is part of other acts, such as the Environmental Management Act. The Explanatory Memorandum (Schultz van Haegen, 2014, pp. 66-67) argues the 'duty of care' principle's functions are:

- Creating awareness to citizens' own responsibility for the promotion of consideration of certain interests,
- Offering guidance for behaviour, when there are no concrete regulations for behaviour in place or when they are not sufficient,
- Offering a measure for the assessment of behaviour
- Offering a justification for the enforcement of administrative law in cases of unmistakable conflicts with the duty of care (safety net function)

Department 1:3	Care for the physical living environment
Art. 1.6	Everyone takes sufficient care for the physical living environment
Art. 1.7	Anyone who knows or can reasonably expect his activity will have negative consequences for the physical living environment is obliged to: a. take all measures that can reasonably be expected to prevent those consequences, b. insofar those consequences cannot be prevented: reduce or revert those consequences as much as possible, c. if those consequences can be reduced insufficiently: refrain from that activity insofar that can be reasonably asked from him.
Art. 1.8	Obligations, as meant in articles 1.7 and 1.8, are fulfilled in any circumstance, insofar through legal requirement or decision specific regulations have been set concerning the goals of the act, and those regulations are observed.

Table 4.7: Duty of care in the EPA

The Memorandum's text on the duty of care and the changing paradigm of 'yes, provided…' – instead of 'no, unless…' – emphasise that the new setting of the EPA asks for more responsibility towards care for the living environment. In principle, initiators are free to determine the sufficient level of care (p. 67). The Memorandum explicitly says that the principle of 'duty of care' is not the single solution to decreasing regulatory pressure. '[Duty of care alone] would optically lead to less regulations, but would lead to an increase of legal uncertainty and the development of pseudo-regulations' (p. 68-69).

There will still be national regulations on, for example, emission standards and building codes. However, more regulations than is currently the case, will be set at the municipal level. This may lead to local differences in demands and conditions. Some think of changes in conditions for participation (e.g. interview De Groot, p. 4), others of different standards for certain nuisance standards (Damen, 2017).

There is a change towards a different type of legal certainty. Rather than difficult deviations of strict regulations, the broader regulations offer more possibilities for initiators, who need to take care of the effects of their spatial development. In practice, it means many environmental activities may take place without a specific permit, as long as the general regulations provide the activity is allowed. It also requires

a more proactive attitude of third parties. In other words, this is a diversion from the current Rhineland model of planning from legal certainties through zoning laws. The new system around the EPA is more like the Anglo-Saxon system of procedural certainty (conform Janssen-Janssen & Woltjer, 2010): no longer are the formal zoning plans leading in what is and is not allowed, it is the procedure and conversations that initiators follow and have that determines if a spatial development is lawful. This is also acknowledged by Eelco de Groot (Interview).

Then again, it is not a full transition towards this procedural certainty. The environmental plans – that replace the current instrument of zoning plans – as well as the environmental vision, the environmental permit or changes to current zoning or environmental plans are all still considered decisions, and are therefore appealable.

4.2.5 CHANGE 5: THE ROLE OF PARTICIPATORY PROCESSES

New in the EPA is the incorporation of participation – as opposed to public consultation – into environmental regulations. The background to the *Omgevingsbesluit* describes it as follows: 'Participation is a subject that flows right through all decisions and instrument of the EPA.' (Schultz van Haegen, 2017b, p. 64). The ideal is to involve citizens, businesses, societal organisations and other levels of government into decision making at an early stage. This offers room for tailor made solutions and results into formal certainty. Participation will take place during the whole chain of policy and decision making in each of the new policy instruments at all levels (values, vision and plan; municipal, regional, national). Many consider this to be a positive development, although there are some criticisms on the way participation is included in the new legal system.

Participation in early stages of plan-making

The new legal system built up around the EPA regulates participation in spatial projects differently compared to the current regulations, based on the Wro and the Wabo. Like the Wabo derived its procedures from the general procedures in the Awb, the EPA will too. So, all decisions will still be appealable and will still include public consultations. However, the *Omgevingsbesluit* includes citizen's participation in procedures and changes the focus of participation in the planning process: aside from consultation and submitting views on the (concept-)decision – which will still be possible – a new moment for more influential participation has been added in the early phases of plan-making. During her explanation in the Senate, the Minister emphasised that this participation should take place when all options are still open (Schultz van Haegen, 2017b; Eerste Kamer, 2017). In the same meeting, the Minister also clarified that this form of public participation only applies to early stages, such as exploration phase, and not the final phase of decision-making. In this stage, there are still the options for submitting views and appealing decisions.

Regulations in *Omgevingsbesluit*

While the Environmental and Planning Act itself mentions participation in art. 16.86, the act delegates the regulation of participation to the *Omgevingsbesluit*, the EPA Executive Order regarding procedures, in art. 4.2. This construction, which also has been applied to other facets of the EPA, has been criticised widely by senators and others (e.g. De Groot, 2017; Van den Broek et al., 2016b). The Environmental Decision prescribes that the responsibility for incorporating participation lies with the initiators. However, this responsibility has different forms when using different instruments from the act.

1) Participation in regular and extended procedures

The majority of environmental permit applications will fall under the regular procedure. In these cases, the responsibility for participation lies with the initiator, and participation needs to take place before the permit application. When the municipality controls the permit application, it also controls for the level of participation. If the level is not sufficient, the municipality may establish the requirement for auxiliary hearing sessions for the 'hearing' of other's interests. The municipality decides this upon aspects as 1) earlier contact with interested parties, 2) the planned activity's effects, 3) the expected objections of interested parties, 4) the general liberty of consideration of the appropriate authority (Schultz van Haegen, 2017b). Otherwise, the municipality may 'hear' interested parties as part of the procedure. If this

2) Participation in establishing environmental visions, plans and programs
The government has promised that in establishing environmental visions, plans and programs, the appropriate authority must declare how citizens, companies, social actors and co-authorities will be involved. They will pre-emptively announce the intent of establishing a new vision, plan of program. How the participation is designed, is free to choose by the authority, and depends on factors such as the involved actors. There also is an obligation to publish the results of the participatory process.

3) Participation in project procedures
The participation in project procedures, spatial activities initiated by governments, is similar to that of visions, plans and programs. Again, the appropriate authority must announce the ways participation will take place and must publish the results of the participatory process. As project procedures often result in a preferred alternative, comparable to a concept-decision, the authority must also react to alternatives proposed by third parties and announce what parts are incorporated in the preferred alternative, and why other parts have not.

No qualitative requirements for participation
The EPA itself delegates regulations on participation to an executive order (art. 16.86). In the Environmental Decision, the executive order, participation is made obligatory when using several instruments. Although early involvement and presentation of the results are mandatory, initiators or the appropriate authorities are free to choose the form of participation and there are no qualitative requirements for participation. Instead, the Environmental Decision refers to the 'Inspirational Guide for Participation' as a source of possible approaches and pitfalls for participation. De Groot (Interview; De Groot, 2017) as well as several senators (Eerste Kamer, 2017) argued that delegating quality to a judicially non-binding document is unjust and disregards citizen's rights, even more so now citizens cannot appeal choices concerning the levels of participation.

From 2011 onwards, when the 'Simple better' policy letter was published, the national government promoted experiments with the EPA principles within the framework of the Chw. This includes experiments with participation, such as the pilot in the case study of De Bilt. Evaluation of the participatory experiments and a number of tips were published by Van Rooy (2018). This voluntary, constant reflection on previous procedures lies at the base of the way participation will be incorporated within the system of the EPA.

The VNG, in a discussion of a Council of State court case on participation in the EPA, acknowledges the benefits of the obligation for participation without qualitative requirements as 'some forms of participation are fit for one municipality, but not for the other' (VNG, 2017a, p.2). They do, however, warn for the perceived differences in what is participation through the eyes of initiators, citizens and the judicial powers: while participation in earlier stages of plan-making are more influential on plans, judicial powers cannot control the quality or results of participation, since they have no jurisdiction on that part of plan-making. They can only control whether or not the procedures have been followed correctly. So, for citizens, there is a confusing difference in participation in early stages of plan-making on the one hand and public consultation and appellation in the formal preparation of a decision.

Participation as a ground for dismissal of applications
In a discussion of another Council of State case the VNG (2017b), states that the quality of participation is not the prime ground for dismissals applications. In principle, a municipality must look at the long-term spatial and environmental effects of an activity. Participation exists to create a spatial plan that satisfies more actors and may aid the municipality in considering its formal decision, but the VNG emphasises that 'lacking public support alone (…) is not a ground for holding back a development, also within the EPA' (VNG, 2017b, p. 2). This case emphasises that municipalities will have difficulty dismissing permit applications, based on the quality of participation. The only reason for dismissing applications, when referring to participation, is based upon the participation plan as proposed by the initiators and agreed upon by the municipality. As long as the initiators follow the participation plan, they stand in their right. Any appeal on

the quality of participation is without chance and 'leaves citizens with a legal right for participation empty-handed' (Interview De Groot).

4.2.6 Change 6: A digital system for environmental planning (DSO)

Currently, the Dutch Cadastre hosts an online platform *ruimtelijkeplannen.nl* (spatialplans.nl) where all current and planned zoning plans and spatial concept-decisions are published. The policy letter 'Simply better' already acknowledged that digital instruments could support a good execution of the EPA (Schultz van Haegen, 2011). Article 16.1 of the EPA itself states that decisions and permit applications on the environment will be published and filed electronically. This idea of digital support was further developed as a 'digital office for the environment', and has led to the *EPA Digital System* (Digitaal Stelsel Omgevingswet, DSO). The DSO will become the primary source of information on regulations on the living environment and will be a channel for changing spatial plans; the DSO will offer insights in current regulations, support the application process for environmental permits by initiators, and support the (local) government in the implementation of spatial planning processes.

The DSO is considered to be a cornerstone of the EPA introduction, as its online permit application function and information source is one of the major solutions to simpler and shorter procedures. Problems with the development of this system have been one major argument for delaying the introduction of the EPA from 2019 to 2021 in July 2017 (Hendriksma, 2017).

For citizens the DSO should become the channel through where they may find out what regulations are active at certain locations, for example their own home. In the DSO they may search for city name, address, postal code, cadastral number or policy document number (Informatiepunt Omgevingswet, 2018b). Through the DSO (civil) initiators may find out what possibilities are, third parties may find out what their rights are. There will also be a possibility for receiving alerts through email, when there are new (concept-) decisions in a designated area of interest, as there already is for *ruimtelijkeplannen.nl*.

4.2.7 Change 7: Effects of the transition towards the EPA

In the period between the EPA's announcement in 2011 there have already been changes in planning practice in the Netherlands. Municipalities try to prepare their zoning plans for the EPA's entry into force, while they have experimented with procedures in the spirit of the EPA.

'EPA proof' zoning plans

When the EPA will enter into force in 2021, all current municipal zoning plans will be transformed automatically into legitimate environment plans and will succeeded by an actual environmental plan when the original time period of the zoning plan has transpired. Therefore, there is no period where no regulations on land use exist. However, it does mean that, initially, there is not always a congruent set of local regulations. The Minister has stated that municipalities will receive time to incorporate all regulation into environmental plans. Current zoning plans need only to be replaced by environmental plans when their valid period ends. Moreover, the national government has advised the various levels of government to be prepared for the introduction of the EPA, so many municipalities have already started to incorporate most of the aspects of an environmental plan into new zoning plans that need to be established before the formal entry into force of the EPA. This effect has been enhanced by the earlier delays of the entry into force of the EPA. This causes most current zoning plans to be 'EPA proof' already. For example, policy for EPA-proofing zoning plans has been established in the case study municipality of De Bilt, as there is already an environmental vision.

The relation between various scales of spatial initiatives and the procedures that are followed will remain roughly similar. Where before the regular and the extended preparation procedures of part 3.4 of the Awb were translated for environmental law through the Wabo, with the EPA the Awb itself is applied. There is, however, a meaningful difference between the current system and the future EPA system, in terms of application of the type of procedure. As environmental plans are less detailed than zoning plans, there is less need to deviate from the environmental plan, because regular environmental permits will suffice. This

means that the extended procedure, which was often applied to deviations from zoning plans, will not be necessary as often as it was.

Although the idea of 'generalised zoning plans' (VROM, 2010) has already been enforced since 2010 in current zoning plans, with the introduction of the EPA municipalities are advised to decrease the level of detail in environmental plans: specific regulations are now the result of tailor made solutions.

Independent effects of the EPA transition
In the case the EPA's entry into force will be delayed even further, which could occur if the DSO is not ready in 2021, or in an even more unlikely case cancelled, the whole period of the preparation of the EPA, combined with the effects of Chw, will still have had a significant effect on environmental legislation. Consequently, as procedures have functioned outside of current regulations, various parties may have different expectations of spatial development, as well as procedures.

4.2.8 Conclusion

In short, when looking at procedures, public consultation, participation, legal certainty and planning practice, there will be some changes. Procedures will not change profoundly. There are also no real changes in public consultation. However, to both applies that they might be applied less, because of the changes in the level of detail in environmental plans as compared to zoning plans. In planning practices there are few changes, since current practices are already working within the framework of the EPA, through experimentation made possible with the Chw. Also notable, the DSO should increase accessibility of changing spatial plans, through increased visibility of the medium, compared to the current system of ruimtelijkeplannen.nl.

In terms of the four aspects of environmental policy change, procedures, public consultation, participation and legal certainty, a number of changes has been signalled. The procedures are shortened and at the same time more politicised, since they are now reserved for deviations of environmental plans or impactful activities. There are no significant changes to public participation. Participation plans are obligatory for the first time. However, there are no qualitative requirements for participation. Since, in current best planning practices, participation is already applied often, there might be no real change in terms of participation. Perhaps, the only change is the increased familiarity with participation by planners. There is a change of legal certainty as well: since the level of detail in environmental plans goes down, there are fewer grounds for appeal. Instead, there is a shift towards procedural legal certainty as the agreements between initiator and municipality are a new source of legal certainty

4.3 ON C) WHAT ARE THE CONSEQUENCES OF THESE CHANGES, BOTH POSITIVE AND NEGATIVE?

In general, the main purpose of the EPA is to introduce a new paradigm for spatial initiatives. This paradigm shift needs to be consolidated into both legislation and planning practices. So, in terms of legislation there is a change of the application of environmental law, shifting the legal-cultural identity (Voermans, 2011) of environmental law.

On the other hand, when it comes to planning practice there also is a change. The choice of planners at the government as well as in the market shifts from protection more towards utilisation of resources. The shift was described by several authors (Kruiter & Lammers, 2016; Meijer et al., 2016; Van Oenen, 2016). Below the effects of the changes as identified in research question B will be explained.

Again, there is no meaningful order to the description of the effects, as was the case with the recognised changes in section 4.2. In this chapter, we follow the same order as in 4.2.

4.3.1 CONSEQUENCES OF THE SYSTEM OVERHAUL (CHANGE 1)

As shown in section 4.2.1 the overhaul of the spatial planning system has many faces: there is a simplification of acts and regulations, there are new terminology and instruments, and there is a simplified flow of environmental policy. As argued in 4.2.1, the implications of this system overhaul are minimal: while the act changes form, the contents are left relatively intact. Foremost, it is a judicial reform, while current environmental standards will stand. Also while the flow of environmental policy is simplified, in its core it remains the same: in the context of the EPA there will still be a top-down flow from broad directives and regulations at the national level towards specific regulations at the regional and local level.

The main difference between the current system and the EPA is in the instrumentation. While instruments remain roughly the same, there is a change in the level of certainty regarding procedures. Many procedural regulations are set in the assembly of executive orders, rather than in the acts themselves. As mentioned before, these executive orders are changeable by ministers, rather than the House of Representatives. This opens up the possibility that in the future the political views of a minister or a cabinet may have a greater influence on procedural policies.

Another small effect of the system overhaul has risen because of the combination of different permits into one permit. In the EPA, projects cannot be halted due to one faulty permit; either there is approval for the project or there is not. In practice this means two things: firstly, for initiators it should be more clear whether or not they can proceed with their project. On the other hand, in the current context, interested parties can appeal decisions on separate permits, while in the new situation, appeals apply to the whole permit. Any pending judicial decision on a permit could halt the whole project.

Finally, while the act aims to shorten the period before an initiator can start his project, shorter procedures do not automatically result in shorter decision-making (Wagenaar, 2016). Shorter procedures still need to be followed correctly, otherwise they lead to third parties' dissatisfaction and, consequently, appeals and a judicial procedure. Alongside others, Wagenaar (2016) argues for stricter regulations for participation in early stages of plan-making, see also 4.3.5.

4.3.2 CONSEQUENCES OF THE INVITATIONAL PLANNING PARADIGM (CHANGE 2)

Invitational planning requires a different attitude of government and market parties as well as concerned citizens. While the former parties are professionally inclined to be prepared for this attitude shift, this may be less so for citizens. This new paradigm requires citizens to be proactive and aware of changes in the environment. Especially so, when first party actors will probably not happily invite local citizens because of the implied extra costs of facilitating conversations with third parties, and the expected extra costs for changing plans into less profitable ideas.

De Groot also warns for problems with the possibilities of smaller municipalities: *'What will happen now, is that smaller municipalities will think about building wind [turbines] or CO_2 storage, but they have little to no capacity to cope with these delicate issues. They only see the administrative charges, some tax income, some increased employment opportunities and think "well, why not?"(…). But you just cannot leave this to (…) smaller municipalities. This is naïve and it will lead to different decisions in each municipality to similar cases. That is randomness, so legal inequality, so injustice.'* (Interview). In short, most likely the smaller municipalities may not have the capacity to deal with the high-rising stakes often associated with environmental activities. This is especially the case, when procedures are more often applied to highly politicised and otherwise impactful developments, now many simple environmental activities may take place without permits, under the 'yes, provided…' strategy.

This paradigm shift towards invitational planning is part of a broader change of the 'participation society', where due to government retrenchment and withdrawal private parties take a leading role in society. According to Gerards (2017) this 'doing democracy' leads to more clashes of private parties and therefore to proceduralisation, where an increase of private disagreements leads to more legal procedures. In the new system there is less room for appellation and more for procedures. Procedures are not only costly and tiresome for the involved parties, above all they often are reactive: the damage has already been done. Gerards argues it is better to prevent problems with fundamental rights by installing constitutional guarantees in policies, than to fight them over in court.

4.3.3 Consequences of new procedures (change 3)

First of all, there are constants when it comes to procedures. Both the uniform procedure as the extended procedure will still be applied, depending on the same different scales of projects as before.

However, there will also be changes in procedures, as identified in section 4.2.3, having a number of effects. Firstly, because regulations are less detailed and therefore deviation of regulations is less likely, the regular preparation procedure will be applied by local governments more often when assessing spatial developments. Also, as regulations are no longer stated in different documents, but combined in one environmental plan, local governments will likely need less time to assess new initiatives. Therefore it is less likely that the local government needs the extra term of the preparation procedure. In terms for citizens' interests, this means that slightly more impactful initiatives will generally be assessed in a shorter period of time, leaving less time for citizens to submit views and enter the appeal process.

On the other hand, secondly, the obligation for participation, although without qualitative requirements, is new and will have an impact on the way citizens' interests are secured. See section 4.3.5 for more on participation.

In terms of the categorisation of change, apart from the changes to new procedures, there are also changes in the way participation works, as well as minor changes in legal certainty. There seem to be no changes in the other categorisation of public consultation.

4.3.4 Consequences of the new sources for legal certainty (change 4)

The culture of the EPA prescribes that the limitations and regulations in environmental plans should be defined less strict as much as possible, as compared to current zoning plans. However, when looking at this from a juridical perspective, this does not mean there is less legal certainty. As much as before in zoning plans, environmental plans will describe regulations for a certain area; only the level of detail is decreased. Also, environmental plans will still be appealable, as well as environmental visions.

There are, however, two distinct instances in the EPA where there are changes to legal certainty. Firstly, many general regulations are not placed within the main Act itself, but in executive orders, that are changed by ministers more easily than changing acts. However, in terms of this study researching the effects of the EPA for 3rd party actors at the local level, this change in legal certainty is not that relevant. Another change, that has a greater effect at the local level, is the new obligation for participation. As there are no

requirements for the quality of this participation defined in an act or order, but agreements between governments and initiators over participation plans are now shaping procedures, certainty over participation is no longer found in general regulations but in specific arrangements. Along with the shift towards invitational planning (change 2), there is a danger for proceduralisation.

This shift will therefore have a selective, but profound effect on procedures, participation and legal certainty. There seem to be no changes in the other categorisation of public consultation.

4.3.5 Consequences of changes in participatory processes (Change 5)

The (national) government itself is deeply aware of the importance of good participatory processes. In their research Van den Broek et al. (2016a, 2016b) emphasise that participation knows many pitfalls and needs careful attention.

Privately organised participation

Several authors also warn for participation that is organised by private first parties. For example, De Groot (Interview) rejects the notion of rational market parties organising participation to prevent commotion; instead he thinks that market parties are not fully rational. Soeterbroek (2017) finds other reasons for probable unsuccessful participation: market parties try to save expenses as much as possible. Governments then often step in to correct this disregard, leading to a situation of private gains and public losses. Wagenaar (2016), De Groot (2017) and Soeterbroek (2017) therefore all argue that participation in its current form in the EPA is insufficient.

Participants

Another concern regarding participation is on who is participating. Van den Broek et al. (2016b) wonder whether citizens are able to participate: Do they have the time and energy to participate? Will they be given enough possibilities to be involved? Will they feel involved sufficiently? The authors also emphasise the (local) governments' need to have 'antennas' in the local community. Other authors argue that those who are participating are not necessarily a representative sample of the population. Often they are those who have both knowledge and time (De Groot, interview A.6), or have a certain lifestyle valuing participation (Nienhuis et al., 2011). In the context of the EPA, this means that especially municipalities need to be aware and alert for the quality of participation plans initiators present. If the proposed level of participation in the plans is too low, or when the method for reaching out to citizens in insufficient, and the municipality agrees to the eventually inadequate participation plan, the outcomes for participation will be regretful, but legitimate.

Case-by-case assessment of participation plans

Participation has been secured in the EPA, or rather the Environmental Decision, at the most basic level in the form of the obligatory participation plan. Further directions on the quality of participation are voluntary. Since, in terms of the EPA, each project needs a tailor-made approach, there is little need for general regulations on participation (Schultz van Haegen in: Eerste Kamer, 2017). Similar cases in the same municipality may receive different assessments of their participation plans. The same applies to similar cases across different municipalities. De Groot (interview A.6) warns that this process may increase differences in legal certainty between different areas within a municipality or between municipalities. Van den Broek et al. (2016b) also warns for effect.

Appealing participation plans

The absence of general qualitative demands of participation plans, makes it difficult to evaluate participation plans. De Groot (2017) goes so far to argue that this makes that the assessment of participation is de facto impossible. Also, the National Ombudsman (2019) is starting a research to appeal processes and quality control regarding participatory processes. In this research the Ombudsman tries to find out 1) where and how interested parties can express they feel they are involved insufficiently, 2) how the (local) government will supervise participation, and 3) how grievance is managed.

4.3.6 Consequences of the DSO's development (change 6)

Many characteristics of the DSO are already working nowadays, in the form of the website www.ruimtelijkeplannen.nl. The main differences between the DSO and the current website are, firstly, the increased data of information placed there, as environmental plan contain more information than the current zoning plans, and, secondly, the slightly changed functionality of the DSO as a digital platform where various actors, including citizens, can provide and upload information.

The first characteristic of the DSO – more information – may have two opposing effects. As more data, information and plans are made public, while geo-referenced, it may provide more insight for and transparency towards citizens into spatial and environmental developments in an area of interest.

Secondly, through the DSO citizens can be updated about changes, so they can react in an earlier stage than before. On the other hand, if the DSO will become a technocratic and inconvenient system, it may cause information overloads, where citizens cannot find the necessary information.

Although there are some changes that are introduced with the DSO, when referring to the categorisation of changes, there are no significant effects to procedures, public consultation, participation or legal certainty.

4.3.7 Consequences of the transition towards the EPA (change 7)

In general, municipalities have practiced with the EPA already, much like De Bilt. Implementation of the EPA takes place gradually: most zoning plans are made 'EPA proof', the paradigm of the EPA is introduced to the municipalities' public servants. There is no real danger for sudden surprises in the implementation.

There are more concerns for the level of expertise and effectiveness of environmental policies in small, peripheral municipalities (e.g. interview De Groot; interview Kragting). This may affect several areas that are necessary for proper government action: communication towards citizens, attention for the disadvantaged, judicial quality of policies (Van den Broek et al., 2016b). As the case of Ganzedijk shows, the expertise of public servants in small municipalities may fall short in early stages. Afterwards, these situations require extensive programs to enforce successful solutions and restore public opinion, as illustrated by Lich and Loorbach (Interview): '*Calon came and Kloeg left and then Pim de Bruijne came (…). And from that we got a decent situation.*' De Groot (Interview) typologises this as 'private gains, public losses'.

It must be said, though, that this also can be a perfectly legal and conscious position for a municipality to take, as Van Ammers (Interview) and Kragting (Interview) agree: the municipal council can distinctly choose to be lenient with participation plans in permit applications.

4.3.8 Conclusion

In conclusion, many of the procedural changes in the EPA lead to a new relations between various actors in spatial planning processes. Since regulations have become more free and will be set and controlled by local governments more often, and since the EPA emphasises the wish for tailor-made spatial solutions, the EPA is another step from a centralised planning system towards a discretionary planning system, as Janssen-Janssen and Woltjer (2010) already foresaw.

Spatial planning processes that are initiated by private actors are not as controllable as publicly initiated projects. This reduction of control at the municipal or other governmental levels may lead to situations where the private actor falls short and the public actor needs to step in, while not having the proper means and tools to rectify private shortcomings. The (local) government may need extra instruments to enforce environmental values. Also, while the EPA way of working creates more public support, it has less democratic legitimacy than the current processes.

In the end, though, the EPA is a product of values held by politicians, policy makers, legal advisors, planners with practical experience, and private actors alike. Even in the scientific world, authors describe that the

role of the planner in the Netherlands has become too important, self-evident, and one-sided (De Roo and Boelens, 2016, p. 108).

In practice, however, regarding the four identified markers of changes of socio-spatial planning practices, there are some significant effects. Apart from the shortening of the overall duration of procedures, there are no real changes. There is no significant change in public consultation. The major changes in the EPA are in participatory processes and legal certainty. For participation the main issue is the lack of general, nation-wide qualitative requirements for participation, potentially leading to unsatisfying participatory processes. The effects on legal certainty are partly to do with the lack of requirements in participation, leaving no description of the rights of third parties regarding participation, and are partly to do with the changes in the way governments and initiators describe each other's duties.

4.4 ON D) HOW CAN THE ADVERSE EFFECTS BE MITIGATED?

In section 4.3 there it was established there is a number of (possible) adverse effects planners at municipalities as well as at initiators need to be aware of. First, and foremost, there are problems with participation. They mainly stem from a lack of definitions concerning participation: neither the EPA nor the *Omgevingsbesluit* do specify the minimal qualitative conditions for participation, nor do these documents give indications for appropriate levels of participation for different scales of projects. Instead, for guidelines the act refers to a non-binding inspirational guide.

As was discussed earlier, there is a real risk that underfunded or inattentive municipal executive branches will pay too little attention to the requirements to participation and the management of impacts to third parties, especially in the phase directly after the act's entry into force.

In this section, possible solutions to or mitigations of the signalled problems are explored. As was the case in earlier sections, we follow the order in which the issues were mentioned in section 4.3.

4.4.1 POSSIBLE MITIGATIONS WITHIN THE EPA FRAMEWORK

In the sections above, it was established that the EPA has a number of shortcomings that need adjustments. Fortunately, the EPA is very flexible and offers room for change.

Emphasise the importance of participation to municipal public environmental and planning workers

De Groot (Interview), Van Ammers (Interview) and Kragting (Interview) note that participation is not yet a standard part of municipal policies. Van Ammers mentions that the De Bilt municipality has put great effort into designing ways of incorporating participation into municipal environmental policy development, but that De Bilt is a relative forerunner in that aspect. So, at the moment, participation seems to be an underdeveloped terrain of policy with municipalities. Also, De Groot (Interview) emphasises that the inspirational guide to participation, to which the *Omgevingsbesluit* refers, is far from sufficient. Instead, the position of participation in the EPA and its associated executive orders should be improved and enforced, in order to make clear that participation should be a serious and important part of planning processes. This may also be done through supplementary trainings for public workers.

Emphasise seeing participation as an investment in public support

The case of Ganzedijk is an example where an extensive and costly program was necessary to rectify earlier mistakes or inadequacies by private and (semi-)public bodies. Often, these costly programs are to be instigated by a government; in the Ganzedijk case, it was the province. The EPA offers the possibility for early participation, but the question remains whether initiators will do so. In practice, early investments are not part of cost-benefit analyses for private initiators and are seen as an unwanted, necessary evil. De Groot (Interview) emphasises that this is situation is not desirable. He argues, instead, the initiator himself should be the one to invest in the relationship with the impacted stakeholders. Early provision of information – along the lines of Free, Prior and Informed Consent (FPIC, see for example Ward (2011)) – and a warm approach from initiators towards impacted, interested parties are very helpful in managing a successful project (e.g. Pröpper et al., 2008; De Groot, 2017). Along the lines of paying for environmental pollution, there should be something similar for social planning: 'paying for socio-spatial troublemaking' (Interview De Groot). To prevent undesirable situations like the Ganzedijk case from happening, the government that assesses and issues environmental permits (often the municipality), should have an imperative voice in assigning relevant interested parties, that should be involved in early participation.

Define qualitative conditions for participation plans

As the EPA stands now, the demands regarding participation in processes spatial change are minimal. Several authors, however, take the view that this should not be the case. For example, Van den Broek et al. (2016b) argue that participation will not develop autonomously in spatial planning; instead, you need regulations and conditions, especially to incorporate 'weak' citizens. De Groot, in his essay (2017), thinks along the same line, and points towards the benefits of regulated participation: there will be fewer procedures, while public support increases.

Apply participatory processes proportionally

De Groot (2017) not only points towards the EPA's current shortcomings, he also proposes several methods to incorporate participation standards in the EPA planning processes, for example the international standard of Social Impact Assessment (SIA) or the French institute of the *Commission Nationale du Débat Publique* (CNDP, National Committee for Public Debate). De Groot (Interview) also emphasises that the applied methods could be differentiated depending on the project's scale and should be proportional. In the interview, De Groot mentions there is a greater need for participation of either the impact or the controversy of a plan, or both, are greater, see Figure 4.5.

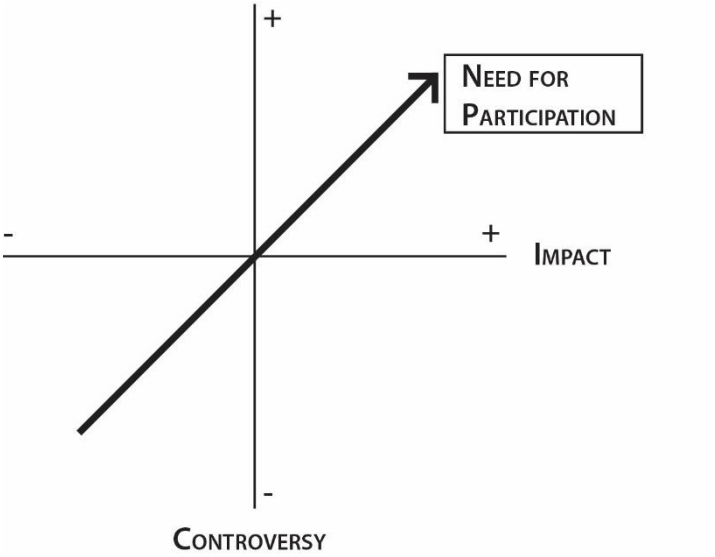

Figure 4.5: Proportionality in participation processes (after: De Groot, Interview)

Increase municipal ambitions on participation

Kragting (Interview) acknowledges that the ambition of the local municipality is decisive for the level of participation processes in the EPA. So, De Bilt may be considered an ambitious municipality, because of the ways the municipality tried to involve citizens in designing their environmental vision through participation. In the end, this approach lead to greater citizen satisfaction with the environmental vision and, consequently, the environmental plan, causing raised public support and a decreased risk for NIMBY-like reactions. However, it is unlikely that all municipalities will have the same ambitions and may therefore not develop and maintain these levels of participation, both in permit applications as in developing municipal environmental visions and plans. To counter this effect, investments should be made in developing these skills and capacities in all municipalities.

Discrepancies in inhabitants' expectations

On the other hand, authors like Voermans and Waling (2018) warn for the pitfalls of municipal policy and policy makers: the difference between the municipality for the people and the municipality by the people must not become too great. As the subjects of municipal policy become increasingly complex, policy makers walk on a thin line between 'we know better, we see the bigger picture' and 'tell us what you want and we will make it happen'.

Create juridical clarity on the status of case-by-case participation plans

At the moment, there is no believable way to express grievance on participation plan proposals. That is why De Groot (2017) warns for the 'de facto uncontrollable' nature of the current way participation is regulated. The National Ombudsman (2019) also acknowledges there currently are shortcomings in the ways citizens can express grievance and how government can control participation levels. Furthermore, the VNG (2017a; 2017b) also argues that the eventual legal status of participation requirements is still unclear, as they discuss judgements by the Council of State. In the early years of the new system, cases on the edges of the

new legal system should be brought before court, in order to create jurisprudence. Instead, fictitious cases may be discussed in court as well.

4.4.2 POSSIBLE MITIGATIONS OUTSIDE THE EPA FRAMEWORK

Mitigations outside of the framework of the EPA are more profound than those within the EPA framework, mostly because many best practices of the last years have already been established within the Chw and EPA mind-set. Mitigations outside of the framework therefore require another legal overhaul.

As mentioned before, the EPA is a mixed form between the Anglo-Saxon, discretionary model and the Rhineland model, based on general regulations. In a sense, you could define the EPA as a set of broad general regulations for the environment that makes tailor-made solutions possible. As we have signalled that incorporating third parties' interests is regulated insufficiently, it is most likely that the EPA should be changed and incorporated those rules, thus moving away from the more discretionary models. A new legal system would create a new balance between protection on the one hand and utilisation on the other hand.

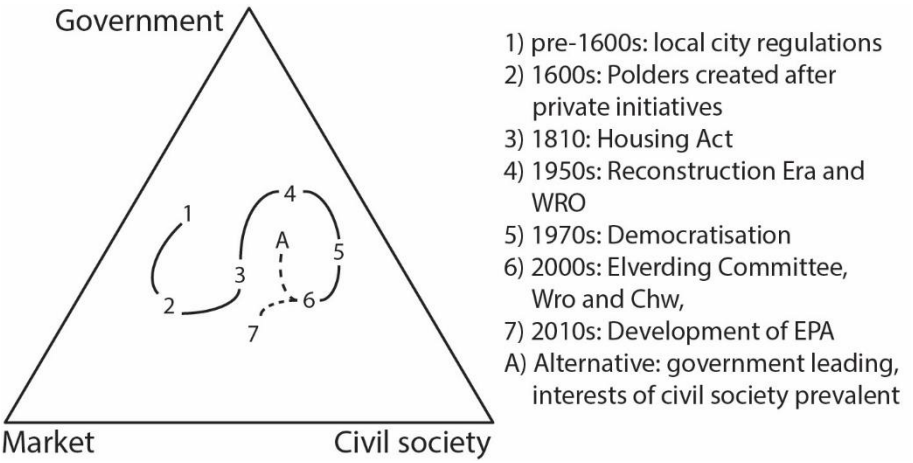

Figure 4.6: Alternative model for power relations in Dutch planning

SECTION 5: CONCLUSIONS

Many of the instruments offered to spatial planners in the new EPA have already been introduced in the recent reforms, when the Spatial Planning Act 1965 was followed up by the Wro (2008) and the Wabo (2010). Trends and developments in society and politics towards decision-making at the lowest level are now firmly incorporated into one act. However, these developments were already acknowledged in the Wro, the Wabo, the Chw, the last Policy Document on Spatial Planning (2004) and - last but not least - good practice. So, in this sense, there is nothing new under the sun. However, if one looks at the details, he would see that the legislator has made small but profound choices, effectively resulting in new directions for environmental law and environmental planning.

Small changes, great effects

In general, the EPA shows a shift in the prevalence of interests, along the line between protection and utilisation. Where before lengthy, meticulous procedures were meant to protect the interests of third parties, the shorter procedures are meant to create more possibilities for initiators. This shift away from legal certainty is compensated by the increased demand for good communication between initiator and government and participation with impacted citizens or communities. This new balance requires close attention, which means the work load for initiators or governments does not necessarily decrease.

Impact of the EPA, despite postponement or possible cancellation

If it were the case that the Environmental and Planning Act will receive the same fate as the never enforced Fifth Memorandum on Space – obsolete after an unexpected shift in national politics – the EPA still will have had a profound effect on spatial planning practices in the Netherlands. The EPA and its predecessor, the Chw, have created a new standard where quick and easy procedures are the norm and private parties are the leading actors. It is unlikely that this new paradigm will change any time soon. So, even in this case, there is a real responsibility for spatial planners to make work of including the interests of third parties.

The practice of municipal EPA planning

The experiments in De Bilt show a plausible strategy to incorporate the interests of residents of the municipality in the environmental vision and, eventually, the environmental plan. This vision will ultimately be the base for the eventual environmental plan for the whole municipality. On the other hand, the De Bilt approach is not a standard approach within the EPA, because each municipality is free to develop their own policy goals after their own wishes in their own ways, whether or not to include inhabitants in environmental vision and plan making processes is up to municipalities.

The level of flexibility in planning processes leaves open a wide array of possibilities to municipalities, from which they must make a substantiated choice.

Final remarks

The EPA marks a new era for Dutch planning. Changing societal demands for more flexibility and tailor-made solutions have put the initiator in the primal position for environmental planning. The initiator will become the main actor who shapes planning processes, while the government takes a step back and mostly facilitates. This new position is fair, as it is a reaction to the ideas living in society, but it also depends on a delicate balance in the protection people's interests. If the balances becomes out of balance, society may react and demand a more equal say in planning processes, or put more power into the hands of the government. Ways to prevent this, are to incorporate more specific regulations on citizen participation in the EPA and the associated executive orders and to emphasise to initiators the importance of good relationships with (groups of) citizens.

SECTION 6: REMARKS AND RECOMMENDATIONS

In this section there is room for remarks on the research practice for this thesis and its consequences on the research's results. Furthermore, recommendations for the work field and further research are made.

6.1 REMARKS ON THE RESEARCH

Due to the long time between some of the interviews and the final version of this thesis, some subjects in the interviews are not as actual as they were at the time of the interview. For example, new developments, such as shifting the responsibility for EPA's introduction process from the Ministry of Infrastructure and the Environment to the Ministry of Internal Affairs during the coalition negotiations in October 2017, have not been mentioned in any of the interviews.

The range of case studies on municipal EPA planning practice was fairly small and only included the De Bilt municipality. Even though, so is the expectation, no essential information was missed, it would have been better if more practical case studies would have conducted to become part of this research. It may have produced more, differing views and could have covered different types of municipalities with different backgrounds, increasing the overall credibility of this research. In the end though, because of time constraints, it was not possible to include more cases.

6.2 RECOMMENDATIONS FOR THE WORK FIELD

The EPA requires a new way of thinking in spatial planning. In many cases there are advantages of the new way of working. However, spatial planners in the work field should be aware of possible pitfalls in the new system, mainly in the area of participation. The lack of general, qualitative requirements for participatory processes, leads to an increased responsibility for spatial planners, both at project offices as with municipalities.

Previously, the Vereniging Nederlandse Gemeente (VNG, Union of Dutch Municipalities) has made model ordinances on, for example participation in general policy making. Also, they have contributed to the Inspirational Guide for Participation the Minister referred to as base for approaching participation in the new EPA system. Perhaps the VNG can make a renewed model participation ordinance, now updated for participation in the EPA.

The shift from protection to utilisation and from focusing on third parties' rights to initiator's rights, does raise a question: how important is the impeding power of third parties? The former, longer procedure aided them in defending their rights.

6.3 RECOMMENDATIONS FOR FURTHER RESEARCH

From in the solemn understanding that research should be based upon questions existing in society, it is clear that the subject in this thesis has considerable relevance to researchers and should be investigated further. Subjects of further research could be a) a broader case study investigation of more experiments and intended planning practices of municipalities in the new setting, b) an case study investigation of experiments or intended planning practices by commercial initiators and project managers, or c) a comparative research to conclude what types of participation is most effective in different types of projects in the EPA context. In any case, many aspects of this research deserve closer examination.

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APPENDICES

APPENDIX A: OVERVIEW OF DUTCH PLANNING HISTORY

This Appendix is a more extensive – and frankly less polished – version of section 2.4.2. In it a general overview of developments in Dutch spatial planning is given.

A.1 INTRODUCTION

The character of Dutch spatial planning, known for its thoroughness and extensive scope, based on a modern rationale and capable of '*moulding society*', has been changing slowly, but steadily (Van der Valk, 2002; Gerrits et al., 2012). In the past, the Netherlands was considered to be a '*planner's paradise*' (Faludi and Van der Valk, 1994) where the possibilities, instruments and policies supported a successful technocratic approach, with planners in the driver's seat. This planning system has effectively reduced the post war housing shortage and, through comprehensive regulations, it has created legal security for residents and private parties, in spite of its delaying and complex procedures (Van der Valk, 2002). In the last twenty years, however, the modern rationale has made way for the post-modern worldview. For example, the extensive set of regulations 'felt to be unnecessarily restrictive to spatial initiatives' of locals and private parties (Gerrits et al., 2012, p. 337). In planners' postmodern views planning ought to focus on creating possibilities, rather than enforcing restrictions.

This shift from modern, top-down planning towards a more bottom-up, post-modern rationale has already had its effects on the Dutch planning system, but is still ongoing. This change has most to do with changes in society (Gerrits et al., 2012). Because of democratisation and societal protest, among other causes, Dutch planning might not be as straightforward as it has been before. Boelens (2009) states a number of reasons: people are becoming more individualistic, with personal interests; also, because of the rise of the network society, communities are not necessarily connected to a certain location. Extensive, general, top-down planning is not applicable anymore. These developments resulted in several new approaches within the planning discourse such as integrated area-based approaches (e.g. De Roo, 2003; De Zeeuw, 2007; Arts, 2007). Gerrits et al. (2012) also mention a new focus on tailor-made, communicative and process-oriented planning. Since the Policy Document on Spatial Planning of 2006, the motto in Dutch national spatial planning has become *´Centralise what you must, decentralise what you can'* (Boelens, 2009, p. 146). In short, the local and the individual levels of space have become more relevant to Dutch spatial planning. The introduction of the EPA consolidates this trend towards tailor-made spatial solutions on the lowest administrative level.

A.2 HISTORICAL DUTCH PLANNING: THE LOCAL GOVERNMENT BECOMES A SPATIAL ACTOR

The Netherlands has a long history of spatial planning. The earliest dikes were built in the Northern Netherlands in the 12th century. Medieval cities had designated areas for leatherworkers and slaughterhouses. The exploitation of peat areas required to arrange the various functions in the landscape as efficiently as possible. The polders of the 17th century created new land where had been water, often caused by unsustainable peat cutting. The polders were a *tabula rasa* that required spatial planners *avant la lettre* to think about the locations of the various spatial actors (Wagenaar, 2011).

However, until this moment, many of these planning interventions were private engagements, that were not really limited by national legislation. Local regulations, put in place by city councils, were far more significant. The Amsterdam canal ring is a 17th century example of spatial development under strict local governmental efforts (Voogd and Woltjer, 2010).

Around the French Revolution and the Napoleonic Era, the Netherlands were increasingly influenced by political ideas from France. Inspired by the French Revolution, a popular revolution against the Dutch Republic proclaimed the Batavian Republic in 1795. Napoleon would later create the Kingdom of Holland (1806) as a client kingdom to France and eventually integrate the whole area into the French empire in 1810. Increasingly, French ideas on politics and government gained power in the Netherlands, in particular the idea of the centralised state. This was a huge change from the earlier federal, locally organised structure of the Dutch Republic.

One of the first state-wide laws in the Netherlands that considered careful planning of industrial activities was from this period: the Mining Act of 1810. It stated that mining companies have a responsibility for

careful development and accountability for adverse effects. In this sense it may be considered as one of the first national acts on spatial planning. For its time it was a very modern law; it is no coincidence that the Mining Act has only been replaced by an updated version in 2002. Another major 'inheritance' of this era is Rijkswaterstaat, the State Water Department: since defence against river and sea floodings was considered of national importance, and creating a nation-wide transport network would aid in creating a unitary state, the management of dikes, canals and roads was centralised and integrated in this one state department (Wagenaar, 2011).

Around 1815, when the Netherlands were independent again, the country was only a shadow of its 17th century self in terms of economics and, while industrialisation had grew and spread from the United Kingdom, it had not yet reached the Netherlands. When it finally did, around 1850, many local governments sought to modernise their cities (Wagenaar, 2011). In general, during the Industrial Revolution in the Netherlands economic powers grew and a need for more regulation rose: a system of rights and duties needed to be formalised. At first these regulations would but focus on social problems; an example is the first child labour act of 1874. At this moment there was no real attention to spatial developments during this era.

A.3 Early Dutch planning: constructability of society and the environment

Several decades later, at the start of the 20th century, the *laissez faire* attitude of earlier liberal administrations was replaced by governments with more attention for societal needs. A wave of social legislation resulted in many acts enforcing social justice in many aspects of public life, including spatial planning (Van der Cammen and De Klerk, 2008). The Housing Act of 1901 regulated the minimum requirements for a dwelling, rendering many slums 'uninhabitable'. To compensate for the loss of housing and foster coordinated urban growth, urban municipalities were required to produce expansion plans, thereby allocating space for new housing. These expansion plans, that needed to be revised every ten years, were the predecessor of the zoning plans of the *Wet Ruimtelijke Ordening* (WRO, *Spatial Planning Act*) of 1965, which in turn will be the basis for the EPA's environmental plans. The role of government changed towards that of a strategic facilitator. In some cases the municipality even was the initiator of new development (Voogd and Woltjer, 2010).

The influential Dutch urban planner Berlage viewed urban planning as 'a means to revive the sense of community' and presented his all-encompassing, rational expansion plan for Amsterdam-South in 1904 (Van der Cammen and De Klerk, 2008, p.93). Many more plans by Berlage and those he inspired would follow, requiring a rational and technical leadership by local governments. Berlage, as well as later 'less rational' architects, had ideas of *social engineering*, of shaping society through the built environment. The pinnacle of this sense of 'constructability of society', was the planning of the Wieringermeer polder in the 1930s: the new inhabitants of the newly created land were chosen after 'a rational selection of individuals' (Soeterbroek, 2008, p.55).

A.4 Post-war Dutch planning: rationalisation of planning

Soeterbroek argues this sense of constructability of the society and the physical environment has led the Dutch to accomplish great feats in the face of environmental threats - mainly flood risks - as well as far-reaching social interventions (2008). The period after World War II, also known as the *Reconstruction Era*, required this positive idea of constructability; during the War many houses were lost and new ideas on the ideal household set new conditions to housing. Wagenaar (2011) argues that the rationalisation and standardisation of dwellings was a prerequisite to rebuild the Netherlands after the war, a process that was already started under German occupational rule. The national government was 'to fight public enemy no. 1', the housing shortage, and focused as well on the rebuilding and expansion of Dutch industry and infrastructure. Van der Cammen and De Klerk however argue that the most significant change of the post-war era is a change of political discourse: 'from a late-capitalist economical order towards the order of the welfare state' (2008, p. 164).

This spatial transformation required the centralist, rational control of a national government (Gerrits et al., 2012), that demanded the input of and overview by managers, in what Wagenaar calls 'a managerial

revolution' (2008, p. 357). In this period local city planning was replaced by national spatial planning, explained in national Policy Documents on Spatial Planning, the so-called *Nota Ruimte*. The first *Nota Ruimte*, avant la lettre, on 'the Western Netherlands' dates from 1958. In the actual first *Nota Ruimte* the national government would explain their *planologische kernbeslissing* (core planning decision), to which local implementation in zoning plans (*bestemmingsplannen*) must comply. It were these instruments that led Faludi and Van der Valk (1994) to consider the Netherlands 'a planner's paradise', where a highly centralised, national committee of planners prescribed the spatial development for the whole country.

When in 1962 the millionth post-war dwelling was built in Zwolle, it was a sign that the housing shortage was decreasing. Until now, most of these houses had been built outside of previously built-up areas – except for the reconstructed parts of cities that had been destroyed in wartime. The emphasis in spatial planning started to shift from the provision of housing to creating liveable environments; from quantity towards quality.

The WRO required by law that each municipality should create local zoning plans covering all of their territory, including the (often medieval in origin) inner cities, and the older neighbourhoods from the early 1900s. The more recent, stricter building codes often deemed the dwellings in these areas sub-par, which caused the local authorities to act. Initially, the solution was sought in applying the same ideas from the post-war housing shortage: building new, standardised dwellings. However, where earlier these houses were built in 'greenfield' areas, in these areas it required to demolish existing housing. This urban renewal, also called 'remediation' of older city areas, was increasingly met with resistance. Koffijberg (2005) argues that this is partly due to the cries for more democratisation of the era, illustrated by the student protests of 1968 in Paris, as well as in Amsterdam. Local inhabitants of neighbourhoods that were marked for urban renewal were not content with their forced move to other areas. '[They] started to organise themselves in tenants' organisations and neighbourhood committees [and] asked for a policy of 'building for the neighbourhood': the right of return for current inhabitants in new or restored dwellings that were appropriate and affordable for the current tenants.' (Koffijberg, 2005, p. 143). After the national elections of 1972 a new coalition was formed, that reset the direction of national policies on urban renewal; instead of building new housing, the focus was shifted towards upgrading existing buildings. For the first time in the history of Dutch planning, the rights and wishes of those affected by spatial interventions were starting to become relevant factors in plan making. However, on the municipal level it would take a while before this paradigm shift had taken place. Local authorities often pursued in their goals for modernisation of the city centre through reconstruction, rather than renovation. Eventually, the hesitation or unwillingness at the local level was counteracted by introducing a new instrumentarium for local spatial interventions, as well as new regulations and subsidies. Another major contribution to the change at the local level was the introduction of new civil servants that followed the new paradigm (Koffijberg, 2005).

By the end of the 1970s, the system of Dutch planning had changed: the effectiveness of state-wide guidance of spatial developments through standardisation, was combined with more attention for the local effects of interventions. This system remained mostly intact until the early 2000s.

A.5 Current Dutch planning; the context for the Environmental and Planning Act

Gerrits et al. (2012) argue that Dutch planning discourse started to shift from the 1990s onwards, due to several societal trends. Firstly, spatial developments became more and more international, in a globalising world. This meant that the focus on networks and international collaboration grew and many of the decisions concerning the creation of international networks were made at the European level. Secondly, as the post-war modern planning succeeded in stopping the immediate housing shortage and creating the framework for future development, other spatial issues and developments manifested themselves at the regional level, making the national level mostly obsolete, along with the planning instruments, intended for national spatial planning. And thirdly, the planning process was becoming democratised more and more. As societal demands changed and citizens became more interested in the spatial environment, they asked to be included in the planning processes. So, where regulations and zoning plans had been implemented to create generic conditions throughout the country, at the end of the century, 'these conditions were felt to be unnecessarily restrictive to spatial initiatives' (Gerrits et al., 2012, p. 336).

In the early 2000s, the so-called Vijfde Nota Ruimtelijke Ordening (Fifth Memorandum on Spatial Planning) was developed, in which the national government would impose regulations for local development possibilities through assigning 'red' and 'green' contours around cities and rural areas respectively. The document was drafted, but has never been enforced nationally because of the political turmoil after the assassination of right-wing politician Pim Fortuyn in 2002. The new coalition's views on spatial planning shifted away from the top-down style of the Fifth Memorandum, towards a more bottom-up approach: the, eventually final, Memorandum on Space of 2006 delegated many national planning tools to the provinces and municipalities, thus ending the modern tradition of nationally controlled spatial planning in the Netherlands.

Zonneveld (2005) argues that – at the time – there was a surprising discrepancy between the European planning agenda and its programmes, procedures and instruments, which the Dutch helped promote and install throughout the EU, on the one hand, and the Dutch national planning systems on the other hand. Although Zonneveld mainly points towards the EU's arguments for transnational spatial strategies, contrasted by the Dutch inward-looking perspective of the (last) Policy Document on Spatial Planning of 2004, the same could be said of the inclusion of participative procedures.

Against this background, Gerrits et al. (2012) argue, Dutch spatial planning has shifted fundamentally. Locally, interest grew to experiment with more open planning processes, such as area-oriented approaches and tailor-made project management. Even with infrastructure projects of a greater scale, traditionally just a technical solution of bringing transport from point A to point B, planners increasingly felt the need to include the environmental and social context into the planning (Struiksma and Tillema, 2009). Also, where environmental impact assessments (*milieueffectrapportage*) has been a part of planning and permits since the 1980s, social impact assessments often were not included (Stolp et al., 2002), leading actors on different levels to create instruments to incorporate those effects in plan making. Examples of these instruments are Citizen Value Assessment (Stolp et al., 2002), finding local support through stakeholder involvement in Strategic Environmental Assessments (Van Buuren and Nooteboom, 2010) and promoting and using active citizenship (Van de Wijdeven et al., 2013)

This change from nation-wide planning and standards towards area-specific, tailor-made approaches was cemented in the Nota Ruimte – the *Memorandum on Space* – from 2006 (VROM et al., 2006) and recognised by several authors in academics (e.g. Struiksma and Tillema, 2009; Arts, 2007) as well as the work field (e.g. De Zeeuw, 2007; Franzen and De Zeeuw, 2009). The Nota Ruimte introduced new planning approaches and instruments: its mottos *'room for development'* and *'local if possible, national if necessary'* illustrate the break with the past. No longer would the national government take the lead in local spatial developments. And since there is no longer a need for an all-encompassing national planning focus, the Nota Ruimte would be the last of its kind.

Now subsidiarity was implemented in policies, the focus in planning shifted to elsewhere. After a number of large-scale infrastructure projects (e.g. the Betuwe cargo railway, the High Speed Rail Amsterdam-Antwerp) had been severely delayed and had considerable cost overruns, the minister of Transport and Water Management established an independent advisory committee on the acceleration of plan-making of infrastructure projects – better known as the Elverding Committee, named after its chairman. While the main focus of the committee's research was aimed at cost overruns, the committee acknowledged the long duration of plan-making and appeal processes. It proposed a different manner of plan-making: in order to streamline decision-making processes, plan makers (in this case the national government) should involve stakeholders in the 'reconnaissance phase', rather than participation in the formal decision-making (Elverding et al., 2008, p. 22); this should increase local support for these plans. The committee also recognised that the formal procedures are very time-consuming and should be shortened. The coalition considered the committee's conclusions and aimed to incorporate its suggestions into policy and law. Accordingly, Boelens and De Roo (2016 p. 23) considered that the Dutch regulatory planning system – with all its good intentions – had '*become a monster in itself*' that was to be tackled.

The last major change in spatial planning in the Netherlands – before the announcement of the EPA – was the introduction of the Crisis and Recovery Act (Crisis- en herstelwet) of 2010. While the Elverding

Committee proposed streamlining processes ordered by national or regional government, the same would now be applied to types of private initiatives as well. The act's idea was to increase possibilities for economic growth in times of financial crisis and in the period of recovery from this crisis by shortening plan-making procedures and appeal possibilities and accept temporary diversions of environmental norms.

Gerrits et al. (2012) distinguish four distinct changes in Dutch planning approaches, that started with the Nota Ruimte: 1) alongside with the presentation of the Nota Ruimte, the Spatial Planning Act of 1965 was revised; 2) decentralisation was achieved by moving responsibilities from the national government to regional and local governments; 3) regulatory pressure was decreased and the length of procedures was shortened, through revising and combining several acts on environmental law; 4) since many responsibilities of the national government have been transferred to other actors, the ministries traditionally involved with spatial planning have been reorganised into new ministries with a focus on infrastructure.

A next step in this process is the further decrease of regulatory pressure in environmental law. Meijer et al. (2016) point out that the House of Representatives already ordered the Minister to develop a new system of environmental law back in 2009. This development lead to the formal announcement of the new Environmental and Planning Act in the policy letter 'Eenvoudig beter' ('Simply better'; Schultz van Haegen, 2011), introducing a more decentralised approach to spatial planning. This was one of the goals of the coalition agreement of the new administration (VVD and CDA, 2010). Furthermore, the 2011 policy letter proposed to simplify and combine the different acts in environmental law.

As spatial interventions have increasingly become interconnected and complex, a different perspective on the planning approach is appropriate. The technical, top-down rationale of the modernist era has gone, and has been replaced by a more bottom-up communicative rationale. In this change Janssen-Janssen and Woltjer (2010) also recognise a change in the way legal protection in Dutch planning is organised: from protection through legal procedures – as is common in a 'continental' model of government – to a more strategic, discretionary type of planning, as is more common in Great Britain and other parts of the Anglo-Saxon world. The development and implementation of the EPA is the next step in this transformation of the planning process.

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APPENDIX B: OVERVIEW OF ACTS TO BE COMBINED INTO EPA

The Environmental and Planning Act will substitute 26 current acts and hundreds of *Algemene Maatregelen van Bestuur* (executive orders). Below is an overview of the current acts that will be incorporated in or substituted by the EPA and the associated executive orders. The overview is based on the Explanatory Memorandum to the EPA (Schultz van Haegen, 2014, p. 303).

In this list are four categories: a) acts that are completely replaced by the EPA, b) acts from which most sections will be substituted by the EPA, c) acts from which a small number of sections will be substituted by the EPA, and d) acts that in future policy changes are planned to be completely substituted by the EPA.

Acts that are completely replaced	*English translation*
Belemmeringenwet privaatrecht	*Hindrance act private law*
Crisis- en herstelwet	*Crisis and Recovery Act*
Ontgrondingenwet	*Earth removal act*
Planwet verkeer en vervoer	*Planning act traffic and transport*
Spoedwet wegverbreding	*Fast-tracked act road widening*
Tracéwet	*Route alignment act*
Wet algemene bepalingen omgevingsrecht	*Act general provisions environmental law*
Wet inzake de luchtverontreiniging	*Act concerning the air pollution*
Wet ammoniak en veehouderij	*Ammonia and cattle farms act*
Wet geurhinder en veehouderij	*Odour nuisance and cattle farms act*
Wet hygiene badinrichtingen en zwemgelegenheden	*Hygiene swimming pools and public swimming spaces act*
Wet ruimtelijke ordening	*Spatial planning act*

Acts that are mostly replaced	*English translation*
Monumentenwet 1988	*Monuments act*
Waterwet	*Water act*
Wet beheer rijkswaterstaatswerken	*Management national road and waterworks act*
Wet milieubeheer	*Environmental management act*
Planwet verkeer en vervoer	*Planning act traffic and transport*
Woningwet	*Housing act*

Acts that are minimally replaced	*English translation*
Gaswet	*Gas act*
Elektriciteitswet 1998	*Electricity act 1998*
Mijnbouwwet	*Mining act*
Spoorwegwet	*Railway act*
Spoorwegwet 1875	*Railway act 1875*
Wet bereikbaarheid en mobiliteit	*Act accessibility and mobility*
Wet lokaal spoor	*Local railway act*
Wet luchtvaart	*Air traffic act*
Wet natuurbescherming	*Nature protection act*

Acts that will be completely replaced in future	*English translation*
Onteigeningswet	*Expropriation act*
Waterwet (de resterende delen)	*Water act (the remaining parts)*
Waterstaatswet 1900	*Water management act 1900*
Wet beheer rijkswaterstaatswerken (de resterende delen)	*Management national road and waterworks act (the remaining parts)*
Wet bodembescherming	*Soil protection act*
Wet geluidhinder	*Sound pollution act*
Wet herverdeling wegenbeheer	*Redivision road management act*

Wet kenbaarheid publiekrechtelijke bepalingen onroerende zaken	*Disclosure of impediments under public law in respect of real estate act*
Wet inrichting landelijk gebied	*Rural area arrangement act*
Wet milieubeheer (de resterende delen)	*Environmental management act (the remaining parts)*
Wet natuurbescherming (de resterende delen)	*Nature protection act (the remaining parts)*
Wet voorkeursrecht gemeenten	*Municipal pre-emptions rights act*
Wrakkenwet	*Wreck act*

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APPENDIX C.1: INTERVIEW GUIDE RESIDENTS

Hoe langt woont u hier al? Altijd zelfde huis in Ganzedijk/Musselkanaal?

Waarom bent u hier gaan wonen?

Heeft u de planvorming rondom de toekomst van Ganzedijk / Florawijk goed gevolgd?

Vond u het belangrijk dat er een plan kwam om uw omgeving aan te pakken?

Bent u betrokken geweest bij de planvorming van uw dorp/buurt?

Waarom wel / niet? Zo ja, in welke mate/op welke manier?

Hoe heeft u destijds de communicatie tussen bewoners en deze betrokken partijen (gemeente, Acantus, KAW/ gemeente, Lefier, KAW) ervaren?

- ➔ Hoe hebben de verschillende partijen met u persoonlijk gecommuniceerd?
- ➔ Wat had u achteraf liever anders gezien in de communicatie?

Wat vond u toen van het plan?

Wat vindt van de huidige plannen / plannen die uiteindelijk zijn uitgevoerd?

- ➔ In hoeverre denkt u dat de plannen zo uitpakken als bedacht?
- ➔ In hoeverre heeft u het idee dat er voldoende rekening is gehouden met uw wensen/belangen/inbreng?
- ➔ En met de inbreng van uw buren?

Waar zit dat evt. verschil van waardering in? Komt dat door het toevoegen van de wensen van ‘gewone mensen’ die daar tenslotte ook (gaan) wonen?

APPENDIX C.2: INTERVIEW GUIDE PROFESSIONALS

Wat is uw achtergrond: studie, werk, ervaring, geografische afkomst?

Hoe in het werk verzeild geraakt?

Wat is uw aandeel in het planproces geweest?

Wat is uw persoonlijke/bedrijfsmatige doel binnen het planproces geweest?

Heeft u er van tevoren over nagedacht wat de persoonlijke, sociale gevolgen van de voorgenomen plannen zouden/zullen zijn?

Hoe zijn die ideeën in het planproces meegenomen?

Heeft u ervoor gekozen burgers/bewoners bij het planproces te betrekken? Waarom? Hoe?

Heeft u nagedacht over een specifieke communicatiestrategie?

Indien ja, hoe zag die eruit?

Wat vindt u van de huidige plannen / plannen die uiteindelijk zijn uitgevoerd?

- ➔ In hoeverre denkt u dat de plannen zo uitpakken als bedacht?
- ➔ Zijn er onderdelen in de plannen geweest die wel bedacht, maar niet uitgevoerd zijn? Waarom?
- ➔ Wat heeft u persoonlijk, professioneel geleerd van het project?
- ➔ Zou u, nu achteraf, het project anders hebben willen aanpakken?

Kent u de term 'Social Impact Assessment'? Wat denkt u dat het betekent?

------- Information sheet SIA laten lezen -------

Heeft u bij de planvorming voor Ganzedijk / Florawijk bewust stilgestaan bij de termen en ideeën die ook in SIA genoemd worden?

Denkt u dat specifiek SIA zou hebben kunnen helpen bij uw project? Vroeger, nu en in de toekomst?

Zou u de ideeën en termen in SIA willen gebruiken in lopende en komende projecten?

Heeft u naar aanleiding van uw ervaringen in theorie of in het werkveld opmerkingen bij SIA? Aanvullingen, vragen, opmerkingen, kritieken?

Zou u meer over SIA willen weten?

Zou u SIA willen meenemen bij volgende projecten?

APPENDIX C.3: INTERVIEW GUIDE PROFESSIONALS (SHORT VERSION)

Wat is uw achtergrond: studie, werk, ervaring, geografische afkomst?

Hoe in het werk verzeild geraakt?

Wat is uw aandeel in het planproces geweest?

Wat is uw persoonlijke/bedrijfsmatige doel binnen het planproces geweest?

Heeft u er van tevoren over nagedacht wat de persoonlijke, sociale gevolgen van de voorgenomen plannen zouden/zullen zijn?

Hoe zijn die ideeën in het planproces meegenomen?

Heeft u ervoor gekozen burgers/bewoners bij het planproces te betrekken? Waarom? Hoe?

Heeft u nagedacht over een specifieke communicatiestrategie?

Indien ja, hoe zag die eruit?

Wat vindt u van de huidige plannen / plannen die uiteindelijk zijn uitgevoerd?

- ➔ In hoeverre denkt u dat de plannen zo uitpakken als bedacht?
- ➔ Zijn er onderdelen in de plannen geweest die wel bedacht, maar niet uitgevoerd zijn? Waarom?
- ➔ Wat heeft u persoonlijk, professioneel geleerd van het project?
- ➔ Zou u, nu achteraf, het project anders hebben willen aanpakken?

APPENDIX C.4: INTERVIEW GUIDE THEORY

Doorlopen van een ruimtelijk plan:

Er lijkt weinig in de wet beschreven te zijn ten aanzien van de omgang met belangen van lokale bewoners, de sociale impacts worden niet of nauwelijks meegenomen. Niet in de Wro, niet in de nieuwe Omgevingswet. Klopt dit volgens jou ook?

Sterker, de nadruk lijkt steeds meer op sneller en soepeler besluitvorming te liggen (kortere procedure, Crisis- en herstelwet), Aangenaam voor aanvragers, maar is het dat ook voor andere belanghebbenden?

Ken je werkwijzen voor plan- en besluitvorming waarbij de sociale gevolgen bewust / uitgebreid / systematisch besproken worden?

- ➔ Vaak zijn er wel sociale doelstellingen, maar is er ook aandacht voor negatieve gevolgen?

Schept een (M)KBA genoeg duidelijkheid? Wordt toch vaak in geld uitgedrukt. In SIA: in eerste instantie geen vergoeding, vooral bewustzijn tijdens planvorming. Wordt er niet te gemakkelijk aan financiële genoegdoening gedaan?

Hoe zit het met een Integrale Gebiedsbenadering?

Hoe zit het met het belevingswaardenonderzoek?

Kortom, hoe worden de sociale belangen van bewoners gewaarborgd in het Nederlandse planologiebestel?

Wat zijn de trends? Passen de ontwikkelingen binnen grotere tendensen: postmodern-liberaal, top-down-zelfregulerend?

Als er een good practice is, waarom is dat niet in de wet opgenomen? Waar wel?

Kunnen die sociale belangen beter gewaarborgd worden? Kan SIA daarbij helpen?

APPENDIX C.5: INFO SHEET SOCIAL IMPACT ASSESSMENT

Ruimtelijke projecten en hun gevolgen

Ruimtelijke plannen en ontwikkelingen hebben vaak veel effecten op de omgeving waarin zij plaatsvinden. Deze gevolgen op verschillende facetten van die omgeving (sociaal, economisch, ecologisch) kunnen zowel positief als negatief zijn. Het is zaak goed uit te zoeken wat precies uit te zoeken wat die gevolgen zijn, zodat met de uitslag van zo'n onderzoek juiste besluiten over het plan kunnen worden genomen. In dit onderzoek is er vooral aandacht voor de sociale gevolgen.

Wat zijn 'sociale gevolgen'?

De term 'sociale gevolgen' is nogal vaag. De definitie in dit onderzoek is: sociale gevolgen zijn alle problemen die voortkomen uit een project die een directe of indirecte invloed hebben op mensen en door hen wordt ervaren op mentale of fysieke manier. Het kan gaan om veranderingen in iemands dagelijks leven, zijn cultuur, zijn gemeenschap, de lokale politiek, het milieu, zijn gezondheid, zijn persoonlijke en eigendomsrechten, en zijn angsten en toekomstplannen.

Identificeren gevolgen en voorstellen verbeteringen

Niet alleen moeten deze gevolgen worden aangewezen, ook moet er iets mee gedaan worden. Zeker voor negatieve gevolgen moeten oplossingen worden gevonden. Bij voorkeur zouden negatieve gevolgen moeten worden vermeden of verminderd. Als laatste maatregel is compensatie mogelijk. Vervolgens moet er ook gecontroleerd worden of deze maatregelen worden uitgevoerd en naar behoren werken. Al deze onderdelen van het planproces zijn opgenomen in de evaluatiemethode Social Impact Assessment.

De rol van Social Impact Assessment

Social Impact Assessment (vertaling: *'socialegevolgenanalyse'*) is een evaluatiemethode om voor aanvang van een plan de sociale gevolgen ervan in kaart te brengen en de bijbehorende maatregelen, die die gevolgen verminderen of compenseren, te controleren op hun effectiviteit. Recent komt hierbij steeds meer de nadruk te leggen op het betrekken van de lokale bevolking in de besluitvorming om hen zo in staat te stellen zelf te beslissen over de toekomst van hun (woon)omgeving. De omgeving zou tijdens en zeker na het project van een hogere kwaliteit moeten worden, zodat de bevolking zelf ook iets aan de ontwikkeling heeft. Het onderzoek kan worden uitgevoerd in opdracht van de bewoners, de overheid of de projectontwikkelaar.

Een klein voorbeeld

Door de aanleg van een autoweg, kunnen bewoners aan weerszijden van de weg niet langer gemakkelijk naar elkaar toe, waarmee hun sociale banden onder druk komen te staan. Daarnaast zullen ze zeer waarschijnlijk geluidshinder van het verkeer ervaren, met slaap- en bijbehorende gezondheidsproblemen tot gevolg. Door de aanleg van een tunnel om over te steken en een geluiddempende geluidswal worden beide gevolgen beperkt.

Kortom

Social Impact Assessment identificeert voor, tijdens en na ruimtelijke ontwikkelingen eventuele negatieve sociale gevolgen en ziet erop toe dat er maatregelen worden genomen om deze gevolgen te vermijden, beperken en compenseren. Hierbij wordt er ook gelet op het versterken van de lokale gemeenschap en het verbeteren van de omgeving.

Bronnen

Burdge, R.J. & & Vanclay, F. (1996). Social impact assessment; a contribution to the State of the Art series, *Impact Assessment*, 14 (1996), pp. 59-86.

João, E.; Vanclay, F. & Broeder, L. den (2011). Emphasising enhancement in all forms of impact assessment: introduction to a special issue, *Impact Assessment and Project Appraisal*, 29(3), pp. 170-180.

Vanclay, F. (2003). International Principles for Social Impact Assessment, *Impact Assessment and Project Appraisal*, 21(1), pp. 5-11.

Vanclay, F.; Esteves, A.M.; Aucamp, I. & Franks, D.M. (2015). *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects.* Fargo (US): International Association for Impact Assessment (IAIA).

APPENDIX C.6: INFO SHEET SOCIAL IMPACT ASSESSMENT (SHORT VERSION)

Ruimtelijke projecten en hun gevolgen

Ruimtelijke plannen en ontwikkelingen hebben vaak veel effecten op de omgeving waarin zij plaatsvinden. Deze gevolgen op verschillende facetten van die omgeving (sociaal, economisch, ecologisch) kunnen zowel positief als negatief zijn. Het is zaak goed uit te zoeken wat precies uit te zoeken wat die gevolgen zijn, zodat met de uitslag van zo'n onderzoek juiste besluiten over het plan kunnen worden genomen. In dit onderzoek is er vooral aandacht voor de sociale gevolgen. Hiermee wordt bedoeld alle problemen die voortkomen uit een project die een directe of indirecte invloed hebben op mensen en door hen wordt ervaren op mentale of fysieke manier. Het kan gaan om veranderingen in iemands dagelijks leven, zijn cultuur, zijn gemeenschap, de lokale politiek, het milieu, zijn gezondheid, zijn persoonlijke en eigendomsrechten, en zijn angsten en toekomstplannen.

De rol van Social Impact Assessment

Social Impact Assessment (SIA, vertaling: *'socialegevolgenanalyse'*) is een evaluatiemethode om voor aanvang van een plan de sociale gevolgen ervan in kaart te brengen. Niet alleen moeten deze gevolgen worden aangewezen, ook moet er iets mee gedaan worden in de vorm van maatregelen (van voorkomen van problemen tot financiële vergoeding), die die gevolgen verminderen of compenseren, te controleren op hun effectiviteit. Recent komt hierbij steeds meer de nadruk te leggen op het betrekken van de lokale bevolking in de besluitvorming om hen zo in staat te stellen zelf te beslissen over de toekomst van hun (woon)omgeving. Het onderzoek kan worden uitgevoerd in opdracht van de bewoners, de overheid of de projectontwikkelaar.

Kortom

Social Impact Assessment identificeert voor, tijdens en na ruimtelijke ontwikkelingen eventuele negatieve sociale gevolgen en ziet erop toe dat er maatregelen worden genomen om deze gevolgen te vermijden, beperken en compenseren. Hierbij wordt er ook gelet op het versterken van de lokale gemeenschap en het verbeteren van de omgeving.

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