LOYENS & LOEFF

GENERAL OVERVIEW OF DUTCH SPATIAL PLANNING AND ENVIRONMENTAL LAW

1 Zoning plan

The general legal framework for spatial planning is embodied in the Spatial Planning Act (*Wet ruimtelijke ordening*; **SPA**).

A Zoning Plan creates a spatial separation between burdensome areas such as industry and sensitive areas such as residential. This zoning is also reflected in legislation pertaining to particular sectors, such as the Noise Abatement Act (*Wet geluidhinder*) and the External Safety (Establishments) Decree (*Besluit externe veiligheid inrichtingen*), as well as circulars and policy rules such as laid down in the Association of Dutch Municipalities (*Vereniging van Nederlandse* Gemeenten; **VNG**) brochure, 'Industry and Environmental Zoning' (*Bedrijven en Milieuzonering*).

2 Environmental Permitting (General Provisions) Act

All permit requirements (including exemptions from the zoning plan) are, as of October 2010, regulated by the Environmental Permitting (General Provisions) Act (*Wet algemene bepalingen* omgevingsrecht; **GPA**). Whereas previously anyone wanting to develop real estate or erect or change an industrial facility had to deal with a lot of different permits and exemptions, this new GPA replaces these different permits and exemptions with one single permit, known as the environmental permit (*omgevingsvergunning*). In most cases, the Municipal Executive for the area where the real estate is to be developed or the industrial facility is to be erected, will be the competent authority to grant the permit.

3 Building activities

The GPA does not change the level of protection of the interests concerned because the GPA has the same assessment criteria that were previously set out in various (environmental) Acts (as the SPA), and regulations. This means that building activities still have to be checked with the Building Decree (*Bouwbesluit*), the Municipal General Building Regulations (*gemeentelijke bouwverordening*), the Zoning Plan and reasonable standards of external appearance. An exemption from a Zoning Plan is only possible if there is well-founded spatial justification for the project (*een goede ruimtelijke ordening*); the justification must discuss the relation between the Zoning Plan and the existing Zoning Plan or substantiate why the project fits in with the future designation of the area concerned.

4 Fire-safety

By virtue of the Environmental Permitting Decree (*Besluit omgevingsrecht*) the occupation and use of buildings in which commercial night-time accommodation is provided to more than 10 persons or to the number of persons specified in the

Municipal General Building Regulations, an environmental permit is required for fire-safe use. This is also the case if day accommodation is provided to more than 10 persons under the age of 10 or to more than 10 persons with a physical or mental handicap.

For the use of certain buildings, a notification of use (*gebruiksmelding*) is sufficient. These are situations whereby accommodation is offered to more than 50 persons, such as offices, restaurants, sporting venues, shopping centres and supermarkets.

A notification of use may be submitted either at the same time as the application for the environmental permit for other activities, or independently.

5 Regular and extended procedure

The GPA provides for 2 procedures: a regular procedure and an extended procedure. The regular procedure applies to more common projects (such as building activities), while the extended procedure applies to more complex projects (for example a project that deals with an exemption of the Zoning Plan). In the extended procedure a draft environmental permit is made and submitted for inspection for 6 weeks, during which all parties involved can react to the draft decision.

In case the regular procedure applies, the Municipal Executive must decide on an application within 8 weeks after receipt of the application. The Municipal Executive is allowed to defer its decision for another 6 weeks. If the Municipal Executive fails to decide within the applicable period, the permit is deemed to have been granted by law. However, in that case, the GPA provides for the possibility to change the conditions under which the permit is granted in order to limit possible harm to the environment, or even to withdraw the permit when changing the conditions cannot prevent the harmful consequences. A permit granted by law and a permit with regard to irreversible activities (such as a demolishing a building or felling a tree) do not enter into force until the time limit for objections has elapsed and, in case the permit is granted by law, the Municipal Executive has decided on these objections.

In case the extended procedure applies, the Municipal Executive must decide on an application within 26 weeks after receipt of the application (and receipt of the Environmental Impact Statement (**EIS**) if required, see below). The Municipal Executive is allowed to defer its decision (within 8 weeks after receipt of the application) for another 6 weeks. If the Municipal Executive fails to decide within the applicable period, the permit is (contrary to the regular procedure) not deemed to have been granted by law. However, in that case, the applicant is free to give the Municipal Executive a notice of default and subsequently appeal to the court by virtue of the Penalty Payments and Appeal (Overdue Decisions) Act (*Wet dwangsom en beroep bij niet tijdig beslissen*). Once the permit has been granted with the application of the extended procedure, it may be directly appealed to the court (and subsequently to the Administrative Jurisdiction Division of the

Council of State); the permit does not enter into force until the time limit for appeal has elapsed.

6 Environmental Impact Statement (EIS)

On the basis of the Decree on Environmental Impact Statements (*Besluit milieu-effectrapportage*), an EIS may be required either prior to the determination of a Spatial Plan that allows for the erection of the industrial facility, a (big) housing- or urban development project, or in advance of the application for an environmental permit for such facility/building activities.

The requirement of an EIS could also arise from the Provincial Environmental Regulations (*provinciale milieuverordening*). The Provincial Environmental Regulations may contain criteria other than the Decree, resulting in the requirement of an EIS.

7 Birds and Habitat Directive, Natura 2000 areas

By virtue of the Birds Directive and the Habitats Directive, which have been implemented in the Netherlands by the Nature Conservation Act , the government has designated the Special Protection Areas (Birds Directive) and Special Areas of Conservation (Habitats Directive), the so called Natura 2000 areas.

Any plan or project likely to have a significant impact on these areas in terms of deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated are subject to an appropriate assessment of implications for the area.

The definition of 'Plan or Project' is broad. Decisions for which such assessment is required, are in any event the determination of a spatial plan that is likely to have a significant impact on a designated area. Also a decision to grant an environmental permit for erecting and operating of an industrial facility will be subject to an assessment obligation if that facility is likely to have a significant impact on a designated area.

The competent authorities are only allowed to agree to the plan or project after having ascertained that it will not adversely affect the integrity of the area concerned.

8 Soil and groundwater pollution

Under the Soil Protection Act (*Wet bodembescherming*), a person or entity holding rights in rem (*zakelijke rechten*), e.g. an owner (*eigenaar*) or long lease holder (erfpachter), or personal rights (*persoonlijke rechten*) (e.g. lessee), may be ordered by the competent authority to investigate and/or to take temporary control measures in respect of seriously polluted property which it uses or has used in conducting its business. In addition, the owner or long lease holder of a seriously polluted property, as well as any person who polluted the property, may be ordered to carry out additional soil investigations or – depending on the risks of the pollution – to remediate the property. The competent authority may also decide that the use of the property must be restricted due to the presence of certain types of pollution.

In the event of serious soil contamination, the environmental permit will not come into effect until the consents required under the Soil Protection Act have been granted.

9 Asbestos

Based on the Working Conditions Decree, asbestos-containing materials in new constructions and renovations have been prohibited since 1993. However, there is no general legal requirement to remove asbestos, unless the presence of asbestos exposures risks to employees. There is 1 exception: as from 2024 asbestos-containing roofs (*asbestdaken*) are prohibited in the Netherlands. The scope of this asbestos prohibition is limited to asbestos roofs of constructions and/or buildings of which the roofs are affected by the outside air, including but not limited to corrugated plates (*golfplaten*) and roof-slates (*dakleien*).

The legal requirement to remove asbestos from (the inner side of) existing buildings which were built before 1993 depends on whether it affects the working conditions in the relevant working area (i.e. the likelihood of employee exposure).However reconstruction and demolishing works involving the removal of asbestos are bound to strict legal requirements in order to prevent human exposure to asbestos. In general, this implies additional removal costs.

10 Parking

Parking standards can be included in zoning plans or an exemption from the zoning plan Furthermore, the Municipal General Building Regulations (*gemeentelijke bouwverordening*) might contain standards as to parking places. If standards follow from a zoning plan or an exemption of the zoning plan, the standards incorporated in the exemption or zoning plan prevail.

As from December 2014, parking standards have to be included in the new zoning plans; for zoning plans adopted after that date, parking standards in the Municipal General Building Regulations cease to have effect. With regard to – at that date – existing zoning plans, parking standards will cease to have effect from July 2018.

A parking garage with more than 30 parking places is considered as a type B facility as meant in the Activities Decree. In case of constructing, making alterations to or expanding a certain parking garage a notification must be filed together with the application for the environmental permit (to build, alter or expand the garage). Furthermore the parking garage must be in compliance with the requirements as defined in the Activities Decree. These requirements relate to mechanical ventilation. The competent authority can issue further specific regulations (*maatwerkvoorschriften*) related to the restriction of benzene, air circulation in the parking garage, and the maintenance of the mechanical ventilation.

11 Thermal energy storage

Thermal energy storage is a sustainable method of storing energy in the soil in the form of thermal energy. The technique is used to heat and/or cool commercial buildings, homes, greenhouses and processes. The application of thermal energy storage systems has increased significantly over recent years and it is expected that this growth will continue in the years ahead.

There are 2 types of thermal energy storage systems by which natural energy in the soil can be used, namely an open system and a closed system. The operation of an open system requires a (groundwater) extraction permit under the Water Act (*Waterwet*). If this also causes the release of flushing water into the surface water, then a (water) permit must also be obtained for this activity. Indirect discharge into sewers or into soil is regulated by means of general regulations under the Activities Decree (*Activiteitenbesluit Milieubeheer*) and under the Decree Discharge Outside Facilities (*Besluit lozen buiten inrichtingen*).

For the operation of a 'big' closed system (>70 kW) a permit pursuant to the GPA (*omgevingsvergunning beperkte milieutoets*) is required. This is also the case for an operation of a 'small' closed system (<70 kW) situated in a so-called interference area. These interference areas, usually dense urban areas, can be designated by the municipal authority to prevent systems from interfering with each other. In addition, the drilling of wells requires an exemption from the Provincial Environmental Regulations (*provinciale milieuverordening*) if the project is located in a geologically rich area or in a drilling-free water extraction and ground water protection zone.

12 Vacant Property Act

The Vacant Property Act (*Leegstandswet*) provides in the possibility for municipalities to introduce a vacancy-byelaw.

On the basis of such a byelaw the owner of offices and retail premises might be obliged to notify the municipal executive if the property remains empty for longer than a period specified in the bye-law (minimum of 6 months). If the owner fails to notify the vacant property to the municipal executive, an administrative fine not exceeding EUR 7,500 can be imposed. In case the municipal executive has given a "vacancy-decision" and the property remains vacant for longer than the period specified in the vacancy byelaw (minimum of 12 months) the municipal executive may nominate a user to the owner.

Furthermore, pursuant to this Act, the Municipal Executive can grant a permit for temporary lease of residential accommodation in a building, after the expiry of which also the rental agreement terminates.

13 Crisis and Recovery Act

The Crisis and Recovery Act (**CRA**) entered into force on 31 March 2010, with the aim of temporarily speeding up the development and implementation of spatial and infrastructural projects. The CRA was supposed to expire on January 2014, but it was made permanent at a later date.

The CRA consists of certain procedural provisions for all projects that fall within the scope of the CRA. Furthermore the CRA introduces new types of plans such as 'development area plans' and 'plans of national significance'. For development area plans, the CRA makes it possible for these areas to deviate from environmental standards. For projects with national significance, such as large-scale urban renewal or the redevelopment of station areas, the process of permitting can be more rapidly completed; the municipal coordination measures from the SPA are applicable, which means that all permits follow the same procedure and are granted at the same time.

14 Energy performance

The primary aims of the EU Energy Performance of Buildings Directive (2002/91/EC) are to reduce energy consumption and carbon dioxide emissions and to comply with the Kyoto Protocol.

Therefore, as of the 1st of January 2015 an energy label is required for most buildings. The Energy Performance (Buildings) Decree (*Besluit energieprestatie gebouwen*) sets out that when a building or apartment is sold or rented out, an energy label must be made available by the owner of the building to the prospective buyer or tenant. For public buildings, with more than 250 m^2 usable area, the energy label must be posted within the building, visible to everyone. Also energy labels are to be included in all commercial advertisements for the sale or rental of buildings. As of the 1st of July 2015 non-compliance with these rules might result in an administrative fine (which can be up to EUR 20,250. The competent body is the ILT (*Inspectie voor Leefomgeving en Transport*).

Furthermore it should be noted that pursuant to article 2.15 of the Activities Decree, the operator of 'an establishment' (*inrichting*) has the obligation to take energy saving measures with a pay-back-period of no more than 5 years. As from December 2015 this obligation is further elaborated in a so called list of recognized energy saving measures. Some of these measures are building related measures, in that case the owner of the building has to implement the measures.

15 Sustainable urbanisation

To promote sustainable space utilisation, the government uses as from October 2012 a 'ladder for sustainable urbanisation' (*ladder voor duurzame verstedelijking*). If a new spatial development provides for a regional need for industrial sites, offices, housing and other urban developments, the developer should describe to what extent this need can be provided within the existing urban area through utilisation of the available urban grounds by restructuring, transformation or otherwise. A description should, therefore, be provided of the way vacancy is being taken into account and why restructuring or transformation is not preferable. If the restructuring or transformation of existing urban areas does not offer sufficient possibilities, new urban areas should in principle be located in such a way that they are accessible to multimodal transport.