

GENERAL OVERVIEW OF DUTCH SPATIAL PLANNING AND ENVIRONMENTAL LAW

1 Environment and Planning Act

The general legal framework for spatial planning and environmental law is embodied, as of 1 January 2024, in the Environment and Planning Act (Omgevingswet; **EPA**). The EPA has merged previous (sectoral) legislation into a single act, and in doing so, has resulted in certain fundamental changes to Dutch environmental and spatial planning law.

2 Physical environment plan

Every municipality has a single physical environment plan (*omgevingsplan*). Under transitional law, previous zoning plans form a temporary part of this (new) physical environment plan by operation of law. The physical environment plan caters for the allocation of functions to specific areas. Physical environment plans, like zoning plans, indicate which areas within a municipality are intended for more environmentally burdensome activities, such as industry, and for sensitive functions, such as residential. Compared to zoning plans, physical environment plans deal with more aspects of (regulating) the physical environment. Whereas previously zoning would also be reflected in legislation pertaining to particular sectors, the EPA consolidates existing sectoral laws such as the Spatial Planning Act (*Wet ruimtelijke*

ordering), the General Provisions Act (*Wet algemene bepalingen omgevingsrecht*), the Crisis and Recovery Act (*Crisis- en herstelwet*), the Noise Abatement Act (*Wet geluidshinder*), the Soil Protection Act (*Wet bodembescherming*), the Nature Conservation Act (*Wet natuurbescherming*), and the Water Act (*Waterwet*) as well as legislation on real estate acquisition, such as the Expropriation Act (*Ontheffingswet*) and the Municipalities (Preferential Rights) Act (*Wet voorkeursrecht gemeenten*). Under the EPA municipalities have additional capabilities to regulate the (local) environment, due to the regulatory shift of focus from sectoral to integral planning, towards decentralised decisions concerning the environment, and towards further enable participation.

Given that several aspects that were previously regulated at the national level have shifted to the municipal level under the EPA, a so-called “dowry” (*bruidsschat*) has been introduced in every municipal physical environment plan during the transitional period to prevent regulatory gaps. The transitional phase towards an integral physical environment plan is intended to last until 31 December 2031, although there are no legal repercussions if a municipality fails to migrate all its previous zoning plans

and the dowry to a (new style) physical environment plan by that date.

3 **Parking**

Parking standards can be included in physical environment plans or in a zoning exemption.

In order to commence operating a parking garage with more than 20 parking places a user notification (*gebruiksmelding*) is required. This requirement has shifted from the national level to the physical environment plan under the EPA. Furthermore, a parking garage with 20 or more parking spaces must comply with the requirements as defined in the Environment Buildings Decree (**EBD** (*Besluit bouwwerken leefomgeving*)). These requirements relate to mechanical ventilation. The competent authority can issue further tailor-made provisions (*maatwerkvoorschriften*) related to the restriction of benzene, air circulation in the parking garage, and the maintenance of the mechanical ventilation.

4 **Building activities**

Under the EPA, building activities are regulated at a technical level and at a spatial level. Separate permits exists for both the technical building activity and the spatial building activity. Building activities are assessed under the EBD in respect of technical aspects and under

the municipal physical environment plan for spatial aspects (and certain deviations from the technical framework that may be possible at the local level, for example in respect of certain sustainability aspects). A deviation from the physical environment plan can be obtained, for which it is required that there is a properly substantiated spatial justification for such deviation (a balanced allocation of functions to locations) (*een evenwichtige toedeling van functies aan locaties*)); the justification must underpin the relevance and acceptability of the requested deviation in light of the physical environment plan or substantiate why the project fits in with the future designation of the area concerned.

5 **Environmental permit (*omgevingsvergunning*)**

All environmental and building permit requirements are, as of 1 January 2024, regulated by the EPA. An environmental permit (*omgevingsvergunning*) under the EPA can be issued for one or several activities. In most cases, the municipal executive is the competent authority for issuing of the permits in the area where real estate is to be developed or an industrial facility is to be set up. Certain activities, such as those relating to water activities or those that pertain to potential effects on nature

conservation areas, may require the involvement of other competent authorities as well.

6 Regular and extended permitting procedure

The Dutch General Administrative Law Act (*Algemene wet bestuursrecht* (**GALA**)) provides for 2 permitting procedures: a regular procedure and an extended procedure. The regular procedure is the default procedure for almost all permit applications, save for a limited number of exceptions to which the extended procedure will apply. It is important to bear in mind that the municipal executive can still in some cases declare *ex officio* that the extended procedure applies to an application for an activity that is expected to have significant effects on the physical living environment and against which various interested parties (*belanghebbenden*) are expected to raise objections (*bedenkingen*). In the extended procedure a draft environmental permit is made and submitted for inspection for 6 weeks, during which all parties involved can put forward a statement of views.

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. Note that this is not a fatal term, and permits are not issued by operation of law after this decision period has lapsed. A permit granted with the regular procedure enters into force the day after it has been published, and becomes

irrevocable if no objections are raised against it within 6 weeks from the day of its issuance.

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 Assessment (**EIA**) 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. Again, no permits are issued by operation of law if the statutory decision period is not met. 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 enters into force the day after the decision is published, and becomes irrevocable if no appeals are raised against it within the 6 weeks appeal window.

If the competent authorities do not issue a decision on permit applications in a timely manner, a notice of default can be sent and subsequently a direct appeal can be made to the courts by virtue of the Penalty Payments and Appeal (Overdue Decisions) Act (*Wet dwangsom en beroep bij niet tijdig beslissen*).

For any permits granted regarding irreversible activities (such as a demolishing a building or felling a tree), regardless of the preparatory procedure, such

permit does not enter into force until four weeks after the decision has been published

7 Fire-safety

By virtue of the EBD, for the occupation and use of room-rentals or residential care facilities a user notification (*gebruiksmelding*) is required. Furthermore, user notifications may be required for several other functions, such as offices, stores or warehouses. The EBD stipulates specific thresholds for various functions which trigger a notification obligation if crossed.

A user notification must be submitted at least four weeks prior to commencing the use of the building.

Fire safety aspects can also be relevant when conducting certain specific activities at a location, such as the storage of larger quantities of hazardous goods. In that context, activity-related fire safety aspects are generally assessed in the context of a separate (environmental) permit application.

8 Environmental Impact Assessment (EIA)

On the basis of the EPA, section 16.4, an EIA may be required either prior to the determination of a physical environment plan that allows for the starting up of industrial facilities, (big) housing- or urban development projects, or in advance of the application for an environmental permit for such facility/building activities.

Similarly, an EIA may be required if an appropriate assessment needs to be carried out in respect of the effect of certain activities on nearby nature conservation areas.

9 Birds and Habitat Directive, Natura 2000 areas

By virtue of the Birds Directive and the Habitats Directive, which continues to apply in the Netherlands through the EPA, 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 physical environment plan that is likely to have a significant impact on a designated area. Also, a decision to grant an environmental permit for any activity that is likely to have a significant effect on a designated area will be subject to an assessment obligation.

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 Natura 2000 area concerned.

10 Soil and groundwater pollution

Remediation obligations in respect of soil and groundwater will in principle lie with the party that caused the relevant soil or groundwater contamination.

Under the EPA, a person or entity holding rights in rem (*zakelijke rechten*), e.g., an owner (*eigenaar*) or leaseholder (*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 leaseholder 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.

11 Asbestos

Asbestos-containing materials in new constructions and renovations have been prohibited since 1 July 1993. However, there is no general legal requirement to proactively remove asbestos, unless the presence (and

current state) of asbestos containing materials poses a health risk. In such instances, potentially hazardous asbestos containing materials need to be remediated.

In case of reconstruction or demolition works, strict legal requirements apply under the EBD to prevent human exposure to asbestos. Asbestos remediation generally implies additional removal costs that need to be made.

12 Vacant Property Act

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

On the basis of such a bylaw 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 bylaw (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 bylaw (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 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, the EBD 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 m² 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. 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, as of 1 January 2023 the primary fossil energy use of office building may not exceed 225 kWh per m² per year, which corresponds with an energy label C as a minimum requirement. This obligation applies to the

(ongoing) use of the office-building and is not restricted to the moment that the office is sold or rented out.

14 Energy-saving measures

Under articles 3.84 and 3.84a of the EBD and articles 5.15 and 5.15a of the Environmental Activities Decree (*Besluit activiteiten leefomgeving*) all energy-saving measures with a return on investment of 5 years or less need to be implemented. In practice, these energy-saving measures cannot always be clearly divided between the owner of a property and the operator or tenant thereof. As a rule of thumb, the owner of a property generally holds responsibility for building-related measures, whereas the tenant will hold responsibility for any measures relating to its operational activities and its specific use of the property.

Furthermore, every four years a report needs to be filed under both Decrees on the energy-saving measures implemented by both the owner of a property and the party using the property.

At the national level, a list of so-called 'recognized measures' has been drawn up. If these measures have been implemented, a party may argue that it has implemented all measures with a return on investment of 5 years or less. Arguably, increasing energy prices may

make an increasing number of potential energy-saving measures more and more cost-efficient.

15 Solar panels

Installation of solar panels (or solar PV-installations) is increasingly implemented on real property in the Netherlands, especially in areas where net congestion may make it challenging to obtain a grid connection that is sufficiently large to conduct all activities that a party wants to conduct at that location. The EBD caters for a permitting exemption in article 2.29 thereof under which solar panels do not require a spatial building permit if certain requirements are met.

For slanted roofs, this deviation is available if solar panels are installed onto the roof and have the same angle as the roof. For flat roofs, there needs to be a distance of at least the height of one solar panel to the edges of the roof. In both cases it is required for the spatial building permitting exemption to apply that the solar panel either has an integrated transformer or the transformer for the solar panel(s) has been installed on the inside of a building.