

# Amendment of the Spatial Planning Act in respect of land development

**(Land Development Act. Currently, dec 06, with the Upper Chamber)**

## ARTICLE I

If the Bill submitted by Royal Message of 23 May 2003 concerning new spatial planning rules (the Spatial Planning Act) (28 916) becomes an Act, that Act shall be amended as follows:

- A** After the last sentence of Article 3.1 paragraph 1, the following shall be added: These rules may also promote the feasibility of the uses incorporated in the plan, on the understanding that these rules with regard to categories of residential buildings shall relate exclusively to percentages relating to the planning area.
- B** In Article 3.8b paragraph 3, the following shall be added after "restrictions" "": , which may also promote the feasibility of the project, on the understanding that the conditions and restrictions relating to categories of residential buildings shall relate exclusively to percentages relating to the project area".
- C** A new paragraph shall be added to Chapter 3.5 after paragraph 3.5.3, to read as follows:

§ 3.5.4 Land use and land acquisition

### Article 3.27a

1. The summons referred to in Article 18 (1) of the Compulsory Purchase Act may be issued after a local land use plan or an integration plan to which Article 3.4 has been applied or a project decision is adopted simultaneously with a development plan.
2. Notwithstanding Article 59 (1) of the Compulsory Purchase Act, the decision of the court may not be registered in the public registers until the local land use plan, the integration plan or the project decision has become irrevocable.
3. In addition to Articles 54 and 59 of the Compulsory Purchase Act, the registration referred to in paragraph 2 shall require a decision by the Administrative Law Judicial Division of the Council of State or a declaration by the Secretary of the Council of State showing that the local land use plan, the integration plan or the project decision has become irrevocable.

**D** Section 3.28 shall be amended as follows:

1. In paragraph 1, first sentence, the following shall be added after "content": "and feasibility".
2. In paragraph 2, the words "and organisation" shall be replaced by: ", organisation and feasibility".

**E** A new article shall be inserted after Article 6.4, to read as follows:

### Article 6.4a

1. To the extent that losses which are eligible for compensation on the basis of Articles 6.1 to 6.3 are based on a decision on a request to include or amend provisions in a local land use plan, including a project decision preceding it or a decision as referred to in Article 3.31 paragraph 1 or to grant exemption other than as referred to in Article 6.8 or 6.9 for the purpose of implementing a project, the Mayor and Aldermen may agree with the applicant that the latter pay all or part of those losses.
2. The applicant who has entered into an agreement as referred to in paragraph 1 is the interested party in a decision of the Mayor and Aldermen on a request for compensation on the basis of Article 6.1 in respect of the adoption of the local land use plan, the taking of the project decision or the decision referred to in Article 3.31 paragraph 1, or the granting of the exemption which he has requested.
3. The party who has a financial interest in the establishment of a development contribution as referred to in Article 6.17 paragraph 1, or the recalculation thereof, is the interested party in a decision by the Mayor and Aldermen on a request for compensation on the basis of Article 6.1 in respect of the adoption of the local land use plan, the amendment or the elaboration, or the taking of the project decision or a decision referred to in Article 3.31 paragraph 1 where the compensation could have financial consequences for the development contribution or the recalculation thereof.



F Chapter 6.4 shall read:

## CHAPTER 6.4 LAND DEVELOPMENT

### Article 6.12

1. The Municipal Council shall adopt a development plan for land on which a building plan designated by Order in Council has been proposed.
2. By way of derogation from paragraph 1, the Municipal Council may decide not to adopt a development plan by way of a decision to adopt a local land use plan, an amendment as referred to in Article 3.6 paragraph 1, a project decision or a decision as referred to in Article 3.31 paragraph 1, where the recovery of the cost of the land development for the land included in the plan or decision is insured elsewhere and it is not necessary to impose the requirements and rules referred to in Article 6.13 paragraphs 2 b. and c.
3. In the event of a decision as referred to in Article 3.8b paragraph 4, the Municipal Council may delegate the authorities referred to in paragraphs 1 and 2 to the Mayor and Aldermen.
4. A development plan shall be adopted and published simultaneously with the local land use plan, the amendment referred to in Article 3.6 paragraph 1, the project decision or the decision referred to in Article 3.31 paragraph 1, to which it relates.
5. The Municipal Council may adopt an intermunicipal development plan in collaboration with the councils of bordering municipalities. The mayors and aldermen of these municipalities shall make the adopted plan available for public inspection simultaneously. By way of derogation from Article 3.8 paragraph 2, the period of time referred to in that paragraph shall commence after adoption of the development plan.
6. A development plan may contain a prohibition on performing work or activities until such time as an implementation plan as referred to in Article 3.6 paragraph 1 b. for the land concerned has been adopted. The development plan may stipulate that the Mayor and Aldermen may grant exemption from such prohibition.

### Article 6.13

1. A development plan shall contain:
  - a. a map of the area to be developed;
  - b. a description of the work and activities required to prepare the development area for construction, the laying of utilities and the organisation of the public space in the development area. In the case of land for which a use has been established that has yet to be worked out, a general description shall suffice;
  - c. a development plan, comprising:
    - 1°. where necessary, an estimate of the input values of the land, which in application of this Chapter shall be regarded as costs relating to the development of that land;
    - 2°. an estimate of the other costs associated with the development, including an estimate of the losses which could be eligible for compensation on the basis of Article 6.1;
    - 3°. an estimate of the yields of the development as well as the reference date for the estimates in paragraphs 1 to 3;
    - 4°. a time frame within which the development of the land shall take place;
    - 5°. where necessary, the phases of the execution of work, activities, measures and building plans, and where necessary the links between these;
    - 6°. the method of assigning the costs to be recovered to the land to be allocated.
2. A development plan may contain:
  - a. a map showing the intended use of the land and the land the municipality intends to acquire. In the case of land for which a use which has yet to be worked out has been established or for which no building permit as referred to in Article 6.17 paragraph 1, can be granted on account of the phasing, an outline schedule of the land use may suffice;
  - b. requirements for the work and activities required to prepare the development area for construction, the laying of utilities and the organisation of the public space in the development area;
  - c. rules concerning the execution of the work and activities referred to under b.;
  - d. an elaboration of the rules referred to in Articles 3.1 paragraph 1 and 3.8 b paragraph 3 with regard to their feasibility.



3. For the calculation of the costs and yields it is assumed that the whole of the development area will be developed.
4. In the absence of compulsory purchase, Articles 40b to 40f of the Compulsory Purchase Act shall apply mutatis mutandis to the establishment of the input value of land. Where land to be compulsorily purchased or for which a compulsory purchase decision has been made or which has been acquired under a compulsory purchase order, the input value shall be equated with the compensation paid under the Compulsory Purchase Act.
5. Costs associated with work, activities and measures from which the development area or a part thereof benefits and which may be assigned to the development plan shall be included in the development statement on a pro-rata basis.
6. Costs not included in the development plan may, for multiple locations or parts thereof, be included in the development statement in the form of a fund contribution where a structure vision has been adopted for these locations or parts thereof which provides information on the expenses which may be charged to the fund.
7. Additional rules on the development statement and the yields to be included in them and the types of recoverable costs may be issued by Order in Council.
8. Additional rules may be issued by Order in Council concerning:
  - a. the maps, requirements and rules referred to in paragraphs 1 and 2;
  - b. the method of compiling and calculating the development statement, and
  - c. costs forming part of the development statement.
9. The proposal for an Order in Council to be adopted by virtue of paragraph 7 shall only be issued after the draft has been submitted to both Houses of the States General and published in the Staatscourant [State Gazette] and electronically, and any person has been given the opportunity to submit written comments on the draft to the Our Minister within a period of at least 4 weeks to be determined on publication.

**Article 6.14**

1. Chapter 3.4 of the General Administrative Law Act shall apply to the preparation of a development plan, on the understanding that the notification shall also be sent to those listed in the land registry as the owners of land in the development area.

2. The Mayor and Aldermen shall within four weeks of the adoption of a development plan notify the owners of the land in the development area in writing that a development plan has been adopted. They shall also announce the public inspection and the period within which appeals may be lodged.

**Article 6.15**

1. The Municipal Council shall revise each development plan within one year of its entry into force until such time as the work, activities and structures in that development plan are realised. If an appeal is lodged against a development plan, the period shall start on the day after which a decision concerning the development plan becomes irrevocable.
2. A development plan as referred to in Article 3.6 paragraph 1 b. which includes land for which a rough description is defined in the development plan shall not enter into force until after a review of the development plan in respect of the land concerned has been adopted and published.
3. Article 6.14 paragraph 1 shall not apply to a review of a development plan, and the notice referred to in Article 6.14 paragraph 2 may be omitted insofar as the review refers exclusively to:
  - a. an elaboration and detailed description of the estimates of costs and yields;
  - b. an adaptation of these estimates taking the indexing method specified in the development plan into account;
  - c. replacement of the estimated municipal costs by the actual costs, or
  - d. other non-structural parts.

**Article 6.16**

Where the amount of the costs in a development plan that are associated with the development, minus the subsidies received or to be received by the Municipal Council in connection with that development and third party contributions, exceeds the amount specified in the development plan as yields from that development, the Municipality may only recover costs up to the amount of those yields.

**Article 6.17**

1. The Mayor and Aldermen shall recover the costs associated with the development of the land in a development



area by attaching to a building permit for a building plan designated by virtue of Article 6.12 paragraph 1, with due regard to the development plan, the condition that the licence holder shall pay the Municipality a development contribution, unless the contribution is insured elsewhere or prior to submitting the planning application a development contribution intended for the development of the land concerned has been agreed and insured in respect of the land concerned.

2. The Mayor and Aldermen shall set a period of time in the construction permit within which the development contribution referred to in paragraph 1 must be paid. They may include a payment arrangement for this contribution in the construction permit, which may be made subject to the execution of works and structures referred to in the development plan. If the payment arrangement entails all or part of the payment being paid after commencement of construction, the Mayor and Aldermen may require the permit holder to provide additional security for the payment. Additional rules concerning this may be issued by Order in Council.

#### **Article 6.18**

1. Expenditure categories may be established in the development plan for the purpose of calculating the development contribution referred to in Article 6.17 paragraph 1. If necessary, these shall be further differentiated.
2. A basic unit in a quantity of square metres of land area, a quantity of square metres of floor area or another similar measure shall be established for each category differentiated.
3. Weighted units shall be established by multiplying each basic unit by a weighting factor determined for each category.
4. The weighted units in the development area shall be added together.
5. The recoverable amount per weighted unit shall be the maximum recoverable amount referred to in Article 6.16 divided by the number calculated in accordance with paragraph 4.

#### **Article 6.19**

The development contribution referred to in Article 6.17 paragraph 1 payable for each construction permit shall be calculated by multiplying the number of weighted units and parts of units assigned in the development plan to the land

referred to in the permit application or, if that produces a higher number, the number of weighted units included in the permit application by the recoverable amount per weighted unit and deducting from this amount:

- a. the input value of the land referred to in the permit application, insofar as this is not excluded from the recovery of costs in accordance with the development plan;
- b. the costs associated with the development of the land concerned incurred by the owner, which for the purposes of calculating the recoverable amount shall not exceed the costs assigned to the land according to the development plan.

#### **Article 6.20**

1. Within three months of the implementation of the work, activities and measures provided for in a development plan, the Municipal Council shall establish a settlement statement for that development plan.
2. In the settlement statement the paid development contributions referred to in Article 6.17 paragraph 1 shall be recalculated based on the total costs and the total number of weighted units in the development area. The basic units and weighting factors referred to in Article 6.18 paragraphs 2 and 3 which were applied in the calculation of a paid development contribution shall also be applied in the recalculation.
3. Where a recalculated development contribution is more than five percent lower than a paid development contribution, the municipality shall refund the difference, insofar as it is greater than five percent, on a pro-rata basis with interest to the party who was the holder of the construction permit concerned at the time when the contribution or part thereof was paid, or his legal successor.
4. If at least ninety percent of the costs estimated in the development plan have been realised, a settlement statement in respect of the development contribution concerned shall be issued and paragraph 3 applied at the request of the party who was the holder of the construction permit concerned at the time when the contribution or part thereof as referred to in Article 6.17 paragraph 1 was paid, or his legal successor.
5. An appeal may be lodged against a decision concerning the settlement statement and recalculated development contribution.

**Article 6.21**

1. If the payment period for part or all of the development contribution referred to in Article 6.17 paragraph 1 is exceeded, the Mayor and Aldermen may immediately decide that construction may not commence or must be postponed until the payment obligation has been complied with. They shall set the period referred to in Article 5:24 of the General Administrative Law Act at a maximum of four weeks.
2. After a period of one month after a payment period, the Mayor and Aldermen may collect the amount owing referred to in paragraph 1, plus the costs incurred for the collection, by means of an enforcement order. Article 5:25 paragraphs 2 to 4 of the General Administrative Law Act shall apply.
3. If the municipality has not received the contribution concerned within three months of the decision referred to in paragraph 1, the Mayor and Aldermen may withdraw all or part of the construction permit.

**Article 6.22**

1. A municipality shall make a financial contribution payable to the licence holder if the performance to which that contribution relates has been executed in accordance with the development plan and a request for payment has been submitted to the municipality.
2. Title 4.2 of the General Administrative Law Act shall apply to the payment of a contribution as referred to in paragraph 1.

**Article 6.23**

The Municipal Council may adopt a regulation in respect of the land development which may contain provisions governing the procedure for achieving an agreement on land development and the content thereof.

**Article 6.24**

1. In entering into an agreement on land development, the Mayor and Aldermen may include in the agreement provisions on:
  - a. financial contributions to the land development and, on the basis of an adopted structure vision, to spatial planning developments;
  - b. settlement of losses which are eligible for compensation under Article 6.1;

2. After the adoption of a development plan, the Mayor and Aldermen shall take the development plan into account when entering into a land development agreement, on the understanding that the agreement may contain provisions on the implementation of subjects in the development plan, but may not contain provisions on subjects which may form part of a development plan but which are not included in it.
3. The Mayor and Aldermen shall publish the agreement in a municipal bulletin or in a daily newspaper, a newsletter or a free local paper within two weeks of its conclusion.
4. Article 6.4a paragraph 2 shall apply mutatis mutandis with regard to the party who has entered into a land development agreement which includes an arrangement for the recovery of losses resulting from government planning decisions.

- G** A part shall be added to Article 8.1, replacing the full stop at the end of part b. by a semicolon, to read as follows;
- c. a decision concerning the review of a development plan which has not been prepared in application of Chapter 3.4 of the General Administrative Law Act, as well as a decision concerning the settlement and recalculated development costs of a development plan.

- H** A part shall be added to paragraph 1 of Article 8.2, replacing the full stop at the end of part
- g. by a semicolon, to read as follows;
  - h. a decision concerning the adoption of a development plan for land included in a simultaneously adopted local land use plan as well as reviews of the development plan concerned and decisions concerning the settlement and recalculated development costs of the development plan concerned.

- I** A third paragraph shall be inserted after paragraph 2 of Article 8.3, to read as follows:

3. For the purposes of an appeal and the procedure for a decision on an appeal in accordance with Part 8 of the General Administrative Law Act, a decision concerning the adoption of a development plan and a simultaneously adopted local land use plan, project decision or decision as referred to in Article 3.31 paragraph 1 or a simultaneously adopted amendment or elaboration of a local land use plan shall be regarded as one decision.



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**ARTICLE II**

In Article 85 of the Compulsory Purchase Act, "Article 13 paragraph 1 of the Spatial Planning Act" shall be replaced by: Article 3.4 of the Spatial Planning Act.

**ARTICLE III**

Before publication of this Act in the Staatsblad [Bulletin of Acts, Orders and Decrees], Our Minister of Housing, Spatial Planning and the Environment shall bring the quotations of articles and parts of the Spatial Planning Act occurring in this Act into compliance with the new numbering and lettering of that Act and shall reassign the numbering and lettering of the articles and parts of articles of the Part on Financial provisions in that Act.

**ARTICLE IV**

This Act shall enter into force on a day to be determined by Royal Decree.

We hereby order and command that this Act shall be published in the Staatsblad and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it.

Done

The Minister of Housing, Spatial Planning and the Environment,