

1. The practice in outline

a) Passive, or permissive, planning

- a municipality makes a development plan;
- waits until someone asks for permission to develop;
- tests that application against the plan;
- either refuses permission, or grants unconditionally or unconditionally.

Dutch practice when it is desired to protect an area from change, or to allow only small changes.

b) Active planning

- a municipality;
- makes an (outline) development plan;
- takes an active role in developing the land;
- the usual planning procedures for permission to develop apply;
- conditions can be imposed, not only under planning law but also under contract law.

Dutch practice for most large developments (> 50 dwellings).

2. Dutch active planning in more detail

a) Until around 1995

- municipality acquired (most of) the development land for a project;
- serviced it, provided infrastructure, open spaces, etc.
- disposed of serviced building plots;
- to commercial uses at market prices;
- to other uses (e.g. affordable housing, schools, clinics) at norm prices;
- with the intention of ‘balancing the books’ on the whole project;
- and with the possibility of cross-subsidisation between projects;
- municipalities have no legal monopoly on the market;
- commercial developers let it happen;
- municipalities did all the work and the supply of serviced building land was ensured;
- close co-operation with the municipality: suppliers of development land needed demanders for development land, and vice versa.

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b) Subsequently

- house prices began to rise rapidly;
- fewer affordable dwellings were included in the housing mix;
- therefore value of development land rose, and developers wanted more of the development gain, also more influence on the content of the plan;
- they started to contest the monopoly which municipalities had acquired as suppliers of building land;
- by offering higher prices to owners of unserviced land;
- but: both commercial developers and municipalities wanted to continue co-operating closely in one form or another (rather than fighting each other).

c) Some forms of active land policy which have developed

Where it is known that a (big) development is being planned

- the municipality and developers will start acquiring (or have already acquired) land. Then:

Either:

- a joint venture company is set up by the municipality and developers;
- they contribute their land to this company in return for shares in the company. The value of the shares in the company is proportional to the value of the land input;
- this company services the land, provides infrastructure, etc.
- it disposes of the building plots to the developers who have shares in the company (and to any others, with permission of the board of the company).

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Or:

- the developers with land sell their land to the municipality;
- under conditions about being able to acquire serviced building plots;
- the municipality does all the land development;
- then disposes of the building plots according to the agreed terms.

Or:

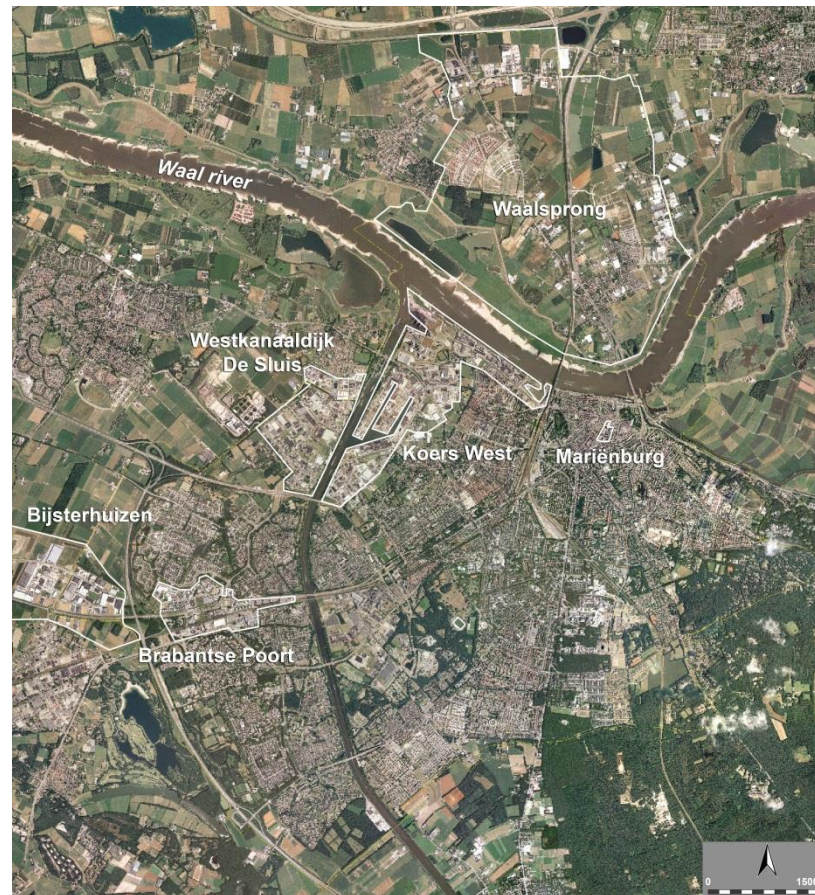
- the municipality recognises the developers owning land as being the ‘official’ developers;
- makes agreements with them under contract law about the quality of the land servicing, provision of infrastructure, phasing of development, financing, etc.
- determines the content of the development by establishing an (outline) land-use plan.

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Some examples of the results: Nijmegen, 160,000 inhabitants



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Affordable housing (built 1950's and 1960's)

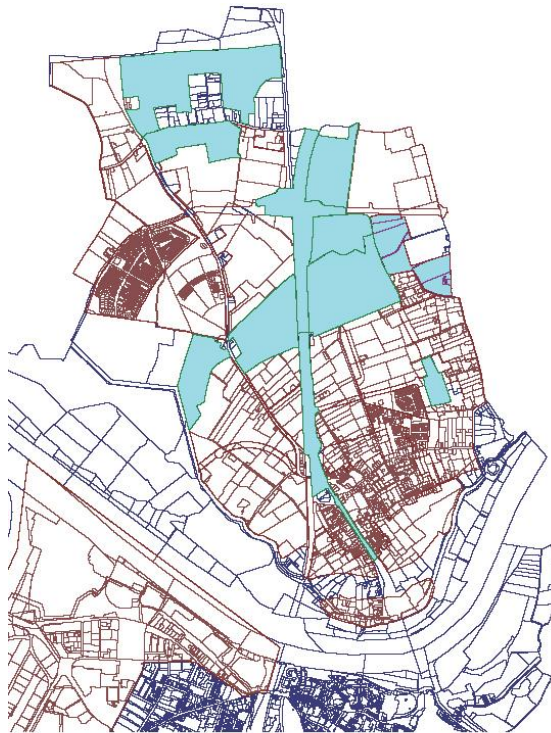


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‘Nijmegen Noord’, a new suburb of 12,000 dwellings



Land to be developed by the municipality



Land to be developed by the land servicing company

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3. The advantages of an active public involvement in land development

- a) Land value increases caused by a change in designation and/or by infrastructure can be used to finance public purposes (e.g. land for affordable housing, parks, schools, clinics, infrastructure, cycle lanes, playgrounds, etc.)
- b) The planning authority has extra powers for achieving the development it wants. Because can attach conditions under contract law when disposing of land; (additional or complementary to conditions under planning law).
E.g. mixed housing; when construction must begin and when it must be finished; selling / rental prices of market housing; urban design.
- c) Both planning authority and commercial developers face less financial risk.
- d) Co-operation not only financially but also when determining details and processes.
- e) Easier to realise an integrated development on a big scale.

4. The disadvantages of an active public involvement in land development

a) The planning authority subjects itself to financial risk.

The division of risks between public and private can be agreed in advance.

But if the commercial developer goes bankrupt, all losses have to be borne by the public body.

b) The planning authority cannot always act transparently.

When buying and selling land, it would undermine its negotiating position if it acted openly.

If it is co-operating closely with a commercial developer, that latter will insist on confidentiality.

5. The necessary organisational conditions

a) Good and experienced professionals who want always to act in the public interest.

‘smart guys who play by the rules of the game’

Note: they can be paid out of the project budget (not a charge on the taxpayer).

b) Stability within the municipal organisation.

Dutch municipalities take direct responsibility for huge development projects.

Distance from the daily administration, preferably a free-standing position.

c) Continuity in municipal politics.

A project can last for years. Financially disastrous if local policy changes greatly in that period. Requires inter-party consensus. Council steers from a distance.

d) Public trust

6. The necessary legal conditions

- a) The planning authority must have the powers of any other (private) legal person to act in markets for land and buildings.
- b) It must be possible to put binding conditions in the contract when land is disposed of.
- c) Compulsory purchase.

The aim should be to use this as little as possible.

But always present when negotiating with private owners ('negotiating in the shadow of the law').

To be effective, the compensation must be less than the full market value of the land. But of which land?

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d) Compulsory purchase under Dutch law

Compensation at the market value of unserviced land in its *new* designation, as if no infrastructural works or other servicing had taken place.

The value in the new designation is the *average* value for the whole project (i.e. taking account of the *mix of uses* in the development plan).

Possible to acquire compulsorily if the existing owner will not, or is not able to, realise the planned use, and/or will not do that within a certain time.