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The new Mineral Planning Act in the Netherlands: a central government's grip on quarrying ?

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1. Introduction

The Dutch Parliament is presently discussing a proposal for a radical amendment of the Mineral Planning Act. The fact is that the present law for realising new quarries is out of date. Especially when planning large quarries, there are many problems for which the law does not provide suitable means. In The Netherlands about 1000 hectares is dug up for extracting gravel sand, limestone and clay. The coarse sand and gravel are predominantly used as an ingredient for concrete and tarmac. The slightly less coarse sands are suitable for mortar. Elevation sand is mostly applied for preparing areas for construction and for roads. Limestone serves the production of cement and lime fertilisers for agriculture. Finally clay is the raw material for reinforcing dikes and the brick industry.

Most raw materials derive from mining sites with a surface area of a few hundred hectares. Due to the fact that The Netherlands is low lying, the landscape of these excavated areas usually changes from land into water. In a populace country such as The Netherlands excavations of minerals are large operations that are increasingly meeting opposition. Almost always there are more claims from other possible users on the areas with extractable materials in the ground. Due to the geological occurrences these areas are predominantly located in the three provinces in the central and southern Netherlands: Gelderland, Noord-Brabant and Limburg. Because of social resistance to the land-use of mineral extractions the available space for planning has continued to reduce.

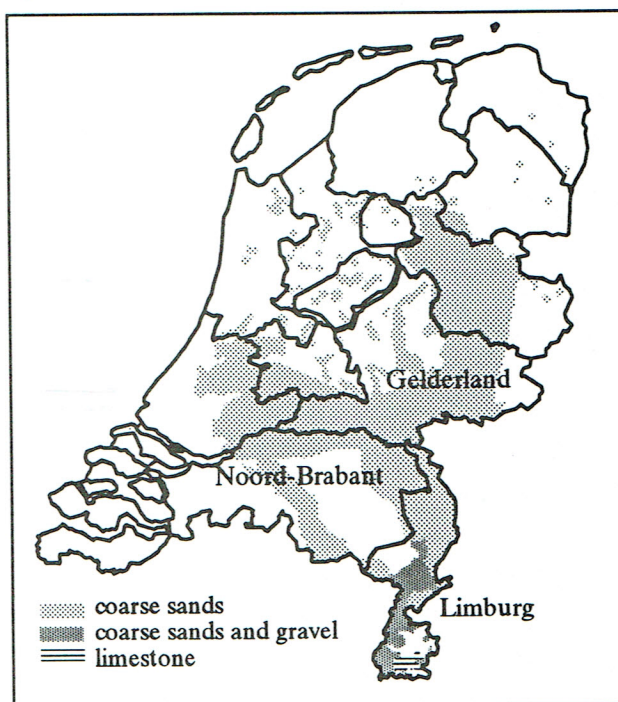


Figure 1. Occurrence of sand, gravel and limestone.

For years the *Mineral Planning Act* has been tinkered with, in order to find a good arrangement between the demand for raw materials on the one hand and social resistance against the necessary mining operations. In the 'old' and first Mineral Planning Act from 1965 important elements are therefore missing. For this reason no legally founded, planned and coordinated mineral exploitation policy could be introduced in The Netherlands.

In early 1994 the Minister of Transport, Public Works and Water Management came with a definitive proposal for legislation. The revised law will make use of existing instruments for physical planning. The starting point in the proposal is that no permit will be granted for large quarries that are in conflict with the plans from the *Physical Planning Act*. These plans are the state structural outline plan, the provincial regional plan and the municipal land-use plan.

In cooperation with the municipal and especially provincial authorities through the revised law, the state government is attempting to gain a better 'grip' on Dutch mineral exploitation (cf. Ike & Woltjer, 1994). In this article the proposed set up is focused on. The Dutch planning system and the problems with the 'old' Mineral Planning Act will briefly be dealt with. Following on from this, a sketch will be given of the new system of planning in the new law. The contribution is rounded off with conclusions. The content of the mineral exploitation policy in the new structural outline plan will be described in an ensuing article.

2. Dutch planning system

In The Netherlands physical planning takes place within the administrative organization of The Netherlands. The Physical Planning Act is adjusted to this organization (Brussaard, 1987). There are three levels of administration, namely the central government, provinces and municipalities. All these administrative bodies are responsible for taking various decisions on physical planning.

The organization of government is decentralized. Each level of administration is free to direct a policy of its own, on condition that it is in accordance with policy of a higher authority. Furthermore, the spatial plans become more concrete down towards the levels of administration. Especially the land-use plans at the municipal level include regulations directly binding upon the citizen.

Spatial policy can be characterized as a facet policy. This means that physical planning is concentrated on a specific facet of various policy sectors. This facet consists of the spatial aspects and spatial effects of the policy decisions taken in the different sectors (Brussaard, 1987). By sector policy is meant the concrete planning in a branch of government activity. Mineral planning is sector policy.

3. Old set up

The Mineral Planning Act of 1965 prohibits quarrying unless a mineral operator has obtained a quarrying-permit from the province. Only for quarrying in the sea and in state waterways is it the minister of Transport, Public Works and Water Management who is authorised to issue permits. Having considered all the interests involved in the mining operation the province may issue, refuse, revise or withdraw a permit. Furthermore, the province can attach conditions to a decision to protect or enhance these interests.

The 'old' Mineral Planning Act only contained the 'passive' instrument of the permit. With this the government had to wait for a permit-applicant to report. However, in the course of the eighties it became apparent that a more active government policy was required. The provinces pleaded for national estimates for the requirement for building raw materials and insight into the division of the amount of surface minerals to be extracted per province. The provinces also wanted consultation and harmonisation between the twelve provinces and the ministry. The building industry wanted more security for the building raw material provision and a coordinated role for the central government. The environmental movement too, deemed the absence of planning as a weakness. It called for more insight into the necessity, scope and locations of intended quarries.

To resolve the difficulties in a draft of 1988 the starting point was taken of the set up that the Minister of Transport, Public Works and Water Management would compile a *sectoral policy memorandum* for quarrying (long-term mineral policy plan). The provinces would then be compelled to make provincial mineral extraction plans. The minister would obtain the authority to give provinces binding assignments for making scarce surface minerals extractable (Ike & v.d. Moolen, 1991). For years this *sectoral model* was worked on, until the moment that the minister pronounced the preference for a *facet-model*. In this the Physical Planning Act is used. An important reason for this is that it is already available. Moreover, the policy area of quarrying fits well in physical planning.

4. New set up

The Dutch decentralized organization of government was more or less formalised by the Mineral Planning Act of 1965. In this Act the emphasis regarding planning and decision making was laid at the provincial level (see Voogd, 1988). Even though on the whole the province issues permits, in the new law this decentralized approach is affected to some extent. This will be illustrated in this section on the basis of three important types of amendments. The first important reason for the legislative amendment is that in the 'old' law there was an absence of a provision for a good system of *policy alignment and planning*. A second deficiency was the absence of *coordination* for the various required permits. Thirdly the government desired broader possibilities in the *regulations* that can be

attached to a quarrying-permit. In figure 2 the most important legal means have been summarised by level of administration.

<p>State</p> <ul style="list-style-type: none">● <i>Structural Outline Plan</i> on Surface Minerals● <i>Policy alignment</i> between state and provinces (compulsory)● <i>Directive</i> to province on regional plan by Minister of Housing, Physical Planning and Environment (facultative)● <i>Directive</i> to province on application for quarrying-permit by Minister of Transport, Public Works and Water Management (facultative) <p>Province</p> <ul style="list-style-type: none">● <i>Regional Plan</i> with quarrying site(s)● <i>Quarrying-permit</i> authority● <i>Policy alignment</i> between state and provinces (compulsory)● <i>Coordination</i> of application for all needed permits at the request of the applicator● <i>Directive</i> to municipality on land-use plan (compulsory if regional plan indicates quarrying site and municipality is non-cooperative)● <i>Delegation</i> of quarrying-permit authority on small extractions to municipality (facultative) <p>Municipality</p> <ul style="list-style-type: none">● <i>Land-use Plan</i>● <i>Consultation</i> about site-indication in regional plan by province (compulsory)● <i>Consultation</i> about applications for quarrying-permit by province (compulsory)● <i>Delegation</i> of quarrying-permit authority on small extractions from province (facultative)

Figure 2. Overview of the legal means for mineral planning in the new set up.

Policy Alignment and Planning

With the aid of the Physical Planning Act extractions can be arranged via a structural outline plan, the provincial regional plan and eventually via the municipal land-use plan. All these plans have their own procedures, containing opportunities for everybody for raising objections to the plan. In order to be able to provide for the requirement for surface minerals the minister of Transport, Public Works and Water Management can intervene, if not enough permits have been granted on time.

According to the proposed law, the state draws up a *Structural Outline Plan on Surface Minerals* (Lower House, 1994a). In this the state policy on raw material provision for the building industry is put down. This plan is signed by the minister of Transport, Public

Works and Water Management and the minister of Housing, Physical Planning and Environment. The plan contains important decisions about physical planning in The Netherlands. These decisions run through the procedure for so-called National Planning Key-decisions. Among others spatial aspects of quarrying as well as the economic use of required surface minerals and possibilities for the re-use of waste materials, are dealt with. The structural outline plan indicates the areas where surface minerals can be extracted in principle. These areas are further specified by the provinces. In order to provide for the national requirement for concrete and mortar sand, the provinces must grant enough permits, in good time for these relatively scarce types of sand. In the structural outline plan they are therefore given assignments. In the structural outline plan important 'steering statements' can be made. For a province these steering statements can have as result that:

- a quarrying-site has to be taken up in the regional plan.
- a permit must be issued.
- a quarrying-zone has to be indicated in the regional plan.

The heaviest statement is that a province must actualise a quarrying-site in the regional plan. In this case a special 'quarrying-site-procedure' starts. This term quarrying-site is an important, clearly defined legal term. If the minister intervenes, according to the new law a province must take up a quarry in its regional plan. Consultation about this with the concerned municipalities is required. The municipality investigates whether the quarries fit in their land-use plan and if not whether it is willing to lend *planning cooperation*. An adaption of the land-use plan is what is aimed at here. If the quarrying-site is in conflict with the land-use plan and the municipality will not lend planning cooperation, the province is compelled to give the municipality a directive. The municipality then has to accept the quarry. The quarrying-site determined in the regional plan is legally binding ultimately. Appeal against it in court is thus possible.

It can be the case that a province does not cooperate enough with the state policy. The state therefore has two instruments to intervene. It is possible that the state regards a particular permit as having been wrongly refused by the province, or that the province attached too many obstructive conditions to it. If speedy extraction is necessary, the minister of Transport, Public Works and Water Management can therefore give a so called directive. The province then has to adapt the issuing of the permit. The minister of Housing, Physical Planning and Environment can also intervene: On the basis of the Physical Planning Act a province can be given a directive regarding the content of the regional plan. The province then has to take up a quarrying zone or site desired by the state in the regional plan.

In the new law there are rules about *policy alignment* between the provinces and the state. This alignment is about the planning and the distribution of the quantities of surface minerals to be excavated. There is a mutual obligation for a periodical consultation and information provision for the state and the provinces. This consultation is necessary to support, harmonise and implement the state policy and to coordinate the policy of the provinces.

Coordination

More effective procedures are required. Before extraction may take place, many decision-making processes often have to be passed through. For example besides the mineral planning-permit there is also a physical planning permit for the land-use plan and one or more environmental permits required [1]. Because of this it is not unusual for an individual to have four or more different opportunities to object to a proposal. None of these objection procedures were synchronised. Due to the increase in submitted objections the balancing of interests has become increasingly difficult, as a result of which the decision-making takes a lot of time. For the quarrying industry this means that it can take between 10 to 15 years before a permit has been obtained. Also the other parties concerned in the relevant area, are confronted by a very long period of uncertainty.

If the applicant so request, the province is compelled to coordinate the preparation and consideration of the various applications. In this way a great amount of time can be saved, in comparison to the situation with no coordinated treatment and decision. Also, integration of appeal occurs exclusively in one authority. This authority will moreover make a decision within one year after the appeal has been submitted. If the quarrying-site has been taken up in the regional plan, the coordination makes sure that within about 20 months all permits can be 'in'.

Nevertheless in the worst instance a quarrier will have to wait a good 5 years for a definitive 'yes'. This worst instance occurs if the province does not want to take a quarry up into the regional plan, a municipality will not cooperate and one or more of those involved goes into appeal against the decision. If the provision is prepared to take the required quarry up into the regional plan, a province on the contrary does not want to cooperate, and an appeal is made against the decision, the waiting period will be 3 to a maximum of 4 years. The Environmental Impact Assessment is included in this [2].

Regulations

The government wants to stimulate an active re-use of derelict mineral quarries, especially by trying to improve the integration of the restoration process with the entire mineral planning process (see Ike & van der Moolen, 1990). On the basis of the old Mineral

Planning Act regulations could be attached to a quarrying-permit in order to protect all the interests involved in the mining operation. With the regulations some or sometimes even all the objections to a mining operation could be met.

In the law of 1965, the judicial possibilities are insufficient to be able to prescribe the desired management of an area. In addition to this the possibilities to prescribe the desired lay-out of a quarry, during and after the mining operation are lacking. What the quarry will look like after the mining operation to a large extent determines whether local residents and local authorities will accept the quarry. The regulations protecting all the interests involved in the mining operation continue to exist. Only the formulation is more elaborate. Regulations can now be set *in order to enhance and protect interests involved in the re-arrangement of the quarried movable goods and the adaption of the surroundings of the movable goods* (Lower House, 1994b).

In the new law it has therefore been taken up that the regulations can also be taken up to a permit, which are concerned with paying the costs for management and re-arranging. For management, it concerns for example, the costs which are made by the nature management authority. By re-arrangement is meant changing the appearance of the surroundings of the quarried plot. For a good re-arrangement nature or recreational provisions can be developed in the quarry remains. The created water can also be adapted to housing construction.

5. Concluding remarks

The state responsibility to be able to make sufficient surface minerals quarriable in time, derives from the desire of the government to build houses, factories, roads and dams. The state regards it as possible to survey, at a national level, the raw material requirements of construction and the disadvantages of quarrying. Consequently it wants to be able to influence and harmonise the policies of lower authorities. To do this more steering means have been taken up in the new Mineral Planning Act. Moreover with the new set up, plenty of use will be made of the legal means from the Physical Planning Act.

As the number of suitable areas for quarrying declines, pressure on these areas will increase. Due to the large demand for building materials and the enormous consequences for the landscape, the quarrying of these materials is increasingly disputed. The state and the provinces now have the legal means to still be able to quarry enough building materials.

The new set up is characterised by consultation and policy alignment. The facultative possibilities for the state to give directives is important. With these directives there is a certain centralistic 'big stick'. For gravel and to a lesser degree for coarse sands it is the case that if insufficient use is made of the steering means in the new law, only a few areas

will become available for the extraction of minerals. This scarcity will undoubtedly lead to an increase in the material and immaterial cost of quarrying. The relatively small size of Dutch territory and the many conflicting interests surrounding areas with suitable aggregates in the ground, also obviously plays a role here. Through the developments outlined, the relative quarrying costs in The Netherlands will be higher than abroad. This will be import enhancing.

Given the political administrative culture in The Netherlands it is not likely that the newly offered means will ever be used by the ministers concerned [3]. The proposal for amendment leaves all parties with much space. If the state government does not feel like taking a steering stance then this will not happen. For this reason there is a danger that the contents of the policy will eventually have a looser character. The present restrained quarrying policy for a number of scarce surface minerals already has as consequence that The Netherlands especially exports her gravel extraction abroad. Possibly also for this reason the present legislative proposal can count on a consensus. It is expected that in 1996 the bill will have been dealt with by parliament.

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[1] In this instance it concerns permit-procedures in the framework of the Mineral Planning Act, decision-making procedures in compliance with the Physical Planning Act and Housing Act (amendment regional plan, adaption land-use plan, building permit, construction permit), the environmental-hygenic legislation (Environmental Management Act, Waste Substances Act and Surface Waters Pollution Act) and other relevant legislation (among others: Forest Act, Rivers-Act, Soil Protection Act, Compulsary Purchase Act).

[2] An Environmental Impact Assessment procedure (EIA) has to be gone through for extractions larger than 100 hectares. This occurs when determining a quarrying-site or when issueing a permit. The initiator has to make the environmental impact statement (EIS). This could be the mineral operator or the provincial government.

[3] Since 1965, only a few ministerial directives on the content of a regional plan have been issued. For example, these cases were concerned with the exclusion of buildings (1967, 1970, 1985), the enabling of harbour construction (1970), the prevention of digging out natural area (1971), the exclusion of buildings and roads (1975), ensuring military training-ground (1979), enabling military storage (1981) and enabling gas-storage (1994).