

WHAT YOU HAVE TO KNOW TO PLAN YOUR *ComCoast*-PROJECT

... policies, procedures, legislation ...





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The ComCoast project is carried out in co-operation with ten partners.

- Rijkswaterstaat (NL - leading partner)
- Province of Zeeland (NL)
- Province of Groningen (NL)
- University of Oldenburg (D)
- Environmental Agency (UK)
- Ministry of the Flemish Community (B)
- Danish Coastal Authority (DK)
- Municipality of Hulst (NL)
- Waterboard Zeeuwse Eilanden (NL)
- Waterboard Zeeuws Vlaanderen (NL)

This report is an initiative of the ComCoast project, co-financed by the EU-Interreg IIIb North Sea Programme.

Mission statement ComCoast

MISSION OF COMCOAST (= COMBINED functions in COASTal defence zones)

ComCoast is a European project which develops and demonstrates innovative solutions for flood protection in coastal areas.

ComCoast creates and applies new methodologies to evaluate multifunctional flood defence zones from an economical and social point of view. A more gradual transition from sea to land creates benefits for a wider coastal community and environment whilst offering economically and socially sound options. The aim of ComCoast is to explore the spatial potentials for coastal defence strategies for current and future sites in the North Sea Interreg IIIb region.

ComCoast Goals:

- developing innovative technical flood defence solutions to incorporate the environment and the people and to guarantee the required safety level;
- improving and applying stakeholder engagement strategies with emphasis on public participation;
- applying best practice multifunctional flood management solutions to the ComCoast pilot sites;
- sharing knowledge across the Interreg IIIb North Sea region.

ComCoast Solutions:

Depending on the regional demands, ComCoast develops tailor-made solutions:

- to cope with the future increase of wave overtopping of the embankments;
- to improve the wave breaking effect of the fore shore e.g. by using recharge schemes;
- to create salty wetland conditions with tidal exchange in the primary sea defence using culvert constructions or by realigning the coastal defence system;
- to cope with the increasing salt intrusion
- to influence policy, planning and people
- to gain public support of multifunctional zones.

ComCoast runs from April 1, 2004 to December 31, 2007. The European Union Community Initiative Programme Interreg IIIB North Sea Region and the project partners jointly finance the project costs of 5,8 million.

1.1.2 Information

Information on the ComCoast project can be obtained through the Project Management, located at the Rijkswaterstaat in the Netherlands.

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INTRODUCTION

This is a guide about prescribed procedures, policies and legal terms one will be confronted with once trying to prepare a ComCoast-project.

This report is not about organizing a project as such.

The pointed policies and legislation refer to the situation in the Netherlands, 2007 (going to 2008).

The public administration plays a key role in organizing a ComCoast project right from the start. From administrative law (Administrative Law Act: 'AWB - algemene wet bestuursrecht, 1994') can be learned:

1. How public administration is organized
2. What is the competency of the public organisations concerned
3. To which legal requirements the public administration has to keep itself
4. How the public administration can make sure that one will comply with the legal requirements and how it can enforce this in case of need
5. What legal protection citizens and private organizations may enjoy once they make inquiries or object/appeal against decisions and acts in law that may do harm to them (see also § 6)

It should be reckoned that rules and regulations are there for us! They are agreed upon in the past and they may not always be very suitable anymore. That is why in [lit. 1] rules are mentioned as one of the fields in which one might innovate.

Players

Apart from initiator(s), see § 1, and the competent authorities involved there will be others that play a role: people and organizations that influence or have a say in the outcome of the project (... a project that could become a ComCoast-project...) or whose lives / livelihoods will be affected:

<p>PUBLIC ORGANISATIONS (tasks presented to them by the people's representatives) * competent authorities (either elected or statutory appointed) {bevoegd gezag} <i>esp. the institutional flood management and physical planning authorities</i></p>	
<p><u>REGULATORS</u></p>	
<p>PRIVATE * market forces like developers, consultants, owners of property like land or assets, contractors, investors and insurers</p>	<p>CITIZENRY * the public, local residents, interest groups, possible future users of the area, the press</p>
<p><u>PROVIDERS</u></p>	<p><u>USERS</u></p>

.... Anyone involved in coastal defence-projects(schedule borrowed from Peter van Rooy)

1. INITIATIVE

The urgency to start an initiative that may lead to a ComCoast-like project derives from efforts of:

- Conservation of the line of defence. A stretch of sea defence doesn't pass the 5-yearly test¹: the hydraulic boundary conditions no longer match the requirements on the strength of the relevant sea defence. In that case, and if temporary measures will not be adequate enough, something has to be done. Possibly a ComCoast solution may be part of the to be examined alternatives then. In the weak spot Hondsbosche en Pettemer zeekering e.g. an overtopping dike has been considered as an option.
- Developments in an area in which the defence is situated. We distinguish adaptation-schemes to climate change (e.g. repositioning the sea defence to decrease the vulnerability to flooding of the hinterland), local initiatives to develop an area for commercial activity (Maasvlakte), to improve the quality of the coastline for regional development, or for reasons of preservation of nature (Breebaart) either or not in combination with salt intrusion.

In order to publicly announce an initiative the following points have to be addressed:

- definition of the problem and the objective of the initiative
- the necessity of the plan
- the public institution responsible to be the initiator of the development (it may very well be more than one initiator)
- the reach of the project: the scope, the to be examined alternatives and their possible impact on the environment, the economy and the social structure
- the relevant aspects and their criteria
- the level of detail
- a preliminary budget-plan with the supposed financial donors
- the legislation and policies in force
- the competent authorities for legally required procedures, permissions and granting licences

¹ the stretch of defence does not comply to the safety standards as meant in the Flood Defence Act (§ 3)

2. MAIN FRAMEWORK

What are the legally embedded phases that have to be passed through?

And: who will be responsible for the execution?

Basically there are three main procedures that shape the planning of the project:

- for the commissioning and finance the Ministry of Transport and Watermanagement ², the prime funder, wants to keep track of progress, quality, costs and deadlines --> SNIP-procedure (§ 3)
- in order to determine external effects on sustainability and the environment decisions have to be made which have to be based on often extensive investigations and research and an interpretation of the results by experts --> m.e.r.-procedure ³ (§ 4)
- spatial planning so that a plan may fit in with other interests and concerns in the specified area --> spatial planning-procedure (§ 5)

In preparing the project planning the three mentioned procedures have to be incorporated. Doing so the initiator will negotiate with the competent authorities.

Phases:	SNIP	m.e.r.	Spatial planning
Exploration	1. Intake 2. Assignment to start studying	Feasibility study	Exploration and start to adjust structuurvisie (if necessary)
Vision ⁴	2A. One alternative is selected out of a few	Startnotitie MER-report	Structuurvisie
Design	3. Decision to implement: ToR (terms of reference)	The environmentally sound solution is selected	Adjust Town and country planning
Assessment	4. Decision to prepare a contract to execute 5. Decision to execution ⁵	Fine tuning of the design	Decree adjustments Town and country planning
Execution	6. Delivery and acceptance	Decree	
Administration & maintenance		Assessment ex-post	Compliance

Sequential phases decision making process (column 1)

..... and documents to be produced on the end of each phase (column 2 – 4)

Note that one phase might take much more time to pass through than another one!

Apart from these main procedures the initiator has to go through several other minor procedures in order to receive all necessary permits, permissions and subsidies.

² Ministerie van Verkeer en Waterstaat

³ please note:

m.e.r. = milieu effect rapportage = environmental impact assessment (the procedure)

MER = milieu effect rapportage = environmental impact assessment (the report)

⁴ The vision [lit. 2] is a phase that appears in all procedures. The vision has proven to be useful in enforcement-projects for river dikes from the 1980's onwards. Landscape architects play a connecting role here. They focus on the objective of the initiative and on local values, interests, needs and agreements. Bottlenecks and opportunities are being explored and ideas and opinions, engagement and willingness to cooperate are identified and brought together if appropriate. The result will be a way of dealing with the landscape of the area: how will it look like after completion? The vision is a strong communication device.

⁵ The decision to execute will be a final 'package-deal' in which all partners commit themselves to proceed with the plan, its finance, and including the risk management that goes with it (see also § 6 'settlement of accounts')

3. ORGANIZING THE IMPLEMENTATION

Flood Defence Act - 'Wet op de waterkeringen' (Wow), 1995

Objective of this law is the safety against flooding of dike ring areas.

The responsibility to maintain the coastline regards erosion, and an overall supervision of the defenses is pointed out to the national government: Ministry of Transport and Watermanagement {Ministerie van Verkeer en Waterstaat}. The Provinces supervise the safety of the flood defences, the work that actually is done by the Waterboards (the administration and maintenance of the defences).

The Water boards manage the flood defences of dike ring areas, whereas Rijkswaterstaat does so for cat b flood defences (flood barriers like Oosterscheldedam, causeways like Afsluitdijk, and foreshore walls).

Apart from the Wow the Water boards have by-laws {keur} that more or less regulate the penal code of the water board. Data about the flood defences are collected in a management-register.

All dike ring areas have a statutory protection-level (exceedance of a particular stillwaterline - return periods: in coastal areas 10.000 years or 4000 years).

The management is held to inspect the flood defenses once in every five years, based on guidelines for hydraulic loads and safety assessment of the flood defenses that are being provided by the national government (resp. 'Hydraulische randvoorwaarden' and 'Voorschrift Toetsing Veiligheid').

For a design of new flood defences also **guidelines** are issued and updated, separate ones for sandy coastal areas ('Leidraad zandige kust', 2003) and for other coastal areas ('Leidraad zee- en meerdijken', 1999).

The Wow was renewed in 2005. Stated then was that costs of maintenance of flood defences will be covered by the water boards and costs for new reinforcements will be covered by the national government.

ComCoast learned from the Ministry that ComCoast-solutions can be applied [lit. 3], if:

- the defence will be breach-free: able to withstand overtopping
- the defence has to be unconditionally accessible for inspection and repair
- incidentally overtopping water should be accommodated behind the defence
- residents behind the defence should feel safe.

Commissioning and finance

The Water board and the Ministry of Transport and Watermanagement initiate new reinforcement projects.

The water boards generally are in charge of the coastal defences and in case of new enforcements they need to be subsidized by the Ministry. This subsidy refers to the flood defence and costs that go with it: costs for preparation, projectmanagement, investigations, surveys, the execution, and allowances paid for compensations, mitigations and damages. For additional costs like costs for spatial quality impulses and costs for the benefit of other stakeholders other sources of finance need to be found.

The lead for the exploration phase of most ComCoast-projects, like e.g the weak spots and many 'Ruimte voor de rivier'-projects⁶, will be the public institution that is best engaged, best informed and best equipped to initiate this process. Often that will be the province or the municipality. It is possible that the lead role may be handed over to another participant once the project will enter a next phase.

SNIP – Spelregelkader Natte Infrastructuurprojecten

For safety against flooding the national government is accountable to parliament in terms of performance and expenditure.

A very substantial part of the funding for ComCoast-projects will be derived from the national government. In order to plan your ComCoast-project the SNIP-procedure needs to be applied. SNIP is a set of rules and regulations that the Ministry of Transport and Watermanagement applies to projects in order to streamline the roles and responsibilities of participants concerned, the legal formalities that are applicable and to get information that will be needed in order to be able to take decisions concerning the

⁶ A programme to add storage capacity to the rivers by enlarging the effective floodplane

progress. A step-by-step procedure is part of this. After completion of one phase in the procedure it will be decided that the project will or will not proceed to the next phase.

SNIP-projects require budget (HWBP) and scrutiny about the costs involved: cost effectiveness, costs - benefits considerations and risk management of the costs concerned:

Budget plan prevention against flooding: (HWBP: hoogwaterbeschermingsprogramma)

The whole process of a stretch of dike that doesn't pass the 5-yearly test until the situation that complies to legal standards is one in which national government, province, municipality, water board and interest groups participate and are mutually dependent from one another.

The national government will only have sufficient means available in due time. The plan to reinforce the flood defence has to attune to strategic objections set, the capacities available to cope, and the interlinkage with other projects. The result of all this prioritizing is a budget-programme: 'Hoogwaterbeschermings-programma', a national programme for more than one year that will be actualised yearly.

Costeffectiveness analysis (CEA)

Given the necessity of the plan, the ToR (terms of reference) and the funding available: how can the plan be engineered and executed most economically?

Social costs benefits analysis (SCBA)

In order to be able to appreciate investments in flood defences SCBA is introduced, as to be found by the OEI-taxonomy⁷. Four main aspects will be examined: safety against flooding, economics, quality of life and costs to be covered. The effects will be expressed monetarily for the net present value⁸. For small projects a simplified SCBA may be followed.

The role of SCBA is twofold:

- Contribute to the necessity of the plan: policy is that national budgets may only be applied when a nett positive prosperity can be demonstrated;
- Helpful aid if you want to compare one alternative against another one

ComCoast provided two SCBA's: an assessment ex post for the project Breebaart, Groningen (completed in 1997) and one assessment ex-ante for Perkpolder, Zeeuws-Vlaanderen (a ComCoast project in progress).

A cost estimate that includes a risk assessment

Parliament and donors to the projects will need objective information. A requirement therefor is that a risk assessment about costs will have to be carried out in order to forestall financial disappointments. That is why the estimated total costs are presented with a clear indication of the uncertainties. The result will be the expected amount needed in €s including a clear indication, a range of about how much the costs possibly may exceed that amount or may fall short of it. Method used: RISMAN.

⁷ OEI (Overzicht Effecten Infrastructuur) a method to appraise costs and benefits for infrastructural enterprises.

⁸ Applied disconto: 2,5 %, plus a max. excess of 3 % on top of that for risks involved.

4. THE ENVIRONMENT

Environmental impact assessment

Two types of EIA's are to be distinguished:

- an EIA that is supposed to lead to a well defined decree, a public decision {besluit-m.e.r. = procedure of milieu effect rapportage}
- a plan-m.e.r. that deals with a plans and programmes for a wider area.

A 'decree-EIA'

Competent authority: (in general) the province.

Projects of any scale need an environmental impact assessment {MER – milieu effect rapportage}, a study in which several different alternative solutions for the defined problem have to be worked out and appraised on external effects. A special, independent commission {commission MER} advises the competent authorities so that appropriate alternatives will be worked out, relevant issues will not be ignored and that there will be objectivity in framing assumptions. The MER has a well-defined procedural path and in many a project the procedure of the MER and the procedure of the project will be intertwined.

Procedure environmental impact assessment	Who is in charge?	Procedure policy and budget
Introductory memorandum: what is the problem and the objective of the plan and what do you want to explore to do?	Initiator	Budget requirements announced
Consultation for ideas and possible cooperation	Initiator	
Draft of guidelines	Cie MER	
Guidelines produced	Competent authorities	
Preparation of the Environmental Impact Assessment: various alternatives are being set up and assessed on relevant aspects	Competent authorities	
Publishing of the EIA	Competent authorities	
Consultation (2)		
Advices given	commission MER and statutory advisors	
The MER is being adjusted	initiator	
The initiator prioritises the alternatives	initiator	Budget plan
The project design is completed, grants for physical planning and permits for other legislation are being requested	initiator	
Consultation (3): the final check up before the decree will be signed about the final plan (according to the AWB)		
Project agreed upon. start with the production of the terms of reference (ToR)	initiator	Time path produced
Project decided upon	competent authorities	
Appeal	court	
Works ahead and an evaluation afterwards	agency that carries out the works	Scrutiny reports

Sequential path of EIA

Plan-m.e.r.

(European guideline 2001/42/EG, June 21st 2004 - 'strategic EIA' - is in effect beside guidelines 85/337/EEG and 97/11/EG, Habitat Directive).

Competent authority: the province.

A future ComCoast-project may very well be part of planning scheme that needs to be portrayed in a environmental report according to a plan-m.e.r. procedure. Plan-m.e.r. will be very useful for sustainability issues because discernment will be given in the addition sum of all effects of a new policy instead of the effects of a separate sequel project only. Discussions about location, techniques, etc. may be rounded off so that they don't have to be done over again on the project-level. The plan-m.e.r. therefore will be framework for the EIA-procedure of the singular project. The plan-m.e.r. itself is dynamic and flexible in character: big changes in the issue to be addressed, scope and alternatives may occur during the process.

Other public law

The field situation gives rise to environmental (chemical) concerns dewatering, water management, surface water quality, groundwater (tables, flows + salt intrusion), moving earth, navigation, cabling and ducts, hunting grounds.

Water management

A decision on carrying out a work that is a part of the watermanagement (‘Wet beheer Rijkswaterstaatswerken’), Wbr, 1997, and a national governmental project-decision (‘Rijksprojectenbesluit’, based on the Wro for measures that have a more than local effect on spacial aspects).

Permissions have to be granted also for (re)moving earth from a site is regulated by means of the ‘Ontgrondingenwet’. (Competent authority: the Province.)

Integrated water management and the links to existing legislations is dealt with in ‘de Wet op de waterhuishouding’ 1989.

Groundwater is qualitatively and quantitatively managed in line with the ‘Grondwaterwet’, 1975. The Wbb deals with the protection of the groundwater itself.

Competent authority: Ministry of Transport and Watermanagement for national policy, the provinces for regional policy and execution of the law.

In preparation is the ‘Integrale waterwet’, with the objective of the public interest regards water and the human habitat and the protection of our living surroundings. This law is meant to replace the Wow, Wvo, wvz, ‘Grondwaterwet’, and perhaps more.

The ‘Europese Kaderrichtlijn Water’, or Water Framework Directive, 1997.

Environment

- the protection of the quality of surface waters by inhibiting a damaging influx of pollutants (‘Wet Verontreiniging Oppervlaktewateren, (Wvo) 1970-1981, and ‘Wet Verontreiniging Zeewater’ (Wvz) 1975 -like the Wvo- for marine environments.
- the protection of the multifunctional use of the soil (‘Wet BodemBescherming’ 1987 (Wbb))
- the prohibition of the introduction of possibly (slightly) polluted material in a more clean natural environment (‘Bouwstoffenbesluit Bodem en oppervlaktewateren’)
- The protection of the environment by dealing with procedures of dumping waste (‘Wet Milieubeheer’, (Wmb) 1993)
- Permits for cutting trees, erecting buildings (‘Bouwvergunningen’) or dismantling them (‘Sloopvergunningen’), discompensations for the degradation of flora and fauna, hindrance of noise, and traffic hold-ups.

Nature

(Included are national implementations of the EU Birds and Habitat Directives)

- ‘Flora- en faunawet’ (FFW) 2002 for the protection of biodiversity regards vulnerable species
- ‘Natuurbeschermingswet’ (Nb) 2005 for the protection of areas of special natural interest (biogeography), either nature reserves and areas for connectivity

Cultural heritage

From the cultural heritage perspective the ‘Monumentenwet’, 1988, and the Malta Treaty (archeological artefacts) may be of concern at certain areas.

Other legislation, hindrance and delays

Once wrecks are found during the process of implementation the ‘Wrakkenwet’ 1934, applies.

Also: limits of access to the area during reconstruction, and provisions for local communities to mitigate hindrance, etc.

5. SPACE

Communitary policy

On May 30th 2001 the EU parliament and Council produced Recommendation implementation of **Integrated Coastal Zone Management (ICZM)** towards an integrated coastal policy for the member states. 'Integrated' stands for the integration of objectives and instruments that are serving these objectives. This means the integration of all relevant fields of policy, sectors and administrative levels. It also means the integration of the land-part and the sea-part, as well as contemporary and future situations. Stated are objectives and principles:

I. Objectives:

- protection of the coastal environment based on an ecosystem approach preserving its integrity and functioning and sustainable management of the natural resources of the coastal zone;
- recognition of the threat posed by climate change and of the dangers entailed by the rise in sea level and in the increasing frequency and violence of storms;
- appropriate protection measures, including protection of coastal settlements and their cultural heritage;
- sustainable economic opportunities and employment options for coastal regions;
- a thriving social and cultural system in local communities;
- adequate accessible land for the public, both for recreational purposes and aesthetic reasons;
- promotion of cohesion of remote communities;
- improved co-ordination in managing the sea-land interaction.

II. Principles:

- a broad overall perspective (thematic and geographic)
- a long-term perspective
- adaptive management and a sound knowledge basis
- local specificity
- involvement of all parties concerned in the management process, based on a shared responsibility;
- support and involvement of relevant administrative bodies at national, regional and local level
- working with natural processes and respecting the carrying capacity of ecosystems
- use of a combination of instruments

Flood Directive

Early 2006 a proposal was drafted for a European Flood Directive, and in June 2006 an agreement was reached for its scope. The Directive covers rivers, delta and the coastal sea.

Town and country planning Act

‘Wet ruimtelijke ordening’ (Wro)

On July 1st 2008 a renewed Wro comes into effect.

It will be in line with the aspects mentioned under ‘Nota Ruimte’.

This implies that the national, provincial and municipal governments each will produce their ‘Structuurvisies’ for a period of about 10 years. These Structuurvisies will be tuned with each other. The Provincial Structuurvisies decide on spatial-strategic consequences, while the Municipal Structuurvisies decide on spatial-operational consequences.

	Wro 1965	Wro 2008	Legal instrumentation
National	PKB	Structuurvisie ⁹ Ministries	AmvB / allotment ¹⁰ / 'fit-in' obligation ¹¹
Regional	Streekplannen	Structuurvisie Province	Prov. Verordening / allotment / 'fit-in' obligation
Local	Structuurplannen	Structuurvisie municipality	BP ¹² / fixation of the current situation ¹³ / project-decision ¹⁴

Transition from Wro 1965 to Wro 2008

The provinces are obliged to provide actual information about the extendedness in geographical information systems (GIS). This information will be about physical data and administrative data including information about the progress in decision making for structuurvisies and the town and country planning.

'Planologische Kernbeslissing' (PKB - core decision on town and country planning)

The new Wro is not in force yet. At the moment though, the national government will for big spatial mega-projects still produce the statutory PKB. It is likely that for the bigger ComCoast-projects - the ones that involve multiple works of implementation - National Structuurplan-procedures will become in effect. For smaller ComCoast-projects it is expected that a Provincial Structuurplan will do.

But, for the moment, the procedure for the PKB is thus:

Based on a exploration carried out by two or more ministries, accompanied by a platform of stakeholder-organisations, a document is produced which will be handed over to the council of ministers. Next is a four-part track under guidance of the ministries:

part 1 Proposed decision of Council of ministers

Measures to be taken for prolonged safeguarding of the land against flooding: types and locations, the future functions, supposed effects, the needed ground planning and reservations for future land claims.

part 2 Findings of consultation

The results of stakeholder engagement and recommendations of the public are published for advice and fine-tuning

part 3 Point of view of Council of ministers

Phase 1: Decision making in the lower house of parliament during which alterations to the plan can be made.

Phase 2: Obligatory approval of the higher house of parliament.

part 4 The PKB is published and is in force immediately. This decision is not open for objections and there is no possibility left for appeal.

National policy

Strategic spatial policy document 'Nota Ruimte' (2005)

The policy organization is very fragmented. Scale and complexity demands that many organizations and administrative levels are involved in the decision making process. Many interests and wishes. A complex process is required.

Renewed national policy on physical planning (2005) introduced more decentralization/subsidiarity, enabled a more on development oriented approach (is less prescriptive), more headway for market forces, as far as risks are concerned more inclined to lean on self help, and: less regulations but for the regulations that remain got more strict enforcement.

⁹ Structuurvisie = principles of spatial policy and an indication of how one expects to perform

¹⁰ Allotment = holds for one specific situation

¹¹ 'fit-in' obligation = exceeding policy indication from a higher level of government

¹² 'Bestemmingsplan': unlike before, this plan doesn't have to be approved by the Province

¹³ fixation of the current situation { 'Beheersverordening' }

¹⁴ Project-decision = regulation for if the current BP doesn't allow for a project, but if this very project understood to be welcome. It indicates that the BP has to be adjusted pretty soon.

Also more governance instead of government: additional to representative democracy and administrative law. This means that the national government shifts from being a developer and builder to a mere supplier of terms while steering on output and quality, leaving the sole implementation to regional and local administrations and public-private-initiatives.

Contrary to policy so far allowances were made to provide for spatial reservations that surpass the 10 year periods.

ComCoast-projects - being projects in extended, often pristine areas - advocate multifunctionality and therefore two issues in Nota Ruimte are of special interest to keep a strict hand upon:

- The cutting up and degradation of the structure of the landscape by infrastructure and buildings and the sharpened contrasts between neighbouring units of land use. The harmful effects are ecological (reduction of habitats and connectivity), visual (asphalt, buildings, etc.) and environmental (noise, pollution).
- The messing up and getting more and more disorder (cluttering) in the landscape. It should be noted that this is experienced individually, it is subjective, but it can be identified by two factors: the presence of potentially disturbing elements (fences, windmills, etc.), and the heterogeneity of the land use (fish farms amidst meadows).

In other words: the natural and cultural core-qualities of the landscape have to be preserved, enforced or renewed.

Regional policy

‘Structuurplannen’ & ‘omgevingsplannen’

While ministries mainly focus on their sectoral roles, the Provinces stand for the integrated approach. The provinces keep a more close contact with all interests in the region.

The Provinces have provided regional ‘structuurplannen’ (later to be called ‘structuurvisies’). It should be noted though that territorial boundaries do have an effect, e.g. spatial planning of the coastal areas and the flood defences is often not fully linked with maritime policies.

The ‘Provinciaal omgevingsplan’ (POP) is an integration of plans that some provinces use to combine sectoral strategic plans for water-quality, the environment, water management, traffic and mobility. An implementation program and budget are attached to it.

Local town and country planning

‘Bestemmingsplan’ (BP)

Competent authority: the municipality.

The ‘Bestemmingsplan’ is the only spatial regulation that grants definite spatial rights to individuals, companies and governments (rights that will hold if a court-case might arise). Unlike a Bestemmingsplan for a developed area the ones for rural areas cover a wide expanse. In case a registered function as mentioned in the municipal plan will have to change, the Bestemmingsplan has to be altered altogether (‘Bestemmingsplan’, Wro). The Bestemmingsplan will have to be updated every 10 years anyway.

6. LEGAL SECURITY AND STAKEHOLDER ENGAGEMENT

As mentioned in the introduction chapter (page 6, dot 5) administrative law regulates and arranges the protection of the rights of individuals and organizations when they feel harmed by governmental decisions that don't work out well for them ('AWB - Algemene Wet Bestuursrecht'). This provides individuals and organizations access to justice.

The following procedure applies in case of legal participation:

- A competent authority publicizes its intention to decide on an application of an initiator
- Everyone is free to comment on this intended decision. What count is the way his or her interests are struck and possibly how to this persons opinion the decision should be. A tentative provision for damages belongs to the possibilities.
- The competent authority takes a decision and publicizes it. This decision might be altered after the initial intended decision. The decision will be accompanied by answers and motivations.
- One is free to appeal on this decision to the authority.
- An independent commission for objections and appeal is handling the appeals, while statutory advisers may be asked to provide particular information.
- If the differences will not be settled the case can be brought to court ('Arrondissementsrechtbank') or to the special court: 'Raad van State'.

Examples for ComCoast projects:

- a farmer fears crop damages because his winter-wheat will be trampled down by widgeons
- a bird watcher looks into a ComCoast plan and fears that he will not be able anymore to have access to his favorite bird-counting spots

The AWB provides well-defined basic rights by giving the public an opportunity to react to plans.

The process has become more open the last two decades. The public is getting more and more involved in projects of infrastructure and is given opportunities to respond, to participate right from the start. (In order to legitimate a solution the former 'decide – announce – defend' seems to heading towards 'dialogue – decide – deliver'.)

Stakeholder engagement

Participation - interaction, communication and cooperation with the surroundings - consists of:

- consultation and involvement of the public and market forces as soon as possible right from the start of the planning-process in order to generate ideas and possibly cooperation
- a final judicial review {see AWB} before a decree will be signed about the final plan in which one will see if not anything is overlooked and or there are any participants that believe that they will be disproportionately harmed in their interests {inspraak}.

Procedures like m.e.r. allowed participation on the basis of avoiding adverse risks. The last decade the process of decision-making has become even more interactive. Nowadays for projects like ICZM-projects it has become common practice to install a public platform in which knowledge suppliers, interest groups and local communities take part. These stakeholders will be co-designers, negotiators and co-developers of local processes dealing with the area. They should also play a main role in final decision making process because that will lead to better ownership of properties like land and assets and creating more effective solutions.

It is very opportunistic to make use of stakeholders knowledge and experience, if it were only so for to prevent that they will develop themselves as opponents of the aim of the enterprise. National, regional and local administrators favour participation because by not doing so they are more and more confronted with time consuming law-suits of public (!) and private parties that feel inadequately heard and/or compensated for damages.

7. TRANSFORMATION OF ADMINISTRATION IN THE AREA

ComCoast projects are public efforts to provide new infrastructure for flood risk management. They involve big stretches of land in which provisions are made for the flood defence. But the character of the area does change, often considerably, because basic conditions will change, esp. the water management and the accessibility. For the sake of safety against flooding the pickets will be struck. But it will be up to the municipality, together with those interested, to decide about what will be the future use of the area. And this will have an effect on places where people live, on their possessions like land, buildings, etc. Arable land for instance may be transformed into nature. The newly shaped land will have to be managed differently then before. And people's interests will be affected and will have to be dealt with one way or another.

Ownerships

In the new situation plots and premises may be used differently then before. If necessary the owner will need to be compensated for his/her loss of income and capital. The loss of income will be derived from the conduct of his/her business concerned. The loss of capital will be based on the appraised values of the assets before and after the transformation. If necessary the land and/or assets will be purchased. The cost of this transference preferably will be determined in a amicable setting. If necessary though public authorities are allowed to compulsory expropriate grounds in case of flood prevention (a title in the Wro and 'Onteigeningswet' 1851) but it is not sure as yet that compulsion can hold in case of ComCoast-like projects.

For reasons of maintaining the safety against flooding there will be restrictions on the land acc. to the judgement of the waterboard, and stated in the by-law {keur}. Example: a prohibition of erecting sheds. Restrictions very likely affect the appreciation of the land.

In order to allow the municipalities certain powers to manage developments in an area, and to avoid negative aspects of ground speculation, a new law ('Wet voorkeursrecht gemeenten' - Wvg) will be operational from July 1st 2008 onwards (together with the new Wro). The Wvg will grant municipalities extraordinary preferential duties - under specific circumstances - to negotiate about ground exchange.

Operations

When the works have been carried out it will be up to the people that have stayed in the area and the newcomers - proprietors and licensees - to run the place, to manage their business and to take care of their possessions.

Public parties like water board and the municipality will make sure to find the funding required to maintain the sea defence and the roads etc. Water boards will got a larger area to administer and maintain, which may work out to be more costly.

Private partners need to have a viable 'business plan' in which their costs of investments and operations will be covered by an adequate income.

Areas of natural interest have hardly any commercial returns. That's why a budget is made available for rural areas for the upkeep of these grounds according to a rural areas act ('Wet inrichting landelijk gebied' - WILG) a competence of the Ministry of Agriculture, Nature and Food-quality¹⁵.

In WILG arrangements are laid down for ILG, the investments budget for the rural areas. The provinces take care of the implementation and DLG¹⁶ takes care of the actual administration and coordination.

Municipalities, water boards and administrative organizations like Natuurmonumenten en Staatsbosbeheer carry out the actual work that has to be done. This entails that ILG provides funding for objectives in the field of nature (safeguarding specified species of plants and animals, habitats and connectivity), recreation, landscape, agriculture and soil sanitation. (It cannot be taken for granted that this income will be predictable for many years to come.)

¹⁵ Ministerie van Landbouw, Natuur en Voedselkwaliteit (LNV)

¹⁶ Dienst Landelijk Gebied, agency of the LNV that operates nationally

Maintenance

In the interest of flood defence the new area needs to be properly maintained by the caretaker regards:

- Sedimentation and erosion
- Vegetation and grazing
- Technical appliances like pumps and infrastructure
- Damage to constructions like roads, armouring, etc.

In order to safeguard the proper maintenance an management-agreement between the authority that is hold responsible for flooding and the caretaker of the grounds will be very useful. In this agreement one might embody:

- The reference situation that has to be maintained
- Compliance to specified laws (e.g. Wbr, F+F, Wm and Wow) and regulations
- A monitoring-scheme
- A specification when any action has to be taken, by whom and what that entails
- A specified list of items that are either included or excluded from the plan (e.g. dredging, civil engineering, mowing, fencing, care for cables and ducts, pollution, facilitating to services like recreation, parking, littering, etc.)
- If necessary: a financial arrangement of costs recovery for maintenance
- An arrangement in case of negligence or unacceptable delays (e.g. a penalty may be charged and/or the work would then be done by the waterboard)
- Who will be in charge for what in case the 5-yearly test points out that repairs have to be carried out

Settlement of accounts

Prior to the implementation of the works (see scheme § 2, 'package deal') there has to be a commitment laid down in a civil agreement among the various participants about that:

- The plan will be carried out
- The burden of the costs of the project will be paid for according to a costs break down and a settlement of risk sharing
- The allocation of the to be received funding, including subsidies, etc.
- A risk analysis and a contingency planning (what happens if things will turn out differently than expected, esp. financial)
- The settlement of accounts among partners involved

The 'Grondexploitatiewet' (Wgr) creates a strong base to fix up civil agreements among the initiator(s) of the plan, the municipality, developers and the other parties involved in order to recover costs and losses from the new, future, owners. The Wgr will be operational from July 1st 2008 onwards (together with the new Wro and the Wvg). The costs are the costs of the land transformation:

- the brought in capital value of the plots and premises
- (some of) the estimated damages¹⁷ (see § 6 AWB), and
- the costs for facilities and amenities that will be there for the benefit of all, like provisions for flood incident management during outbreaks of storms and flooding.

The operational costs however - after the implementation - will not be part of the cost recovery.

T H E E N D

¹⁷ Compensations for losses experienced by former owners and users.

Rijkswaterstaat compensates certain losses ('Regeling nadeelcompensatie') once new town and country planning has become irrevocable, to the judgement of an administration or a court on the principle of reasonableness.

Literature used:

1. 'Integrated coastal zone development, a process approach based on ComCoast experiences' August 2007, ComCoast / RoyalHaskoning
2. 'Leidraad Rivieren' 2007, Ministry of Transport and Watermanagement
3. 'Past ComCoast binnen de Wet op de Waterkering?' December 2004, ComCoast: Patrizia Bernardini, Roy Stroeve, Hans Janssen