



Land policy discretion in times of economic downturn: How local authorities adapt to a new reality



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ARTICLE INFO

Article history:

Received 14 October 2016

Received in revised form 31 January 2017

Accepted 14 February 2017

Keywords:

Land management
Public land development
Institutional change
Local government

ABSTRACT

This paper looks at the consequences of the recent property market boom-bust cycle from the planners' perspective. It takes the case of Dutch local governments and, in particular, the instrument of public land development. The analysis focusses on the question whether the economic downturn has given rise to a reconsideration of the intertwining of public and private roles inherent to public land development. The paper sheds light on the formal changes in land management strategies in the recent years and asks whether these formal institutional changes result in less controversial land management, in terms of efficiency, effectiveness, fairness and democratic legitimation. It concludes that, although at first sight the findings suggest a paradigm shift in Dutch land management strategies, municipalities have not sorted out robust new alternatives. Public land development creates serious path dependencies and current changes in the regulatory space of land management are mostly pragmatic and show lots of traces of the old model. If local authorities keep pursuing their active, entrepreneurial, involvement in the land market in an ad-hoc manner, they face challenges regarding how to keep control over the discretionary power. It raises serious new dilemmas on transparency and predictability of municipal behaviour. There is a risk of ending up in a patchwork situation where different regulatory aspects are changed inconsistently.

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1. Introduction

Well-functioning real estate and property markets are crucial safeguards to economic and financial stability. The recent property bust and consequent downturn of real estate prices have shown system-wide effects on welfare (ECB, 2015). This is one of the main reasons why real estate markets receive a lot more attention from policymakers currently, typically from a financial perspective at the national and international level, focusing on stringent Loan-to-Value regulations and EU banking legislation (ECB, 2015). So far, less attention has been paid to the consequences of the recent property market boom-bust cycle from the planners' perspective, as formulated by Ponzini (2016): 'How and to what extent have these stresses and changes affected planning activities and knowledge?' (Ponzini, 2016, p. 1237).

This paper looks at land use planning from this perspective. It considers what has long since been a key element of the Dutch planning system: municipal intervention in land markets under private law (Needham, 2007). In order to keep control over plan implementation,¹ Dutch municipalities actively intervened in the land market by buying land and selling ready-to-build-on plots to developers, after having provided services to the land and (re)parcelling it (Van der Krabben and Jacobs, 2013). Due to this public land development instrument, the economic downturn has had severe consequences for municipalities that are used to hold large land banks. Deloitte (2013) estimated that because of the drop in land prices and postponed development projects there had been an overall public loss of 4–6 billion euros. This financial loss is caused by (the combination of) 1) unforeseen extra interest payments over loans, and 2) lower income from building plots sales (due to both decreased market value of building land

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¹ We thank two anonymous reviewers for their very helpful comments and suggestions.

¹ Apart from this 'quest for control', in general land management strategies serve three main objectives: to assure availability of building land, to make sure that the costs of public infrastructure can be (re)covered and to capture (a part of) the unearned increment in land value (Van der Krabben and Jacobs, 2013, p.775).

and downzoning of building land owned by municipalities, but no longer needed for development). A planning system that is known for delivering an outstanding level of spatial quality is more than ever under pressure. Buitelaar and Bregman (2016, p.1281) even speak of 'trembling pillars in the planners' paradise'. The fact that local governments have historically acted like market players not only complicates the discussion as to how government should now stabilize (real estate) markets, it furthermore challenges municipalities to improve the performance of their land management strategies.

The economic downturn may be perceived as a critical juncture (Sorensen, 2015) prompting institutional change. Due to its controversial nature, intertwining public and private roles, and its distinct advantages and drawbacks (Hartmann and Spit, 2015), the desirability of public land development is more than ever under discussion. Land management strategies in general constitute a complex of interdependent formal regulations and informal rules and habits (as defined by North, 1990 and Buitelaar et al., 2007). Everyday practice and performance of public land development should be set against the organizational balance of power within each municipality. This paper analyses to what extent local governments have formally adapted their public land development strategy in the recent years of economic downturn and asks whether these formal institutional changes result in less controversial land management, in terms of efficiency, effectiveness, fairness and democratic legitimation.

Providing empirical evidence on dealing with dilemmas as a planning practitioner, this paper builds on a growing body of literature that emphasizes the ethical elements of planning practice and land management (Campbell and Marshall, 1998, 1999). In taking such a perspective, it allows to analyse the different values that compete and the values that prevail in the process of institutional change.

Certainly, the Dutch case of public land development is rather unique and quite atypical. More or less similar models of public land development are only found in Sweden and Finland (Valtonen et al., 2017). Why then is such analysis of interest to international planning scholarship? The answer is threefold. Firstly, it sheds light on how municipalities regulate themselves when they are confronted with ethical issues and dilemmas of legitimacy and accountability. The paper operationalizes policy discretion and (self-) regulatory space in the context of land management strategies. It explores the different dimensions and criteria of such a regulatory space and analyses subsequent room to manoeuvre. Secondly, it improves understanding and develops an operationalization of institutional continuity and change regarding a dominant and heavily debated policy instrument such as public land development. Taking into account that, despite its highly controversial nature, public land development has existed for many decades now, how can we understand why certain institutional changes occur or not. Finally, the lessons learned that are presented in this paper are valuable for all international planners who are considering adopting certain aspects of the public land development instrument into their own land management strategy. Municipalities wear the public hat of spatial planners and the private hat of land traders. The public and private interests are very much intertwined (Hartmann and Spit, 2015), which results in obvious financial and spatial benefits but also holds enormous risks. That is why international planners sometimes look with great envy to the Dutch system (Ploegmakers and Woestenburg, 2015). The public land development instrument has often been compared to other planning traditions (see for example Lefcoe 1978; Louw et al., 2003; Needham, 2007; Van der Krabben and Jacobs, 2013) to identify whether elements could be implemented elsewhere. Recently Adams and Watkins (2014) even argued that the British planning system should learn from how the Dutch system secures its land supply. This paper presents

how municipalities that pursue a public land development strategy adapt to a changing context to seek for a robust land management strategy applicable to economic conjuncture. Moreover, the analysis shows that public land development policy should not be seen as opposite to alternative, more regulatory land management strategies. A hybrid configuration is possible.

The paper is structured as follows. The next section elaborates on the dilemmas of public land development, especially in relation to the balance of power within the municipal organization. This section is followed by the development of an analytical framework, primarily based on public administration literature on regulatory change. This framework explicitly connects the incentives to institutional and regulatory change and the inherent dilemmas of public land development. In the subsequent section, the analytical framework guides the results of the analysis of changes in public land development policy within 10 cities. Finally, it concludes with a reflection on changes in existing controversies.

2. The regulatory space of public land management

Urban planning policies differ significantly between countries (Cullingworth, 2007). The diversity is particularly evident if we look at the hierarchy of planning functions that range from locality to central government (Cullingworth, 2007, p. 162). Particular regulatory hierarchies result in a certain degree of local autonomy. Perfect autonomy is characterized by the total irrelevancy of higher tiers of the state 'both as institutions defining the arena of local autonomy and as watchdogs over the legitimacy of local actions' (Clark, 1984). Or as Pratchett defined it: '*freedom from* central interference; *freedom to* effect particular outcomes and the ability of local policy to be a *reflection of local identity*' (Pratchett, 2004). This tension between central policy intervention and local autonomy is at the heart of every governance system and policy field. The outcome of this struggle, in terms of a certain degree of central control over particular policy issues, differs for each country and each particular field of study (Pratchett, 2004, p. 362).

The Dutch land management system shows a great deal of local autonomy.² Local authorities do not experience total freedom from central interference, but they certainly have great *freedom to* effect particular (land market) outcomes and the ability of local policy to be a *reflection of local identity*. A great deal of policy discretion, however, does not mean a total disregard of rules and regulation. For instance, though municipalities are free to decide to invest in building land development, they must follow strict accountancy rules with regard to their investments in land. Significant autonomy manifests itself in terms of a 'regulatory space' (Lodge and Wegrich, 2012) in which formal and informal rules define how actors should behave and relate to each other. Moreover, the concept of regulatory space allows to distinguish the different organizational parts and actors that 'the local authority' as an entity consists of and how they connect to each other.

The concept of regulatory space links in with the dialogue within planning scholarship on the comparison between discretionary and regulatory planning systems (see for instance Allmendinger, 2006; Booth, 2007; Moroni, 2007; Janssen-Jansen and Woltjer, 2010). Janssen-Jansen and Woltjer (2010) indicated that the regulatory planning systems, such as is in the Netherlands', often seek to improve responsiveness and flexibility. Discretionary systems, instead, face the challenge of controlling the flexibility, for the sake

² It is not correct to state that the public land development model exists due to this significant local policy discretion. The active role of the Dutch government in developing land goes way back (Needham, 2007) and has its origins in enormous infrastructure projects and large (social) housing development schemes. These projects could not have been developed without such an active government role.

of democratic legitimacy and predictability. The essence of this dialogue is that the way in which the regulatory space is being controlled and transparently being discussed determines whether flexibility results in thoroughly deliberate situated policy making, or just ad hoc *laissez faire*. A vital element to improve transparency in this respect includes well-defined process steps to deal with situated policy making.

Regarding a system in which the public body performs market activities under private law, this 'regulatory space' is especially interesting.³ Local governments formally determine their land management strategy in land policy memoranda. These policy documents include rules imposed by the municipal council on the execution of land management strategies by the municipal Executive Council (Mayor and Aldermen) and public administrators. In fact, local governments *themselves* feel that there is a need to (re)formulate their own 'rules of the game' in order to create a directing land management framework. These memoranda may be perceived as a 'municipal's land use manual'. They contain political choices that are made, the determination of policy discretion, additional considerations and limiting conditions to execute public land development. Land policy memoranda thus fulfil three main functions. Firstly, they provide a guiding framework for the municipal authority and public administrators. Secondly, they increase transparency on the municipal behaviour, both for land owners that may want to sell (or the opposite, are reluctant to sell) raw land to the municipality, and for developers that want to buy building plots from the municipality. Thirdly, they give the municipal council an instrument to regulate, control and adjust the behaviour of the local authority. The balance between these functions, or powers, is the outcome of political discussion and a societal field of force.

The formal status of land policy memoranda

In the past, many Dutch municipalities had their own land management bureau, which was a separate part of the municipal organization, to a large extent independent from the municipal budgetary processes and control mechanisms. Nowadays, this is no longer the case. Land policy is an integrated part of municipal (financial) policy cycle.

For some issues, for instance the book value of the land and the methodology on profit- and loss-taking, very strict accountancy rules apply. However, local governments experience discretion in determining the other aspects of land management.

In their budget and annual accounts they are obliged to include a paragraph on the financial results and policy intentions regarding land management. However, this paragraph is very technical. Many City Councils have asked their City Executives to deepen the paragraph in the budget and annual account in a (voluntary) land policy memorandum. There is no exact overview of the number of municipalities that actually have such a memorandum. But a quick scan shows that most of them have. Form and content of the memoranda differ, as does the level of elaboration of the land use policy.

Although developing the memorandum is voluntary, its content is binding and should be aligned with other planning documents and municipal budgets. Some municipalities develop extensive complementary documents, for instance on land acquisition or value capturing. These documents as well should be carefully aligned and are binding.

Land use policy has long been known for its regulatory and financial complexity. Recently several local and regional audit offices have suggested better control mechanisms and improved transparency for City Councils. In practice the content of land policy memoranda is translated into the municipal budget. The accountancy control guarantees such impact. The extent to which planning documents and land uses policy memoranda are aligned is difficult to say. The [Financial Relations Council \(2015\)](#) suggested a closer connection of planning policy and land use policy. Planning policy should be more in the driving seat. Although land use policy memoranda are the result of deliberate dialogue between the City Council and the City Executive, the extent to which planning and land use policy are connected depends on whether financial or spatial interests have driven the development of the memorandum.

How this balance between powers works out, differs for each municipality. Moreover, changes in land use memoranda both reinforce or impair one of the defined functions of this policy document and change the balance between different players within the municipal organization. In order to elaborate on this, we build on four dilemmas that public land development strategies face: effectiveness, efficiency, democratic legitimacy and fairness ([Hartmann and Spit, 2015](#)). These dilemmas will be discussed below, with consideration to how these dilemmas follow from the particular regulatory space in the Dutch planning system

2.1. Effectiveness

The effectiveness and performance of a planning system and spatial plans is a widely debated topic (see for example [Faludi, 2000](#)). Effectiveness depends on the consistency between different planning instruments within the planning system. Regarding the UK planning system, Adams stated that 'simply to have a planning system without managing the land supply is half a planning system' ([Ploegmakers and Woestenburg, 2015, p. 420](#)). The effectiveness of a land management strategy should thus be assessed against the planning goals that it reaches to achieve ([Hartmann and Spit, 2015](#)). The Dutch active land policy is implementation-driven and is famous for its quick implementation periods ([Buitelaar, 2010](#)) and for the way it makes things happen ([Needham, 2007](#)). Not only is the availability of land consistently ensured, moreover, due to their entrepreneurial activities on the land market it is in the municipal interest to quickly realize plans so as to minimize interest costs. The dilemma of effectiveness thus comes down to the question of how to handle such financial risks in terms of sufficient expertise and how to ensure immediate decision-making of land acquisition in case there is a sudden market opportunity. The former aspect relates to the judicial and financial expertise available within the public administration on land valuation and investment risk assessments. The latter aspect of the time needed to react to a market opportunity and to make an offer on a specific plot typically refers to the balance of power between the municipal Executive Council and the City Council.

2.2. Efficiency

The efficiency dilemma of land use management refers to the ease with which municipalities can earn profits and capture planning gain in relation to the financial risks they run ([Hartmann and Spit, 2015](#)). In the years before the economic and financial crisis, municipalities have earned a lot of money with their entrepreneurial activities on the land market ([Rli, 2004](#)). Due to the fact that Dutch municipalities do not have sufficient means to 'earn' their own money via taxes, the unearned increment of greenfield development was a very welcome source of income. Moreover, some even argued that most 'land policy supports only plans that can produce a net benefit for the municipality [and that] most projects that do not produce a financial benefit are stopped.' ([Needham 2007](#) in [Hartmann and Spit, 2015](#)). In addition, the market orientation of the planning system comes with a price. During the past few years of economic downturn, the financial risks that municipalities had to take in order to gain profits, turned out to be (too) high.

How is the efficiency dilemma embedded within the municipal organization and the balance of power between the different municipal players? The financial aspect is typically related to the way in which stimulating profit-making development plans are formally institutionalized and defined to be in the public interest of planning. The element of proper risk assessment is both an accountability issue as well as a matter of expertise within public administration.

³ "The Dutch public land development model [...] encompasses a public developer – usually a municipality [...] – who buys all the land to be developed, readjusts the parcels into forms suitable for the desired development often many years prior to the implementation of the plan in a certain location, and sells those parcels" ([Van der Krabben and Jacobs, 2013, p. 776](#)).

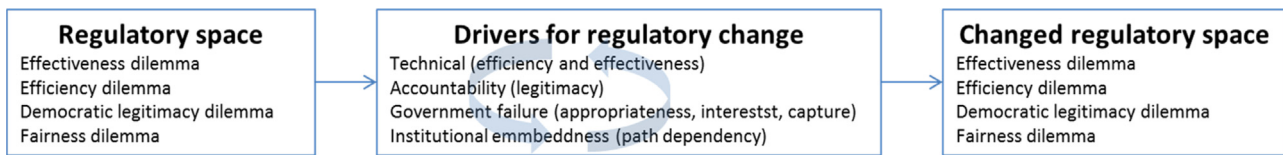


Fig. 1. Analytical framework.

2.3. Fairness

The fairness of a land policy system that relies heavily on active land management can be assessed along its distributive effects. What type of actors benefit from the system in place? Although the instrument of public land development has helped to achieve significant social housing schemes and perhaps has prevented social segregation by promoting mixed housing schemes, 'consensus and negotiated agreements between public and private stakeholders are deeply entrenched elements' of the system (Hartmann and Spit, 2015). Various authors (Van der Krabben and Needham, 2008) argue that the parties that benefit the most from the current system are, besides municipalities, the big housing associations and large private developers, because they were the only ones that were able to develop new housing in large quantities (as requested by municipalities), and because they were able to negotiate 'building claims' based on positions they held at municipal residential development locations. Changes in land development strategies affect the fairness of the system. The question is whether such changes are explicitly based on their distributive effects or not.

2.4. Democratic legitimacy

This term refers to the way in which planning decisions are embedded and assessed by the democratically chosen City Council. Moreover, it refers to consistent, transparent and predictable policy activities. More often than not, the Dutch approach has been characterized as 'pragmatic' (Needham, 2007). 'The achievements of Dutch planning are often better attributed to the way in which the formal planning system has been sidestepped' (Needham 2007 in Hartmann and Spit, 2015, p. 733). Democratic legitimacy and transparency often turn out to be problematic.

In terms of the 'regulatory space' of the municipal organization, democratic legitimacy is typically part of the relationship between the City Council and the municipal Executive Council. Moreover, regarding the transparency and predictability of public policy, it affects the relationship between the municipality as a whole and citizens, developers and other stakeholders.

3. Why controversy and dilemmas give rise to regulatory change, or not. . .

The former section emphasized the dilemmas that inherently arise if the role of the public planner and private market actor are intertwined. Does the economic downturn give rise to a reconsideration of the intertwining of roles or do local authorities keep pursuing their active, entrepreneurial, involvement in the land market? After all, Dutch planning practitioners have lived peacefully with these dilemmas for decades. The account of this current section is to theoretically substantiate the current observation that the dilemmas of public land development have become oppressive due to the economic downturn. The section elaborates on the academic literature on institutional (or regulatory) change in order to better understand why local authorities do indeed change certain formal rules regarding their own behaviour in the 'land market game' and keep other parts of their regulatory space intact.

The academic literature on regulatory change (see for example Hall and Taylor, 1996; Mahoney and Thelen, 2010) holds at least four different perspectives on the drivers and direction of changes in rules and regulation. These perspectives show partial overlapping of the four dilemmas presented earlier, but they are not to be confused with each other. The first perspective is rather technical and straightforward. This perspective emphasizes that institutional change is to be expected if regulations no longer effectively achieve the goals they are set up for in an efficient manner (Baldwin and Cave, 1999). Following this rather conservative and rational view, the dilemmas of effectiveness and efficiency can be reduced to a solely technical exercise (Peters, 2002) that results in rational decision-making on using alternative land management strategies and/or 'linear' adjustment and improvement of existing strategies. The former is related to the literature on tool choice and instrumental rationality (Peters, 2002). The latter resonates with the ideas from new institutional economic scholarship which highlight the evolution of institutions towards a greater efficiency and less transaction costs (Williamson, 2000). It raises the possibility of adopting changes *within* instruments themselves, next to the possibility of using alternative instruments.

Following this instrumental view, one would indeed expect changes in the way the public land development strategy will be applied in the future. The effectiveness of the land acquisition instrument diminishes in times of economic downturn, as the trade-off between financial risks and spatial quality will be explicitly taken into account by local decision-makers. The use of alternative strategies with less risks involved will be more likely. In addition to this, the institutional economic view would lead one to expect to see an improved demarcation of the rights and responsibilities of each actor involved, resulting in tighter regulation of the risks of land acquisition and the cases in which public land development would be allowed at all.

The second perspective on regulatory change points at the importance of legislative mandate and accountability (Baldwin and Cave 1999). The issue of a legislative mandate closely relates to the concept of policy discretion. It concerns the question of whether public action is authorized by a democratic body and, subsequently, how the mandates underpinning specific public actions have been formulated (Baldwin and Cave, 1999). 'Only in a very specific set of circumstances can officials do what they like' (Hill, 2009) and in the remainder of the situations their choice of action is fully embedded in a structure of rules which determines/constrains their freedom of acting. The municipal land policy memorandum is a typical example of regulation that *can* potentially be used by the municipal council to restrict the 'room for decisional manoeuvre' (Hill, 2009, p. 226). Regulatory changes that arise from the argument of legislative mandate typically include regulation that either restrict, explicitly assign or even extend room for decisional manoeuvre. It has a strong connection with the possibility of situational interpretation. In terms of land management, changes on legislative mandate might affect the room for manoeuvre of the municipal Executive Council to choose freely among a different set of tools and acquire and sell the land without any significant intervention of the City Council. But it might also tighten or loosen the specific objectives of land use policy and the mandate for discretionary decision-making in case of conflicts. Changes within the frame of legislative mandate

typically regulate the formal relationship between the municipal Executive Council and the City Council.

Also related to the relationship between the municipal Executive Council and the City Council is the issue of accountability. Accountability is defined as ‘a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences’ (Bovens, 2007, p. 450). Baldwin and Cave (1999) pointed at the role of accountability problems as a crucial driver behind changes in regulation. Regulatory changes regarding accountability issues relate to better control and information provision. They also might include local audit commissions and reports, which are not uncommon in the Netherlands (and have indeed been installed in some municipalities to account for municipal land policies). Accountability is, due to its focus on information, closely related to the aspect of transparency and thus concerns the balance of power between the municipality and third parties as well. Such parties might for instance be competitors on the land market or land owners.

Both the above perspectives still assume a great deal of (economic) rationality, mainly concentrating on efficiency and effectiveness. Other perspectives on institutional change and continuity have a more sociological and organizational focus, based on interpretations, power relations and values. ‘Institutional development follows a logic of social appropriateness rather than a logic of instrumentality’ (Buitelaar et al., 2007). The third perspective on institutional and regulatory change starts from the idea that policy instruments are not politically neutral (Peters, 2002). That is to say, the question of whether municipalities have adopted their land management strategies to the new reality of economic downturn is highly dependent on the political character of the instrument of public land development. From an historical institutionalist approach institutions are seen as ‘distributional instruments laden with power implications’ (Sorensen, 2015). This perspective is closely related to the theoretical movement that points at the hypothesis that politicians pursue their own individual ‘rational’ interests, further developed under the denominator of ‘public choice theory’ or ‘government failure’ (Pennington, 2000). ‘The basic logic is that politics is driven by the real or perceived interests of actors, and the desire of the actors involved to utilize the political process to achieve their own ends’ (Peters, 2002). Peters argues, similar to the statement by Hodgson on power inequalities (1993), that ‘examining the interests involved in the choice of a policy instruments is a good place to start an analysis of public policy’ (Peters, 2002). Regulation, in this respect should be seen as a product of capture and interest group politics (Lodge and Wegrich, 2012) in which regulators come too close to the interests of those they are supposed to regulate. This is called ‘capture theory’. Another expression of this ‘capture theory’ is the hypothesis that regulation is a product of dominant ideas and worldviews. In terms of potential regulatory changes in Dutch land policy memoranda one should understand this specific perspective in terms of changes that reflect the dominant paradigm of withdrawing governmental responsibilities. Changing spatial policy at the national level increasingly underlines the importance of participatory planning processes. This new vision challenges the prevailing land management instruments and the existing field of force.

The final perspective on institutional change relates to the organizational structures within which policy instruments are embedded. Local authorities, like any other organization, prefer to perpetuate ways of doing business that benefits themselves. Sorensen (2015, p. 24) brings forward the issue ‘path-interdependence’ to illustrate the complexity of political processes and interlocking institutions. Moreover, organizations and their employees have been learning to use specific instruments and have been investing in their optimization. Regulation, from this perspec-

Table 1

Analytical framework transferred to a structure for the empirical analysis.

Perspective on change	Dilemma			
	Effectiveness dilemma	Efficiency dilemma	Democratic legitimacy dilemma	Fairness dilemma
Technical rationality				
Accountability				
Government failure				
Institutional embeddedness				

tive is seen as a product of unintended consequences and inevitable ‘wear-out’. ‘Regulatory spaces emerge in the context of legal and historical understandings and are therefore not a result of intentional design at a particular time’ (Lodge & Wegrich, 2012, p. 34). The path dependency this creates might be one of the reasons that public land development strategies are not given up so soon but slightly change over time. In terms of formal changes we might expect that they may well give long-lasting informal practices a permanent character. Moreover, Baldwin and Cave (1999) emphasize the importance of expertise within an organization to behave correctly according to the rules. Changes in land policy memoranda might indicate another model to secure proper knowledge and expertise to execute the appropriate land management strategies.

The account of the preceding analysis of drivers for regulatory change is not to choose a preferred perspective in order to use in the analysis of land policy memoranda. Moreover, the different perspectives should not be assessed in terms of right or wrong. Several drivers will always collaboratively produce regulatory change. Sometimes the rational effectiveness perspective will be dominant and sometimes the others. Indeed, interpreting the land policy dilemmas in terms of drivers for regulatory change, for instance the effectiveness dilemma fits best the rational effectiveness perspective and the fairness dilemma has close linkages with the perspective on actor interests as driving force behind regulatory change. However, if one links the defined land policy dilemmas point-to-point to a particular perspective on regulatory change, that ignores the fact that drivers behind institutional change are interlinked and will have an effect on each dilemma. This is shown in the analytical framework, Fig. 1.

The framework shows that the regulatory space of land use policy involves several dilemmas. Due to the economic crisis these dilemmas have become oppressive and regulatory spaces are being changed. The direction of change, however, is influenced by interconnected drivers of regulatory change. Their collaborative effect results in a changed regulatory space. This regulatory space inherently includes new dilemmas.

In the next section the changes in land use memoranda are discussed. The analytical framework, Fig. 1, is translated into the following structure for this section, Table 1. Regulatory changes are discussed per dilemma and are discussed along their relationship with perspectives on and drivers for change. This allows to shed light on their collaborative effect.

4. The case of the Netherlands

4.1. Methodology

For this research we have analysed the land policy memoranda of 10 Dutch municipalities. Land policy memoranda fulfil three main functions. Firstly, they provide a guiding framework for the local authorities and their officials. Secondly, they increase transparency on the municipal behaviour. Thirdly, they give the municipal council an instrument to regulate, control and adjust the behaviour of the local authority. The balance between these

Table 2
City characteristics and their policy documents.

Municipality	Size/Inhabitants	Province	Analysed documents
Alphen aan den Rijn	108,000	South-Holland	– Nota Grondbeleid 2007–2011 – Nota Grondbeleid 2011–2015 – Nota Grondbeleid 2015–2019
Amersfoort	150,000	Utrecht	– Nota Integraal Grondbeleid 2006 – Nota Grondbeleid 2014
Arnhem	148,000	Gelderland	– Nota Grondbeleid 'Grond(ig) bezien!' (2005) – Herijking Grondbeleid 'Zicht op Gegeronde Keuzes' (2013)
Groningen	190,000	Groningen	– Nota Grondbeleid 2004 – Nota Grondbeleid 2010–2014
Kampen	52,000	Overijssel	– Nota Grondbeleid 2009 – Evaluatie Nota Grondbeleid 2009 (2012) – Nota Grondbeleid 2015
Utrecht	340,000	Utrecht	– Aanvulling 2008 op de Nota Grondbeleid – Nota Grondbeleid 'Regie op goed Gronden' (2011)
Venlo	100,400	Limburg	– Beheerverordening Ontwikkelbedrijf 2009 – Nota Ontwikkelbedrijf 2008 – Nota Ontwikkelbedrijf 2010 – Nota Grondbedrijf 2015
Nijmegen	164,000	Gelderland	– Kadernota Grondbeleid 'Ontwikkeling op goede gronden' (2009) including changes compared to 2005
Hulst	27,380	Zeeland	– Bouwsteden voor grond(ig) beleid (2012) – Nota Grondbeleid 2012–2015
Delfzijl	26,000	Groningen	– Programmabegroting 2008 Delfzijl – Grondbeleid gemeente Delfzijl 2014

functions is the result of the political and societal field of force. Potential changes might influence, both reinforce or impair one of the functions and change the balance between them.⁴ Land policy memoranda are – for our goal – a very interesting source of information due to the fact that they contain self-imposed regulation. They give a very good idea of how political rhetoric works its way through into formal documents. With that it sheds light on the binding character of policy ambitions.

In order to analyse how the economic downturn has affected land management strategies, at least two land policy memoranda were analysed per city. One dating back before the economic downturn and one in which the effect of the crisis should be visible. The choice of cities is based on location within the Netherlands, covering both parts of the country with relative high pressure on land markets and regions in which the demand for land is relatively low. Almost all provinces are covered. Moreover, we have chosen both larger as well as smaller cities. Table 2 presents an overview of the cities and documents that were analysed.

4.2. Changing regulatory spaces in land management strategies

Land policy memoranda typically address the regulatory space within which municipal land management is performed. The structure of this section is based on the analytical framework presented in the previous section. Regulatory changes, shaped through the

⁴ Land policy memoranda are not the only policy documents in which the regulatory space of land management is formally laid down. We have checked for consistency with the yearly budget and annual accounts. Moreover, some municipalities develop partial policy documents in which they further elaborate on specific aspects, such as accountability issues and acquisition. Land policy memoranda usually refer to these additional policy documents. They were part of our analysis as well.

land policy memoranda, are discussed per land policy dilemma (effectiveness, legitimacy, efficiency and fairness) and analysed along the different perspectives on drivers behind institutional change. To what extent is the dilemma formally addressed and how does it become manifest in these self-regulatory policy documents?

4.2.1. Effectiveness dilemma

In the second section of this paper it was argued that the effectiveness dilemma of public land management comes down to the level of financial risk that the municipality is willing to take, compared to the pace in which spatial planning goals are effectively achieved. Results of the analysis show several changes being made by municipalities in their regulatory space of land management policy. Municipalities either choose to change their land development strategy or choose not to do so and improve their financial risk management instead.

The city of Nijmegen addresses the issue of effectiveness in its most recent land policy memorandum and states that due to the crisis market actors are reluctant to invest in spatial developments. The city argues that it should take responsibility to keep the market going by acquiring land, speed up planning processes and change the content of existing plans towards, for example less expensive houses.

In contrast, the city of Amersfoort, for instance, in its post-crisis strategic plan 'Amersfoort 2030' laid down the spatial planning aim to give inhabitants and entrepreneurs room to design and develop their environment themselves. The newly defined land management strategy (2014) of facilitating land management – basically, it means that the municipality will not develop land itself, but is willing to support third parties to develop land by offering a smooth planning process – has been carefully aligned with these altered land use goals.

Yet another strategy is followed by the city of Utrecht. Their strategy is based on the principle that the goals that can be reached without private law intervention, should indeed be achieved by only using statutory planning instruments. The city accepts that urban developments might take longer this way. It should be noted that this shift is not primarily due to changing urban development ambitions, the main reason behind this shift is that the new coalition programme adopted a different view on the role of government within society. This finds its way through into other aspects of government intervention as well.

The overall finding on the dilemma of effectiveness is that, due to the economic crisis, this dilemma has become very urgent. Financial risks have become untenable and even by taking such high risks the planning aims were not accomplished. It seems that municipalities have become more transparent and clear in deliberately linking planning goals to land management strategies. All municipalities deliberately argue why they choose to pursue a particular land use strategy. The traditional arguments that were used in pre-crisis policy documents, being in charge of the development and ensuring a sufficient supply of building land, seem to be no longer of crucial importance. It is not necessarily that changing land use goals results in changing land development strategies. What really urges institutional change is rather the acceptance of the ineffectiveness of the instrument in times of economic crisis, together with an altering planning paradigm towards bottom-up planning processes. However, it should be noted that a balanced land development strategy that fits this new planning paradigm is still to be defined.

Effectiveness of land management strategies

Perspectives on drivers for institutional change	Operationalization and changes in land policy memoranda
Technical rationality	Most municipalities discuss a deliberate choice to pursue a particular land management strategy that fits their goals. An explicit connection to effective policy. Some change strategies due to changing goals, others due to ineffectiveness. Finally, some accept a slower pace of achieving goals.
Accountability Government failure	Capture theory refers to adapting regulation to dominant worldviews, such as neo-liberalism or decentralisation. Several land use policy memoranda explicitly state that the municipality will no longer pursue a public land development strategy because it no longer fits the role of government in an individualistic, decentralised and self-organizing society.
Institutional embeddedness	

4.2.2. Democratic legitimacy

The second dilemma of public land management refers to proper democratic legitimacy. Considering this particular topic, three main regulatory changes can be observed. Firstly, the connection between the choice of instrument and the public interest is changing. This connection is either being made more explicitly or a change in indicated public interest can be observed. An example of the former can be seen in the municipality of Delfzijl. This municipality deliberately chooses to pursue a public land development strategy in the future to keep track of the redevelopment challenge in the region-related population decline. Regarding the latter aspect of changing definitions of the public interest, an interesting finding is that most municipalities officially state that profit making is a legitimized argument for taking up a public development role. The municipality of Utrecht, for instance, states that profitability of a particular land development is an important criterion considering using a public development strategy. The municipality of Nijmegen

explicitly states that 'if the economy improves, the money maker principle of public land development will be applied, as it has been before' (2009, p.15). Profitability is crucial to guarantee continuity of the public land development model and to develop sites that show a negative business case as well. In this respect, the municipality of Amersfoort declares that they will only pursue a public land development strategy in the future in those cases where developments are not taken up by private developers or inhabitants. However, the land memorandum says that such developments, primarily concerning inner city regeneration areas with negative business cases, should be financially covered by making profits on other locations. There are other municipalities, for instance, the city of Venlo, that only takes up a public development role in those cases where profits can be made.

The second theme that experiences regulatory change is accountability. The analysis shows that all municipalities aligned their accountability requirements with the national policy standards (Commissie BBV, 2012). However, some municipalities explicitly choose to improve their accountability and set up rules in addition to these general standards. These rules involve the number of accountability checks yearly, the level detail of the information required and the need for 'objective' examination by external experts. The city of Amersfoort, for instance, explicitly chooses to present scenarios to its City Council to improve insight in the robustness of different land investment decisions. The City Council requires information at a very detailed level. Moreover, arguing that spatial developments are today embedded in a multi-actor configuration, the process of land development is subject to more explicit moments of reflection and decision-making. The same is true for the city of Arnhem. An interesting and somewhat ambiguous finding is a very detailed acquisition and valuation protocol that was included in the memorandum of the city of Utrecht, despite their policy aim to shift towards a more facilitating land use strategy.

The third aspect concerns the external transparency and predictability of municipal intervention. One of the main findings regarding the dilemma of democratic legitimacy is that almost all municipalities intend to make less use of the public land development strategy. However, they do not completely turn away from it. Most municipalities state that their new default strategy is 'situational land management' (in Dutch 'situationeel grondbeleid') or 'tailor-made land management' (in Dutch 'maatwerk'). An interesting finding is that all municipalities define this situational land management differently. Moreover, they use different, if any, assessment methods to choose the right land management strategy in the right situation. For instance, the city of Alphen aan den Rijn has a detailed option sheet that guides public administration through the decision process. Criteria for choosing public development are public goods, such as infrastructure, but also profitable developments. It is interesting, however, that the city of Alphen aan den Rijn explicitly regulates that no public land development strategy will be pursued to complete housing development. Other cities, for instance Delfzijl, have mapped the areas where they intend to pursue specific land use strategies. Others, such as Amersfoort, do not decide beforehand. 'There is a range of possible public-private cooperation models. Models might change during the process and they might also differ with each development phase' (2014, p.12).

Regarding the dilemma of democratic legitimacy, the findings result in three main conclusions. In general, as we have seen under the topic of 'effectiveness' there is an improvement of explicit argumentation on why to pursue a specific land use strategy. However, it is rather questionable whether profitability is a legitimate argument to pursue a public land development strategy. This point will be elaborated further in the discussion section. A second overall finding is that accountability issues are being solved more and more, due to the number of accountability moments yearly and the

level of information provided to the City Council. A third overall finding here is that land management strategies in general become fuzziest and the choice between different strategies is often not transparent. Land use policy thus tends to be less predictable in the future.

Democratic legitimacy of land management strategies	
Perspectives on drivers for institutional change	Operationalization and changes in land policy memoranda
Technical rationality	Most municipalities adopted a clear decision making model on how and when to choose for a particular land management strategy. However such decision making models still involve significant flexibility. For instance, a question municipalities have to ask is: “do we need to take the lead?” Such a question is, of course, highly political and has a very low guiding character.
Accountability	Several municipalities have made changes regarding accountability, in order to improve democratic legitimacy. Observed changes involve a higher number of accountability moments yearly, the level of detail of required information and required expert input.
Government failure	Regarding government failure, capture theory and the influence of interests in regulatory change, the most relevant finding is that there are lots of changes in defining the ‘public interest’ legitimizing a public land development strategy. Profit maximising as a reason to pursue active involvement in the land market tends to favour the interests of the municipality itself.
Institutional embeddedness	Building on the changing definitions of ‘public interest’, this may be perceived as a sign of path-dependency.

4.2.3. Efficiency dilemma

The efficiency dilemma comes down to a trade-off between costs, pace and risk. The efficiency dilemma is at the core of the public land development strategy. In order to reduce costs, and be competitive, municipalities are urged to react very quickly on the land market. Moreover, they need to lower the costs of interest payments, so there is a need to postpone high expenses until the very end, if possible.

Regarding the aspect of being able to react quickly to market opportunities, very often the City Council mandates the municipal Executive Council to strategically acquire land, prior to formal planning ambitions and processes, without intervention of the City Council. They do this trying to prevent paying high prices to landowners that are delaying the process when there is pressure to develop the location quickly. We do find interesting regulatory changes regarding this very aspect of the mandate. There are some municipalities that lower the mandate to the municipal Executive Council (for instance the city of Amersfoort and Arnhem no longer use a mandate, while they used to work with EUR 2 million and EUR 3 million respectively) but we also see municipalities keeping this mandate in place despite their changed policy ambition to shift from public land development towards facilitating land management strategies (for example Utrecht). There are other cities, such as Nijmegen, which explicitly state that strategic land acquisitions are the way forward, as buying land way ahead of planning aims and procedures ensures a low land price, and thus cost reduction.

Other explicit references to cost reduction were defined by the city of Utrecht on optimizing financial benefits from temporary management of real estate.

Efficiency of land management strategies	
Perspectives on drivers for institutional change	Operationalization and changes in land policy memoranda
Technical rationality	Several municipalities take rational measures to cut costs, maximise profits and averse risk. These measures are clearly and transparently defined and discussed.
Accountability Government failure Institutional embeddedness	A major issue referring to path-dependency is the mandate to acquire land without feedback from the City Council. Several cities do not cut back in allowing the City Executive to buy land in advance, even though their overall policy change expects the city to not buy land at all. This inconsistency may cause unpredictable outcomes.

4.2.4. Fairness dilemma

The dilemma of fairness is much more complicated than the others to assess. While one might argue that public land development mostly benefitted the public authorities in the past, the shift away from the municipalities’ default strategy will benefit other actors, such as developers and inhabitants. The question is whether specific regulatory changes are in place to do so formally. The city of Amersfoort explicitly states in its recent land policy memorandum (2014, p.1) that ‘the ball is in the city’s (inhabitants and the market) court’ and that these market initiatives will be actively stimulated and facilitated. It can be concluded that the issue of fairness is not explicitly addressed in land policy memoranda.

Fairness of land management strategies	
Perspectives on drivers for institutional change	Operationalization and changes in land policy memoranda
Technical rationality Accountability Government failure	Fairness is not explicitly mentioned in land policy memoranda. However, the shift from municipality to society refers to the changing worldview on the role of government in society.
Institutional embeddedness	

5. Conclusion and discussion

Hartmann and Spit (2015) argued that by using a public land development model public authorities inherently face four dilemmas. The analysis in this paper elaborated on these dilemmas and showed the rules that constitute their regulatory space. With that, it presented the balance of power between different parts of the municipality and the way in which the dilemmas formally manifest themselves in regulation(s). Although the dilemmas have been known, and more or less been taken for granted for decades, they have become oppressive due to the recent economic downturn. A window of opportunity for institutional change (Van Stigt et al., 2013)?

We conclude that, although the findings suggest a paradigm shift in Dutch land management strategies, we do not find that municipalities have sorted out a consistent alternative yet. The model of public land development creates serious path dependencies. In the wording of Lodge and Wegrich (2012) ‘regulatory spaces emerge in the context of legal and historical understandings’. Of course, a lot can still happen in the future, and it might be a bit too soon to expect municipalities to have it all sorted out, but the changes in the regulatory space of land management strategies that we found in our analysis of land policy memoranda are mostly prag-

matic and show lots of traces of the old model. So, the emergence of the system in the future can either be directed towards consistent change or a return to old ways.⁵

The recent episode of economic downturn did not turn out to be a critical juncture, in the sense that complete new institutions were established and major policy changes have been applied (Sorensen, 2015). That is to say, policy statements to shift from public land development as default option to a facilitating land management strategy in most cases did not result in significant changes in formal regulations. The argumentation behind the intended policy change is often rationally elaborated. High financial risks, a broadly shared vision on the new role of government in society and the availability of alternative instruments to (re)cover the costs of urban infrastructure are most cited arguments. So far, these policy statements resonate with the instrumental view on institutional change. However, what follows is what Sorensen (2015, p.30) calls 'layering' and 'conversion'. Layering refers to the creation of new policies without eliminating the old regulations. This happens if a number of interests is heavily involved and there is low level of discretion in interpretation of regulations. Conversion refers to internal policy changes in terms of implementation (and interpretation) where formal rules remain unchanged. This potentially happens when regulations are broadly interpretable and the involved actors have weak veto possibilities.

Both layering and conversion are the result of path dependency. The question is whether this path dependency is problematic? The analysis shows that changes in the regulatory space often result in various inconsistencies. A municipality, for example, chooses to be no longer actively involved in the land market, but the City Council still leaves a mandate with the municipal Executive Council to strategically acquire land for several million euros. While such inconsistencies might be resolved in the next policy memorandum, they might also be the result of debate between the City Council and the municipal Executive Council. If the latter is the case, such inconsistencies are not only non-transparent, they prevent municipalities from developing a robust alternative strategy, halting between two opinions.

Most municipalities adopt a flexible way of land management in the sense that they choose the best strategy per situation, improving efficiency as Hartmann and Spit (2015) suggested. Instead, this sounds like an improvement of the effectiveness, the legitimacy and fairness of the system. Indeed, the fit of instrument and planning goal is improved, municipalities will probably better substantiate their choice for a particular land management strategy and there is more room for market actors to operate on the land market and to benefit from spatial developments. However, the findings show that municipalities shape the new regulatory space on this 'situational' land use policy very differently. Some define specific areas or spatial functions for which a particular strategy will be pursued, others present a clear decision model. However, most of them leave it open to discussion when to use which land development strategy.

Based on the comparative literature on discretionary and regulatory planning systems this particular finding in itself indicates a critical juncture. Increased flexibility and situational land use policy tend towards empirical planning systems (Booth, 2007) in which practice determines rules and not the other way around.

Although such flexibility might improve the responsiveness of Dutch land use policy, experiences with UK planning practice show that serious new dilemmas on transparency and predictability may rise (Janssen-Jansen and Woltjer, 2010). Since municipalities state that they will leave room for other actors, for instance local entrepreneurs and inhabitants, to take a serious role in spatial developments, predictability of behaviour becomes more important. Experiences from such discretionary planning systems learn that managing flexibility in a democratic legitimate manner, requires serious focus on process conditions, feedback mechanisms and audits. Current research findings in this paper do not provide evidence that municipalities are carefully thinking through such flexibility management.

This critical juncture is very relevant to the international audience. The Dutch search to find a balance between more flexibility in a regulatory planning system, and developing process requirements to led ad-hoc land management be the result of thoroughly situated deliberation, may provide helpful lessons on how to exploit the real added value of a public land development system.

Increased diversity between municipalities in itself is not problematic. There are many other countries where decentralised autonomy works quite well. However, there is one major reason why one should doubt the sustainability of developing alternative land management strategies in the Dutch context. The Dutch financial system does not allow municipalities to raise their own income. Their budgets come, to a large extent, from national government. Income generated by land development has been very welcome for many years. This institutional embeddedness is a big hurdle to really switch to an alternative land management strategy. Supporting this argument is the observation that although most local governments state that they no longer pursue a public land development strategy in those cases where other actors can achieve defined planning goals, the ability to achieve these goals mostly relies on the financial side of the projects. Achievable aims resonate with profitable developments. Developing profitable developments in order to finance the developments that no other actor is able to achieve is in the public interest. This argument is used to legitimize land market intervention. One might argue that this has already been the case for several decades. Although we think this is true, there is a risk in explicitly stating that it is in the public interest to publicly develop a project if (and sometimes even only if) it is profitable. More than in the past, the search for profitable developments might influence planning practice and urban design. This risk is, for example, highlighted by Campbell and Marshall (2005).

The explicit (or implicit) dominance of financial arguments to choose a particular land management strategy is in itself part of a neo-liberal worldview on planning practice. As such, it is a significant driver for regulatory change or, in this case persistent land management strategies. Sager (2009) points out that flexible local planning decisions inherently have a managerial, negotiated and entrepreneurial focus. Referring to the Dutch transition, this is not right or wrong. However, the current tendency towards a more neo-liberal focussed land management system, should at least be subject to a transparent dialogue.

Finally, and related to the concept of path dependency, it is clear that pursuing a public land development strategy in an effective and legitimized manner requires municipalities to have specific expertise in private law land market intervention. The ability to quickly, and competitively, act on the land market is crucial. This requires time, effort and (knowledge) investments. Public administration was well-equipped to deal with private law intervention in the land market. Significant expertise was dedicated to this task. Successful public land development heavily relies on a dedicated public administration. This raises the question to what extent a municipality can have the expertise to pursue several land management

⁵ It should be noted that the empirical analysis in this paper is based on changes in formal municipal land use documents. Actual practices might differ (slightly) from the regulatory and policy intentions that are formally documented (see for example Lipsky (1980) on street level bureaucracy and the lack of institutionalization of formal regulation by practitioners). Another aspect that should be taken into account is that the focus of this paper is on changes of municipal land development strategies. The extent to which these changes run parallel to substantive changes in the spatial planning goals is quite difficult to analyse, since planning aims are updated and documented in separate policy processes following different timelines.

strategies at the same time, as will be the case with situational – ad-hoc – land management. Due to the fact that public land management is highly demanding and needs careful preparation, the question is whether municipalities can just perceive it as one out of several available alternatives.

This paper has given insight into the different parameters within the regulatory space of municipalities to optimize and fine-tune land management strategies and deal with their inherent dilemmas and the inherent balance of power between different actors within the municipality. The conclusion is that, within the regulatory space of municipalities, there are many parameters that can be influenced, either by the City Council, the municipal Executive council or public administration. There is a risk of ending up in a patchwork situation where different regulatory aspects are changed in an inconsistent manner. Additional research is required to further explore whether there is a way to optimize a robust configuration of these parameters. What should an effective, efficient, democratically legitimized and fair situational land use policy look like?

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