Summary

This book in hand is very much a Dutch book, as it reviews matters concerning Dutch law only. Nevertheless, it could be of interest to public officers and consultants involved in spatial planning in other countries (if they are able to understand Dutch), as this book deals with a problem that is not only confined to The Netherlands. It focuses on the juridical design of a spatial plan at local level, that assigns zonings and regulates space-use from the viewpoint of spatial planning. In most industrialized countries similar instruments exist that play a determining role in the regulation of space-use in the medium-term, though their juridical form does not play an automatic part. The investigation in this book leads to criteria determining the specificity of decisions about the location of zonings and the circumscription of space-use with physical elements, as well as about the scope of the regulation of space-use consisting of activities and of objects closely related to space-use.

In chapter 1 we learn that the question of how precise and complete the regulation by a local zoning plan should be, is quite an old one. In 1907, when the municipality of The Hague considered commissioning the famous Dutch architect Berlage with the drafting of a local zoning plan, known in those days as an ‘uitbreidingsplan’, the contents of the instructions for this work gave rise to much discussion in the municipal council. Should they follow the course chosen by the city of Amsterdam and pin down the location of all future roads, as well as the purposes of space-use within the blocks between those roads? Or should they refrain from this and confine themselves to the assignment of the main roads, canals and squares? The division between these two tendencies was not split between those in favour of governmental interference and those advocating free enterprise, because adversaries of the specific line were also to be found in the first-named group. These pointed out that in case of intended changes in space-use in the medium-term, it is dangerous to be guided by one final model. Similar objections are also being made now with regard to the successor of the ‘uitbreidingsplan’, the ‘bestemmingsplan’, that came into existence as a juridical instrument on the first of August 1965, when the ‘Wet op de Ruimtelijke Orde-ling’ (Spatial Planning Act) came into force. The ‘bestemmingsplan’ is a local spatial plan that covers parts of a municipality, identifying zonings that are assigned to pieces of land in the shape of a ‘bestemming’. In connection with the ‘bestemming’ the plan contains provisions that embody binding norms limiting the freedom of space-use by individuals. Thinking of space-use one must be aware this is composed of: building, other land-use and the use of buildings. The ‘bestemmingsplan’ sets bounds to the possibilities of space-use by rules that hold a restricted allowance or a restricted interdiction. In this way control of building can be reached by the ‘bouwvergunning’ (building permit), and of other space-use than building by either the ‘aanlegvergunning’ (operation licence) or the ‘gebruiksverbod’ (space-use prohibition), the last one usually being accompanied by a competence to an exemption. So the main characteristic of the ‘bestemmingsplan’ lies in the fact that it is a regulatory zoning instrument.
The objections detailed above are in regard to first of all the specificity and the lack of flexibility of the provisions in the ‘bestemmingsplan’. In this respect politicians and writers in the field of spatial planning stress the need for global and flexible rules. Global rules have as a characteristic that the norms involved do not go into details; that they are less specific than the particulars that can be inherent in space-use in reality. Flexible rules have as a characteristic that they consist of competencies by which a prior rule can be refined, widened or altered. The central government has been trying to attain better results with the ‘bestemmingsplan’ by striving towards plans that should be less specific and more flexible. In order to reach this, more freedom has been given to the regulation through a ‘bestemmingsplan’ by removing certain articles from the administrative order that has gone with the Spatial Planning Act since 1965, and by adding to it an unclear possibility for an alleged new sort of provision, the ‘beschrijving in hoofdlijnen’ (description in outlines). These changes came into effect through the ‘Besluit op de ruimtelijke ordening 1985’ (Spatial Planning Decree 1985). The approach of creating more freedom but leaving the door open to the old solutions at the same time, has mainly caused greater uncertainty, however. Upon review it has not brought about better plans in the respects referred to above. Neither has it stopped criticism of the poor maintenance of the regulation by the ‘bestemmingsplan’, of the insufficient support of the ‘bestemmingsplan’ in the foreseeability of an individual to the decision-making possibilities of the government on a concrete space-use proposal, and of the unclear definitions of nearly all basic conceptions that are of importance to the juridical form of a ‘bestemmingsplan’.

A different course has been taken by the investigation attempted in this book. It begins with the supposition that better regulations will become attainable only when the vague legal terms in article 10 paragraph 1 Spatial Planning Act, describing the contents of the competence to draw up a ‘bestemmingsplan’, have been given a clear significance. This closer description should contain criteria that enable the local government, the individuals concerned with space-use and the judiciary to determine the scope of a regulation based on the competence attributed by article 10 paragraph 1 Spatial Planning Act. As far as this refers to the distinction and the location of a ‘bestemming’ and the limits of space-use with physical elements, this has been named the specificity of the regulations. As far as this concerns space-use consisting of activities, as well as other objects closely related with space-use, this has been labeled as belonging to the scope of the regulations in a wider sense. Moreover, as it should be well rooted in reality, a clarified definition as pursued should be based on conceptions that can be recognized by the experts who are engaged in the preparation of the decisions to be laid down in a ‘bestemmingsplan’. The assumption is that if such a closer description has been accomplished, it will be possible to make plans that have fewer shortcomings than is common nowadays. Thus, after having ascertained there still will be a useful task for the ‘bestemmingsplan’ in future, the book formulates the two following questions which it will then try to answer:

(i) Which closer description can be given of the vague substantive criteria in article 10 paragraph 1 Spatial Planning Act, in such a way that this description - especially in relation to the specificity and the scope of the regulation by a ‘bestemmingsplan’ in a wider sense - offers clarity as to the limitation of the administrative competence in question and complies as much as possible with the conceptions that (should) play a part in the process of drafting such a plan?
(ii) Which contribution can offer the basic notions in the closer description referred to above, to the regulation by a ‘bestemmingsplan’ that can be well defined in relation to the specificity and the scope of the regulation in a wider sense, and that does not only have a global and flexible character but that also enables the individual to foresee the decision-making possibilities of the government on a concrete space-use proposal?

In quest of an answer to these questions, this book contains 8 more chapters. Those numbered 2 to 4 are dedicated to the first question and those numbered 6 to 8 deal with the second question. The chapters 5 and 9 contain a synopsis of the preceding conclusions as well as some recommendations. Before switching over to these chapters it seems prudent to take a closer look at the central element of the investigation, the contents of article 10 paragraph 1 Spatial Planning Act. As far as matters here, the text of this provision runs as follows: “Within the territory of a municipality [...] the municipal council lays down a ‘bestemmingsplan’, in which, as far as this is necessary for a good spatial arrangement, is assigned the ‘bestemming’ of the land that is situated within the plan and in which, as far as is necessary in connection with the assigned ‘bestemming’, rules are set down about the use of the land that is situated within the plan and the use of the buildings located therein.” The structure of the substantive norms in this text may be compared with a two storey building. On the ground floor the different ‘bestemming’s are set out, while on the first floor the directions about space-use are circumscribed, in relation to the assigned ‘bestemming’. To make the picture complete, one could imagine a good spatial arrangement as being the soil on which this building can be erected. Given this relationship to one another, it is logical to study the substance of a good spatial arrangement first and after that to pursue the contents of the assigned ‘bestemming’ and the signification of necessary in connection with the assigned ‘bestemming’. This has been done in successively the chapters 2, 3 and 4.

Chapter 2 seeks to describe (a good) spatial arrangement as a substantive conception: what is the object of spatial arrangement in the sense of article 10 paragraph 1 Spatial Planning Act? The answer can be looked for on the basis of the history of the statute in question, declarations to be found in national spatial planning instruments by the national government and Parliament, and the opinions of writers in the fields of spatial planning and spatial planning law. In this way the object of spatial arrangement has been found to be limited by three factors. In the first place we discern the object in a factual or quantitative sense. This can be described unambiguously as space-use: building, other land-use and the use of buildings. Secondly the implementation is influenced by the fact that public interference with space-use on behalf of spatial planning, takes place with a view to a certain goal. This means that not all aspects of space-use will be of importance, but only those that have significance for the goal of spatial planning. The conclusion can be established that spatial planning aims at realizing a spatial structure: a certain pattern of diversity and variation of the space-use within an area as a whole. To reach this goal spatial planning makes use of spatial conceptions: a coherent complex of mutually compatible considerations, describing a desirable diversity and variation of the existing or future space-use within an area as a whole, and visualizing this by using one or more maps. So the object in a quantitative sense can be narrowed to an object in a qualitative sense; this being all space-use that is of importance to a spatial conception. In order to know what this implies, it should be clear which kind of components a spatial conception is
made up of. The consulted sources however show a wide range of terms in which a spatial conception can be expressed, such as: spatial elements, units, activities or functions. As for spatial planning at the level of the ‘bestemmingsplan’, it is clear that the components of a spatial conception must be expressed in terms of ‘bestemming’s. What is meant by this will be given closer study in the following chapter. Now as the second factor brought about a reduction of the object, the third factor on the other hand effectuates an enlargement. It puts on record that the regulation of space-use that is of importance to a spatial structure, in the end takes place in order that social life as such can follow an orderly course. This implies that as far as other objects than space-use as such have a direct influence upon the functioning of space-use in relation to a spatial structure, these may also be seen as part of the object of spatial arrangement. Examples can be found in the extent of pollution by certain types of business and the fact that an individual or a business has strong bonds with some locality.

Chapter 3 is devoted to the study of the first main element of the substantive norms in art. 10 paragraph 1 Spatial Planning Act: the ‘bestemming’s that are necessary for a good spatial arrangement. In doing so, by carrying out a historical analysis, it concentrates on the meaning of the ‘bestemming’ as a substantive notion and finally comes to the following description:
(1) The ‘bestemming’ in the sense of article 10 ‘Wet op de Ruimtelijke Ordening’ is the juridical quality of a piece of land that stands for:
(2) one or more purposes of space-use, assigned to a piece of land, that can be discerned as such because of their particular requirements in having a proper location, as a result of their particular influences upon or their particular demands on the surroundings;
(3) in which the relationship between the space-use as implied in the ‘bestemming’ on the one hand and the surroundings on the other, has been considered, whether at the level of blocks or streets, or at a higher physical level (such as entities that determine the spatial structure of a neighbourhood or an urban quarter);
(4) with strictly binding force for the municipal administration and important indirect legal consequences for the individuals that are practising space-use.

The most important part of this description is to be found in the first element, that umbrellas the other ones: the ‘bestemming’ embodies a purely normative notion. This is a very fundamental aspect which very often gets overlooked. The interpretation of a ‘bestemming’ is not dependent on the character of a building or other physical element, but solely on the intention of the competent administrative body regarding certain qualities that the assigned piece of land should possess. It is a standard that should be met by the actual space-use at the location of the ‘bestemming’. Therefore the investigation embraces the idea of the abstract ‘bestemming’ as a declaration of intent and rejects the so-called concrete ‘bestemming’ that identifies the ‘bestemming’ with certain aspects of physical elements. Coming to the substantive meaning of the ‘bestemming’, it must be seen - according to the second element in the description above - as a purpose of space-use that has been discerned because of its special relationship to its surroundings. Reputed examples of such purposes are dwelling, working, recreation and traffic. Of old, these are known as the four basic spatial functions or, as Le Corbusier wrote: “Les quatre fonctions-clefs de l’Urbanisme [qui] réclament [...] des dispositions particulières offrant à chacune d’elles les conditions les plus favorables à l’épanouissement de leur activité
propre." In other words, the distinction is made because of the differences in the relationship to the surroundings, that ask for a different location of the named purposes of space-use so that these may flower under prosperous conditions. The differences referred to above have been labelled as ‘situeringkenmerken’ (situational features): factual qualities of a purpose of space-use, that lead to particular influences upon or particular demands on the surroundings in which such a purpose of space-use can be situated. The purpose of dwelling for instance takes place in relatively small functional units and - as long as we disregard them being stacked in blocks of flats - small spatial units too, that consist of both built-up and unbuilt ground. Generally the spatial function of dwelling will desire quiet surroundings and - in relation to each functional unit - it will arouse and attract just a modest quantity of traffic that mostly happens by day. Besides that, this function will not cause environmental pollution nor business-like activities of any importance. Given the daily, weekly and long-term needs of a dwelling house, it will be clear that proximity to apt facilities will be favoured. All these influences and demands can be seen as situational features, that determine the proper location for the spatial function of dwelling. In a comparable way, the situational features of the spatial function of working can be described. Working tends to take place in larger functional and spatial units, that must be directly connected to the main traffic-structure as they have to be attainable for larger numbers of workers and visitors. They arouse and attract a substantial quantity of traffic, especially when work starts and finishes. Mostly, it will not be necessary to look for a quiet location. Moreover business-like activities often involve environmental pollution, that is not necessarily limited to the daytime. In all these respects or situational features, the purpose of working differs greatly from that of dwelling, and as a result their possibilities in finding a proper location will differ. Hence we might characterize the ‘bestemming’ as a purpose of space-use with situational features of its own. As the competent administrative body has to decide about the importance it wants to attach to a situational feature, it would be more correct, however, to say that a ‘bestemming’ is a purpose of space-use with situational possibilities of its own.

The third element in the description given above has to do with the level of spatial arrangement. When drafting a ‘bestemmingsplan’, the possibilities of space-use on a certain parcel of land will not be valued as a separate phenomenon but they will be weighed in relation to their surroundings. The present investigation takes the position that the lowest level in spatial planning on which to consider the relationship between space-use and its surroundings, is the level of blocks or residential streets. This means that on this level only those aspects of space-use can be relevant that are of importance to the functioning of blocks or residential streets. So when spatial elements or activities have impact that is only of importance within one plot or between to neighbouring parcels, they will not be regulated by a ‘bestemmingsplan’. To administer such impacts other instruments are indicated, such as the ‘Bouwbesluit’ (Building Decree), the ‘bouwverordening’ (municipal building by-law) or the ‘burenrecht’ (rights and duties between neighbours). There are two kinds of specificity a ‘bestemming’ can have, leading to what is known as either a detailed ‘bestemming’ or a global ‘bestemming’. In view of the level of spatial arrangement as explained above, these types of a ‘bestemming’ have been described as follows. A detailed ‘bestemming’ is one or more (split) purposes of space-use in which the relationship of the connected space-use to its surroundings has been weighed on the level of blocks or residential streets. Consequently a global ‘bestemming’ is one or more (split) purposes of space-use in which
the relationship of the connected space-use to its surroundings has been weighed on a higher physical level than that of blocks or residential streets.

The fourth and last element does not refer to any substantive meaning of the ‘bestemming’, but just completes the picture by characterizing the binding force that goes with it. So, it states that the ‘bestemming’ as such is only directly binding on the municipal authorities. Indirectly, however, it has very important legal consequences for the individual, as the contents of the ‘bestemming’ carry over into the provisions that are given in connection with the assigned ‘bestemming’.

Chapter 4 reviews the second main element of the substantive norms in article 10 paragraph 1 Spatial Planning Act: the rules as to the possibilities of space-use, that can be set down as far as is necessary in connection with the assigned ‘bestemming’. The kinds of rules there are and to which forms of space-use they relate has already been made clear in the preceding chapter, as their history is tightly interwoven with that of the ‘bestemming’. These provisions are partly testing-norms which play a role in the decision making about the building permit and the operation licence and partly they contain directly binding norms for the individual by means of prescribing an operation licence or putting forth a space-use prohibition for certain qualified forms of space-use other than building. The notion of the abstract ‘bestemming’ mentioned above, involves that the necessity-criterion in the second main element applies to all restrictions of space-use, be it of building, other land-use or the use of buildings, as well as to restrictions through testing-rules or directly binding norms. In view of its legal context and its function in the process of spatial arrangement the following description of the meaning of the necessity-criterion has been elaborated.

Only those restrictions of space-use are ‘necessary’, that serve to prevent that a ‘bestemming’:

(a) cannot or cannot be properly realized;
(b) cannot function well or gets pushed aside - partly or completely - by a different purpose of space-use;
(c) does not link well with surrounding assigned ‘bestemming’s.

In this way the necessity-criterion has been split up into three different grounds. Each ground can implement the necessity-criterion and thus justify a restriction of space-use. The a-ground especially serves as a justification for building rules that regulate the purpose of a building. They make certain that no buildings can be erected that may have the proper size and situation, but are destined to serve a different purpose of space-use than the ‘bestemming’ is aiming at. In the same way the a-ground justifies the prescription of an operation licence regarding activities that will change the landscape, when there is a chance that the result of those activities will render the area less apt for a proper realization of a global ‘bestemming’ for a future residential area. The b-ground seems to be of no importance to the building rules, but it supports any space-use prohibition forbidding that buildings will be used for a purpose conflicting with the assigned ‘bestemming’ (non-conforming use). And it also gives a base to the prescription of an operation licence regarding activities that are threatening the functioning of a fulfilled ‘bestemming’. The c-ground as last, accounts for the extent of rules about the situation and measurements of buildings as well as of a space-use prohibition limiting the situation and the height of storage outside of buildings.
Chapter 5 summarizes the clarified meaning of the substantive norms in article 10 paragraph 1 Spatial Planning Act in a similar way as has been done in the preceding pages. It also reflects on the question whether the chosen criteria will be recognized by the experts that are engaged in the preparation of decisions to be laid down in a ‘bestemmingsplan’. The greatest impediment seems to be that there is no agreement on the type of component in which a spatial structure should be expressed. Disciplines on spatial research and design follow a fairly free course by using alternate terms like spatial elements, units, activities or functions, to describe a spatial structure. A structure that is composed of purposes of space-use - not as a factual quality of physical elements, but as a normative quality of a piece of land, as is the case with the ‘bestemmingsplan’ - is not quite as commonplace in these fields. On the other hand, all the other notions applied in the closer description of the vague substantive elements in the first main element of article 10 paragraph 1 Spatial Planning Act, have their roots in spatial planning research and design. So they should be recognised, even when used in a juridical context. It is expected anyway, that more uniformity will develop, as the need for consistency in the complete process of decision making will be stressed by the increasing application of information technology. Now this is established, the first question that has been put forward in chapter 1 has been answered. To illustrate that the elaborated description carries a rich potential, chapter 5 closes with a suggestion for a new wording of article 10 Spatial Planning Act and of some allied articles in this statute.

Chapter 6 is the first of the chapters to deal with the second of the questions raised in chapter 1 and leading this investigation. As this second question is about the consequences of the clarified meaning for the juridical design of the ‘bestemmingsplan’, chapter 6 gives an outline of the form of this instrument. In the old days it was obligatory for an ‘uitbreidingsplan’ to be laid down in a map only, though since the twenties written rules have never been wanting. Later on it was made possible to set up a by-law to regulate space-use in already built-up areas, the so-called ‘bebouwde kom-voorschriften’ (built-up area directions). And although the law only referred to written rules and did not make mention of any map, these provisions never took effect without making use of a map as well. Nowadays the ‘bestemmingsplan’ - pursuant to article 12 paragraph 1 Spatial Planning Decree 1985 - has to be laid down in written rules and in one or more maps. It is important to see that the plan as such consists of two dependant parts: (1) cartographic symbols that fix the location of norms and (2) written rules that describe the kind of binding and the contents of these norms. Each part is incomplete without the other, nor is it capable of taking over the task of the other one. In accordance with this a ‘bestemming’ and other norms with a spatial dimension must not only be assigned and named on the map, but they must have a description in the rules as well. Finally the ‘bestemmingsplan’ must be accompanied by (3) an explanatory note, whose main task it is to justify the contents of the plan. The explanatory note may not be absent; it does not belong to the plan as such, however, as it cannot provide any legal consequence on its own. After an introduction of these three elements, the chapter is largely dedicated to a fairly detailed treatise on the framework of the maps and the written rules that together make up a ‘bestemmingsplan’.

Chapter 7 explores the influence of the given description of the vague terms in article 10 paragraph 1 Spatial Planning Act upon the specificity of the regula-
tions. This has been confined to the following aspects of the regulations: the differentiation of the assigned ‘bestemming’s, the situation decisions implied by areas, lines and points drawn upon the map, and the contents of the building rules. These last-named rules may refer to (1) the use-purpose of the buildings, (2) the number, situation and size of functional units within such a building and (3) the dimensions of parcels or lots and the situation, dimensions and joint of building masses. The influence as described above has been examined on the basis of five cases, concerning the regulation of: a future residential area, a future residential block, an existing residential block of cultural-historical value, an existing block of cultural-historical value with shops, cafés, pubs, services and dwellings and existing roads with different tasks in the traffic-system.

The first two cases do not only demonstrate the specificity of a regulation in compliance with the clarified norms, but they contain examples as well of the specificity a traditional regulation might have shown in these cases. In this last-named approach the specificity is largely determined by the effects of the concrete ‘bestemming’. As a consequence the regulation concentrates on a likely implementation with physical elements that might be realized in the end. The approach chosen by the investigation before us is a different one, but the given examples prove that it is very possible to determine the specificity of the regulation with the help of the abstract ‘bestemming’ and the criteria connected with it. In these examples the regulations are built upon the differentiation of purposes of space-use with situational possibilities of their own. In connection with these the specificity is further influenced by the level of arrangement upon which the relationship to the surroundings has been weighed, as well as by the support the necessity-criterion can give in justifying restrictions of space-use. Looking back at these examples, one must confirm that a clear relationship between the named aspects of the regulations and the statutory norms only comes to light in the examples based on the abstract approach. Moreover, it can be concluded that the abstract approach produces regulations that are less specific than the traditional ones, while the decisions concerned have a more realistic motivation.

Contrary to the first two cases, that dealt with an intended change of space-use, the remaining three examples refer to an existing situation. This circumstance influences the specificity of the regulations, because there is more detailed information available for the decisions to be taken and the interests concerned will have less need of freedom for space-use. Besides that, it is possible to acknowledge existing cultural-historical values by assigning a ‘bestemming’ that includes a cultural-historical purpose. Both factors will cause the regulations to be more specific. From the viewpoint of the abstract approach the distinction of a cultural-historical use-purpose can be understood, when we accept that a historically determined location and physical manifestation can act as situational features. The third case shows how the purpose of dwelling and a cultural-historical purpose can be fused into one combined ‘bestemming’. In such a united ‘bestemming’ the included split-purposes can occur over the entire surface of the assigned ‘bestemming’, at the very same time. In the fourth case we find another example of a united ‘bestemming’ with cultural-historical purposes as split-purposes. This time it has been combined with a so-called mixed ‘bestemming’ for all kinds of centre-purposes with shops, cafés, pubs, other services and dwellings as well. In a mixed ‘bestemming’ the several split-purposes are meant to stay apart, though their location within the assigned ‘bestemming’ is free in principle. The intention is to secure the diversity and the variation of the split-purposes, that are thought to be more determinant for the functioning of space-use on the level of blocks or resi-
dential streets, than is the exact location of each individual functional unit. In both cases a clear relationship can be constructed between the measure of specificity and the described criteria of the abstract approach.

Finally case five gives attention to the regulation of spaces destined for roadtraffic. Here the abstract approach in one respect leads to greater specificity than the traditional one, as it urges assigning different ‘bestemming’s when roads have a different influence upon their surroundings, coinciding in their task within the traffic-system. In the traditional approach it is not thought to be necessary to distinguish between traffic-purposes, as long as roads have roughly the same physical appearance. In another respect, however, the abstract approach permits more freedom because it is impossible - with due observance of the necessity-criterion - to prescribe exactly how a road should be subdivided. Within the traditional approach there is no impediment to do so. Along the lines of the abstract approach the subdivision of a road can only be regulated within margins that leave room for any subdivision complying with the use-purpose of the road in question.

Chapter 8 illustrates the consequences of the elucidated terms in article 10 paragraph 1 Spatial Planning Act for the scope of regulation by the ‘bestemmingsplan’. To begin with it seeks to delimit the regulation by the ‘bestemmingsplan' in relation to other space-use than building. This is illustrated by the example of the use of buildings in connection with a ‘bestemming’ for a dwelling purpose. The judicial decisions in questions relating to professional or business-like activities in the home regulated by provisions in connection with a dwelling purpose, tend to be haphazard and do not systematically make use of the statutory criteria. It is shown, however, that it is possible to define a clear demarcation in a given case, if an equally clear image of the situational features accompanying the purpose of space-use concerned exists. In the case of dwelling, six criteria have been indicated that describe the relationship to the surroundings that is representative for the purpose of dwelling. With the help of these there is enough clarity for an appropriate regulation - consisting of a space-use prohibition accompanied with an exception and a competence to an exemption - that can prohibit activities in the home having unacceptable effects on the home or its surroundings. This has been attained by making use of the notion of a purpose of space-use with situational possibilities of its own, as well as of the b- and the c-ground of the necessity-criterion.

Secondly this chapter tries to define the borderline of the ‘bestemmingsplan’ regarding other objects than space-use as such. As has been explained in chapter 2, other facts than space-use as such that have a direct influence upon the functioning of space-use in relation to a spatial structure, may be seen as part of the object of spatial arrangement as well. In this matter a judicial decision regarding the extent of pollution inherent in certain types of business has been chosen as a starting point. It has been concluded that this decision is not very consequent in giving a proper application to the vague substantive norms in article 10 paragraph 1 Spatial Planning Act. A better solution can be sought by looking at some borderline-questions connected with ‘bestemming’s for business-purposes and dwelling-purposes. These refer to matters that largely have been qualified as being relevant for the ‘bestemming’ in question, though the reasoning leading to these judgments was not thought to be very satisfactory either. Consecutively, the regulation of: a so-called mobility-profile of a business, the local binding of a business, a dwelling house reserved for an employee of a business, dwelling houses reserved
for aged people, dwelling houses reserved for people with local binding, recreational residences and the costs of dwelling houses, have been under discussion. It has been found that a proper solution could be reached in all of these cases by applying one same set of criteria closely related to the notion of the abstract ‘bestemming’ and the relevant statutory norms. Among these criteria a determining role has been played again by a purpose of space-use with situational possibilities of its own and the necessity-criterion. On top of this, two factors proved to be an important key to a broad interpretation of the word space-use. In the first place it is not very uncommon when dealing with space-use, to take into account a certain personal quality of the space-user in question, as long as this can be determined objectively and there is a link with situational possibilities. In the second place one must realize that to ‘use’ in space-use should also include: to give in use and to do or to let use.

Chapter 9 answers the second question that lies at the roots of this investigation. This has been done in relation to four parameters, that are all present in this very same question. The first one refers to the support that has been received from the elucidated terms in article 10 paragraph 1 Spatial Planning Act, when looking to delimit the specificity and scope of the regulation by a ‘bestemmingsplan’. Using the studied cases, it can be concluded that the two substantive main elements described above - as they have been clarified by the abstract ‘bestemming’ and the necessity-criterion - have been of great help, enabling a well motivated decision about the specificity or scope of the regulations in question to be made. The other three parameters touch upon the measure of specificity, flexibility and foreseeability a regulation carries along. In this respect it has become obvious that a regulation that is based directly on the closer description of the statutory norms, has less specificity than a regulation that has the traditional approach as a background. Nor are there any indications that the abstractly inspired regulations fall behind in terms of flexibility and foreseeability. As for this last parameter: it is even more likely that the consistency implied with a clarified meaning of the statutory norms, creates far better conditions for the individual to foresee the decision-making possibilities by the government on a concrete space-use proposal. Finally this chapter formulates some recommendations - most of them deriving directly from the abstract ‘bestemming’ and the necessity-criterion - to players that are able to influence the regulation by ‘bestemmingsplans’, namely the national legislator, the local legislator and the judiciary, as well as the administrative agencies concerned, firms of consultants, professional associations and educational institutions.