

## Land Use Plans: Long Live the Crocodiles

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### 1 ABSTRACT

Some would say that land use plans are the dinosaurs of planning policy. And indeed, in almost every country in continental Europe land use plans emerged as main instruments in the earliest/almost prehistoric periods of organic planning legislation. But unlike the dinosaurs, land use plans have managed to survive in most of these countries and they have adapted successfully until now as some kind of living fossils. That is why we prefer to see them as crocodiles. Like crocodiles, land use plans appear quite frightening because of their non contemporary unattractive look and their lethal/legal power. Unfortunately, similar to the gradual extinction of crocodiles because of climate change, land use plans seem to become endangered and mainly too because of drastic changes in contextual factors.

Since their features seem rather unappealing at first sight, acolytes of crocodiles as well as land use plans rarely raise their voices in the debate about their survival. However, this contribution wants to change strategy. It consciously ignores the characteristics of land use plans that might make them vulnerable. Instead, it addresses three main contextual aspects of its questionable survival. In other words it focuses on the destructive ways in which planners, policy makers and citizens more and more position land use plans as planning instruments.

First, planners and policy makers seem to have almost blind faith in the power of land use plans. The latter are still too often considered, by planners as well as policy makers, as the universal solution of each planning process. This dogmatic belief burdens land use plans with impossible expectations since it ignores the original ambition of land use plans, namely offering a framework for the assessment of building permits. It also neglects the role and position of other policy instruments in consolidating the outcomes of a planning process.

Secondly, convinced of the robustness of land use plans, in the last two decades policy makers in closely related policy domains such as for instance environmental, nature conservation and cultural heritage policy, have legally linked their own sectoral assessment tools to the approval process of land use plans. Despite the integrating character of planning, this strategy has led primarily to a formal overload of land use plans with sectoral policy goals what makes them obese and vulnerable.

Finally, the sensitivity of individual citizens for interference of government in their private property rights has grown tremendously, even when this interference is inspired by public interests. The combination of government's preference for land use plans as a tool to limit these rights on the one hand and the vulnerability of these plans because of the lethal amount of linked sectoral policies on the other hand, make land use plans ideal subjects for judicial procedures. Already weakened because of the combination of the first two aspects, land use plans are easy preys.

Before officially declaring land use plans extinct, this contribution pleads for a drastic sanitation of the societal and political context in which land use plans have to function. We want to prevent these crocodiles from extinction because, in our opinion, land use plans still have an optimistic and meaningful life expectancy. But as crocodiles have adapted to and need a specific climate, land use plans need to be strictly used for the purposes they were generated for originally.

### 2 WHY WORRY ABOUT THE SURVIVAL OF LAND USE PLANS?

The authors of this paper are involved in a 'comparative' research project in Flanders (Belgium) on potential concepts for framing and tuning various policy instruments when a (spatial) planning process turns from visioning and decision making into realizing. The research project is commissioned by the Spatial Planning Department (Ruimte Vlaanderen) of the Flemish Government and is conducted by a consortium of private consultancy agencies (Voorland, ProFlow and LDR advocates) with the support of another private consultancy agency (Intoe) and KU Leuven-Faculty of Architecture.

## 2.1 Introductory observations on the current position of land use plans

In the call for the research project, the Spatial Planning Department describes how spatial planning processes in Flanders have recently evolved towards processes that not merely cope with changes in land use (as defined in land use plans) but also with a broad package of spatial as well as non-spatial measures. Attempts to keep this combination of measures as transparent as possible and to embed these measures in obvious political decisions have appeared to be inadequate. They are certainly no guarantee that land use plans survive the judgement of the highest administrative court in Flanders/Belgium, the Council of State. Existing jurisprudence points out for instance that the framing and tuning of the measures taken in land use plans and these taken in flanking and supporting policy instruments, such as strategic environmental impact assessments, is insufficiently visible. Frustrating experiences bring the Spatial Planning Department to three observations which also question the general relevance of land use plans.

First, the transparency and legal status of overall decisions in planning processes has decreased remarkably. The outcome of processes is not only translated into traditional land use plans, but also into programs of action, flanking policy measures or mitigating measures. The land use plan and the amalgama of instruments form an overall package of measures. These packages can be quite small or very extensive as they consist of these measures actors have considered necessary or very important throughout the planning process. However, not every measure can be translated into land use plans because a social measure for instance is not considered a spatial planning policy issue or because some measures are insufficiently strategic but instead very technical aspects which should not be taken care of in the land use plan but be elaborated on in the building permit. As a consequence, these measures are politically decided upon parallel to the political decision on the land use plan. Often, both types of decisions are linked. However, the overall package of measures misses a clear status. Therefore, decisions about spatial as well as non-spatial issues that are embedded in the overall package have to be justified each time specific instruments are brought into action to implement a part of the program of actions.

Second observation of the Spatial Planning Department is that land use plans get a disproportional part of the attention while they are only one instrument in the complex combination of various policy instruments and measures. The public debate and legal procedures often shed insufficient light on instruments and measures other than the land use plan. The fact that land use plans are increasingly used to regulate the most diverse issues, also non-spatial issues, is the result of two societal trends. First, the legal system in Flanders highlights the written rule, i.e. legislation; the enacting force of their urbanistic rules empowers land use plans dramatically. And as land uses directly interfere with individual property rights, urbanistic rules are considered very relevant by citizens. Second, courts, and in particular the Council of State, have become increasingly demanding when it comes to the level of degree and the range of urbanistic rules of land use plans. This attitude is prompted by a specific interpretation and implementation of the principles of legal certainty and protection of legitimate expectations. Leaving development perspectives open becomes more and more difficult which leads to very static land use plans at the very moment where the need for flexibility grows. Plus, since other legally binding instruments are lacking, the pressure to embed non-spatial measures in land use plans continues to rise; land use plans are perceived as the instruments bringing universal happiness. The overwhelming focus on land use plans can also be noticed in the large number of legal procedures fighting decisions on land use plans. When one is unsatisfied with (certain aspects) of an overall package of measures, only the land use plan is challenged since flanking policy instruments are not taken into consideration by the Council of State.

Finally, an aspect that is often denied is the tiering mechanism in political decision making. A land use plan is only one link in a (tiered) chain of decisions which are taken at a strategic or plan level and are being followed by decisions with a higher degree of detail, for instance the realization of projects through building permits. Also non-spatial measures have to be positioned within this mechanism. For instance, mitigating measures from a strategic environmental impact assessment that can not be embedded in a land use plan should be specified in a building permit.

## 2.2 Outline of the paper

This summary of observations and concerns from the Flemish Spatial Planning Department is the starting point of this paper. A brief description of the genesis of Flanders' breed of land use plans offers some insight in its characteristics, strengths and weaknesses. Next, the three main contextual aspects that question the

survival of land use plans in Flanders are addressed. They coincide roughly with the concerns described above: the almost blind faith of planners and policy makers in the power of land use plans, the legal linking of sectoral assessment tools to the approval process of land use plans and, finally, the sensitivity of individuals for interference of government with their private property rights. The paper ends with a plea for a drastic sanitation of these contextual aspects since land use plans definitely have a meaning in planning policy and thus have a reason to survive.

### 3 BRIEF GENESIS OF FLANDERS' BREED OF LAND USE PLANS

Compared to other countries in continental Europe, Belgium was quite late in adopting an organic planning policy legislation. The approval of its first organic Planning Policy Act goes back to 1962. The Act offers a legal framework on the content and procedures of planning policy, building permit policy and enforcement policy. Although planning policy has become a regional policy matter in 1980 as a consequence of Belgium turning into a federal state, it is only in 1999 that the Flemish government adopts its own organic Planning Policy Decree, codified later on in 2009. Today, the Flemish government is again taking new steps in rethinking the planning system.

#### 3.1 Subregional land use plans guaranteeing legal certainty in 1960-1970

Before the Planning Policy Act of 1962, Belgium didn't really have an adequate and systematic ensemble of instruments regulating the development of its territory and protecting its natural environment. As a consequence of this long-lasting lack of regulatory instruments, today's spatial structure in Belgium is characterized by an extensive road network, dispersed settlements and the specific (small scale) structure of agriculture (Albrechts, 1999).

The main goal of the 1962 Act was of course to stop these negative developments, providing a framework for a hierarchical planning system at four policy levels (Van den Broeck, 2005) (fig. 1). However, the national plan (,nationaal plan') and the regional plan (,streekplan'), conceived in the Act as visionary documents, were never developed. In practice, planning policy in Belgium was limited to general and specific municipal land use plans (,algemeen plan van aanleg' and ,bijzonder plan van aanleg') and, above all, subregional land use plans (,gewestplan').

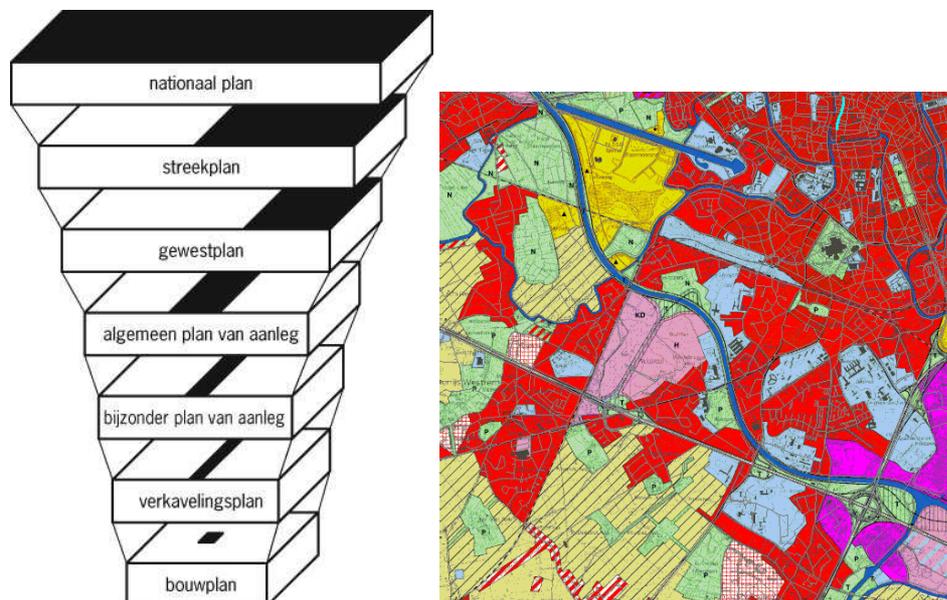


Fig. 1. Hierarchical planning system in the 1962 Act. Fig. 2. The degree of detail of subregional land use plans.

As only very few municipalities drew up their own municipal land use plans, the Belgian government decided in the 1960s and 1970s to develop 48 detailed subregional land use plans covering the whole of Belgium. On the one hand, by doing so, the subregional land use plans turned out to become the highest planning instrument in Belgium. On the other hand, because of the level of detail of these subregional land use plans in allocating land uses to individual parcels, they limited the need for municipalities to draw up their own land use plans (fig. 2).

Albrechts (1999) summarizes, amongst others, the following characteristics of the subregional land use plans as the main planning instruments in Belgium and Flanders.

- The subregional land use plans are mostly passive plans not directed at implementation as such. The land use plan is looked upon in the first place as a criterion, into which a system of building permits can be projected. In these land use plans there is no mention of an explicit time-horizon, of action-programmes, instruments, priorities, budget making etc.
- As a result of the procedure for approval of land use plans, these plans become ‘laws’ which can only be altered by the approval of another land use plan in the same way.
- Adjustments to a subregional land use plan are only possible by making detailed corrections at the same policy level and by the devising of a completely new plan subject to legal approval.

These characteristics stress the legal certainty the subregional land use plans have brought to the Belgian and Flemish planning system. Not only do municipalities have these plans at their disposal to control the validity of building permits. Through the subregional land use plans, every land owner in Belgium also has a quite clear idea of the development potential of his property. Moreover, after decades of daily planning practice with and jurisprudence about these subregional land use plans, the allocation of land uses at the level of individual parcels implies a financial value that is linked to the potential to develop the individual property extensively or intensively. Parcels are sold and bought on the real estate market taking into account the colour and thus the desired land use and the potential financial value of the property (Needham, 2006).

### 3.2 Structure plans for visioning and implementation plans for legal certainty

In 1999, Flemish government, having become the competent authority for planning policy in 1980, adopted a new Planning Policy Decree. This Decree introduced the development of two new planning instruments at three policy levels: the ‘national’ level of the Flemish region, the regional level of 5 provinces and the local level of 308 municipalities (Leinfelder et al., 2010; Van den Broeck et al., 2014). The political (long term) vision on the future development of the territory involved is written down in a structure plan (‘ruimtelijk structuurplan’), the implementation of this vision through the allocation of land uses and rules on development and management of these land uses is defined in an implementation plan (‘ruimtelijk uitvoeringsplan’) (Albrechts, 2001) (fig. 3).

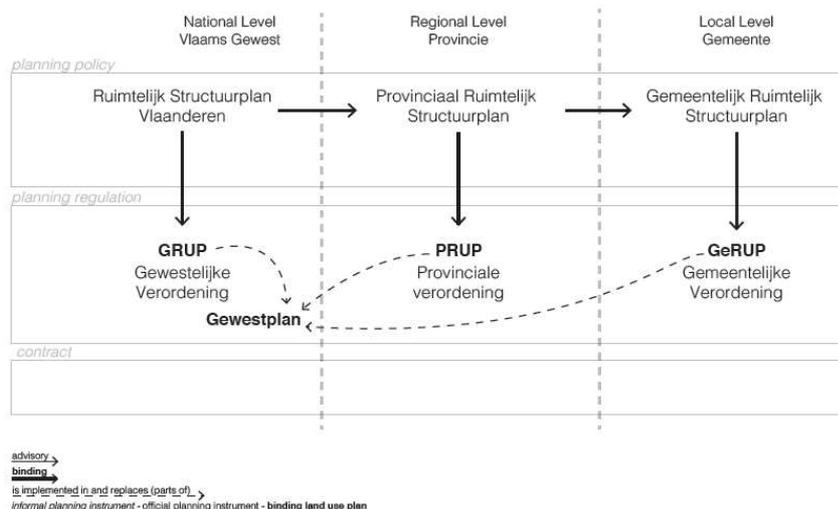


Fig. 3. The planning system with structure plans and implementation plans.

While the original ambition of the implementation plans was to have a more active character than the subregional land use plans, planning practice has shown that the resemblance with the land use plans is huge. Path dependency within the group of planning practitioners and jurisprudence by the Council of State have resulted again in very detailed ‘law’-like implementation plans, both at the municipal level and at the provincial and Flemish level (fig. 4) (Albrechts et al., 2010). Despite some innovations, for instance the additional possibility to use symbolic indications on the graphic allocation plan, implementation plans are very similar to land use plans.



Fig. 4. The degree of detail of a 'national' implementation plan.

Very important to mention is that the original subregional land use plans, introduced by the 1962 Act, keep their legal status for individual parcels for as long as they are not replaced, for these parcels, by an implementation plan. Knowing that the drawing up of implementation plans takes years and is only done when necessary for the realization of a project or the optimization of a functional spatial configuration, the use of the majority of the land in Flanders today is still defined by subregional land use plans. It is expected that this situation will last for many more years.

### 3.3 Shift in visionary planning instruments but preservation of legally certain implementation plans

Today, almost 20 years after the Flemish Spatial Structure Plan of 1997 (Ministerie van de Vlaamse Gemeenschap, 1997) initiated an overwhelming visioning activity at various policy levels in Flanders, the Flemish government is again taking new steps in rethinking the planning system. Its ambition is, amongst others, to reorganize the system of structure planning to a system of strategic policy planning that is more focused on key issues and key regions, that is more flexible and more action-oriented. It is impossible to elaborate on this shift in planning system in this paper (see: Departement RWO, 2012). What is striking however, is that the role and position of the implementation plan in the planning system, and as a consequence of the subregional land use plans, remains unchanged at first sight!

### 3.4 Land use plans are the dinosaurs of planning policy

Based on this brief description of the genesis of the specific breed of land use plans in Flanders/Belgium, one can certainly say that these plans are the dinosaurs of planning policy. This is not unique. Indeed, in almost every country in continental Europe land use plans emerged as main instruments in the earliest/almost prehistoric periods of organic planning legislation. However, where most of European countries have land use plans at local level - the Dutch 'bestemmingsplan', the French 'plan local d'urbanisme' and the German 'Bebauungsplan' – the Flemish region has land use plans at national/Flemish, provincial and municipal level.

Unlike the dinosaurs, however, the genesis shows that land use plans seem to have survived and adapted successfully until now as some kind of living fossils. That is why it is better to see them as crocodiles. And, like crocodiles, land use plans, also today, appear quite frightening because of their old-fashioned unattractive look and their lethal/legal power.

## 4 CONTEXTUAL ASPECTS QUESTIONING TODAY'S SURVIVAL OF LAND USE PLANS IN FLANDERS

Unfortunately, similar to the gradual extinction of crocodiles because of climate change, land use plans seem to become endangered and also mainly because of drastic changes in contextual factors. Three contextual factors will be addressed in this paragraph: the almost blind faith of planners and policy makers in the power of land use plans, the legal linking of sectoral assessment tools to the approval process of land use plans and, finally, the sensitivity of individuals for governmental interference in their property rights.

#### 4.1 Almost blind faith in power of land use plans

Until the rise of strategic structure planning in Flanders in the 1990s, the one and only possible outcome of a planning process seemed the drawing up of a new land use plan and, later, a change of the existing land use plans. The ambition of these land use plans was and still is merely to command and control the development of activities in space through granting or refusing building permits. Plans formally state 'what is allowed' and 'what is not allowed'. Urbanistic rules in land use plans list positively the sort and number of activities that can be developed by private or public persons or they enumerate negatively the activities that can not be developed at a specific spot. Land use plans grant an overwhelming power to public authorities to control new developments passively without necessarily interfering in an active way on the real estate market. More generally, the typical command-and-control characteristics of land use plans is very familiar to politicians and policy makers as, already for centuries, they are used to write laws and other legislation to regulate private and public interventions in society.

The development of ideas on strategic structure planning in the 1990s initially widened planners' perspective on their professional activity. Strategic structure planning emphasizes the role of the planner as a story teller combining the ideas of a coalition of various actors in an attractive story line about the future development of a territory. Through this story line and the growth of a coalition of actors supporting this story line, the planner hopes to raise the societal acceptance for institutionalizing this so-called policy discourse (Hajer, 1995; Van Tatenhove et al., 2000). This institutionalisation can take the form of restructuring governmental organization, writing policy documents and legislation or developing policy instruments for the translation of the story line in practice. The new story line was actually written down in the new Spatial Structure Plan for Flanders in 1997, this with the support of various stakeholders, interest groups as well as government administrations at all policy levels (Albrecht, 1999). It was however the process of institutionalisation, especially within the planning policy field itself, that failed to come up with new ideas on how to consolidate the outcomes of planning processes. The 1999 Decree for instance neglected or failed to define new instruments besides the land-use-plan-like implementation plans. While, at the same moment, an enormous source of international and even Flemish literature on 'collaborative' planning referred to 'agreements' and 'contracts' between private and public actors to consolidate the planning process outcomes (for instance: Healey, 1997; Healey et al., 1997; Vermeersch, 1994). However, the Flemish planning society decided to stick to the traditional land use plan as the most appropriate 'contract form',beit that land use plans should be considered as predominantly unilateral contracts without any commitment, for instance, of private actors to realize the plan in reality. The best and perhaps most disappointing illustration that the institutionalisation of strategic structure planning in Flanders already went wrong in the Spatial Structure Plan for Flanders itself, was the explicit desire of the ministers in the Flemish government that the plan would include a so-called 'spatial accounting' table (fig. 5). The table shows 'schizophrenically' (Van den Broeck in Renard, 2009) the implications of the new story line on the acreages for the various land use categories in the subregional land use plans. By including the table in the Spatial Structure Plan, the tone was irreversibly set to focus on drawing up implementation plans for the realization of the vision.

Bestemming	Huidige gewest-plannen (ha)	Gewestplannen in 2007 (ha)	Natuurverwevings gebied
Wonen	227.500	227.500	
Industrie	55.000	62.000	
Recreatie	17.500	18.500	10.000
Overige bestemmingen	57.000	57.000	
Landbouw	806.000	750.000	70.000
Bosbouw	43.000	53.000	40.000
Reservaat en Natuur	112.000	150.000	
Overig groen	34.000	34.000	30.000
Totaal	1.352.000	1.352.000	150.000

Fig. 5. 'Spatial accounting' table of the Spatial Structure Plan for Flanders. (Ministerie van de Vlaamse Gemeenschap, 1997)

Concerning the importance of land use plans in Flemish planning policy, Claeys (2012) makes a relevant distinction between project-driven and vision-driven implementation plans (fig. 6). In the first type, the implementation plan is situated at the end of the visioning process and nearly coincides with the assessment of the building permit as final step to realization. The implementation plan is administratively and legally

necessary to grant the building permit for a specific project. In the second type of implementation plans, the approval of the plan is situated at a moment in the visioning process when realization is still far away in time. But also in this type, the plan defines the urbanistic frame for the assessment of building permits for yet unknown initiatives that might contribute to the future development of a territory.

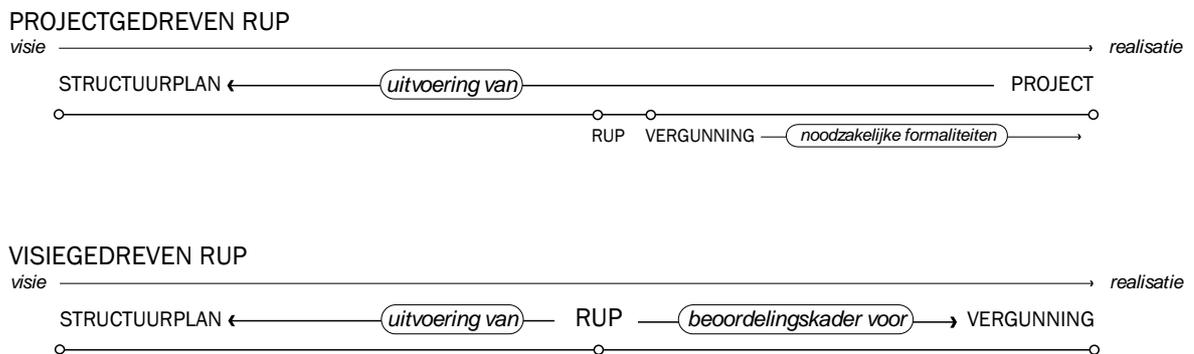


Fig. 6. Project-driven and vision-driven implementation plans. (Claeys, 2012: 45)

Offering such a framework for the assessment of building permits is of course exactly the role of land use plans that was set by the 1962 Act (Albrechts et al., 2010). It is a pity that today's politicians and policy makers often ignore this role and ask for a land use plan even when the outcomes of a planning process don't need the drawing up of another often annoying and limitative legally binding land use plan. They seem to have an almost blind faith in the power of land use plans. However, this dogmatic belief burdens land use plans with impossible expectations. It also neglects the role and position of other policy instruments in consolidating the outcomes of a planning process.

#### 4.2 Legal linking of sectoral assessment tools to the approval process of land use plans

Already in the early 1990s, when Flemish environmental policy was scarcely out of its egg, environmental legal norms and standards were linked to land use categories in planning policy. The legal link between environmental and planning policy culminated drastically when various European directives obliged the preliminary assessment of the impact of projects, plans and programs on the environment as a whole and on the natural environment in specific. The European directives on environmental impact assessment as well as the Habitats, Birds and Water Framework Directive all come down to the same idea that planning processes should assess every reasonable development alternative on its environmental impact before approving a policy plan for one single alternative. Furthermore, the necessary mitigating measures resulting from the assessment procedure should be integrated at the most in the final plan. Each EU member state decided how to translate these directives in its own legislation and policies. This integration seems problematic in many member states as assessment procedures and the attitude of the European Court of Justice towards these procedures are generally considered excessive and dramatic at the expense of economic and infrastructure development (Buijs et al., 2014 and Kistenkas, 2014).

When an implementation plan in Flanders deals with a spatial development issue that should be assessed according to any of the European directives, a table is drawn up and integrated in the planning document. This table shows the mitigating environmental measures and the related goals, the decision whether or not the measure is integrated in the plan, and how it is integrated (fig. 7). The informative value of the table is important since it also indicates why an environmental measure is not integrated in the implementation plan: because it is considered as a non-spatial issue or because it is so technical or specific that it can not be dealt with in the implementation plan and should be integrated in the building permit procedure. In this case, this type of measures is integrated in parallel political decisions on what is called 'flanking' policy measures.

Milderende maatregel	Doelstelling	GRUP (plan)	Ruimtelijke vertaling
		betreffende 'Ruimtelijk beleid binnen de agrarische gebieden waarvoor de bestaande plannen van aanleg en ruimtelijke uitvoeringsplannen herbevestigd zijn')	
<b>Mitigerende maatregelen voor Mens-gezondheidsaspecten</b>			
Effecten op externe veiligheid	Verminderen van de grote snelheidsverschillen tussen vrachtwagens en auto's (zorgvuldig ontwerp, kruipstroken, ...)	X (voorzien van ruimte voor dwarsprofiel met kruipstrook)	Het gebied voor wegeninfrastructuur voorziet de ruimte voor dwarsprofiel met kruipstrook. In de toelichtingsnota wordt de afbakening hiervan verder verduidelijkt.
<b>Mitigerende maatregelen voor verkeer</b>			
Effecten op verkeersveiligheid	Dwarsprofiel (integreren kruipstrook)	X (voorzien van ruimte voor dwarsprofiel met kruipstrook)	Het gebied voor wegeninfrastructuur voorziet de ruimte voor dwarsprofiel met kruipstrook. In de toelichtingsnota wordt de afbakening hiervan verder verduidelijkt.
Effecten op doorstroming	Ontsluiting Pontstraat-West	X (voorzien bufferzone tussen Pontstraat-Oost en N60)	Voor de realisatie van de N60, zijnde de wegeninfrastructuur en aanhorigheden (weg, bermen, grachten, geluidsreducerende maatregelen,...) worden verschillende bestemmingsgebieden voorzien in het

Fig. 7. Table with mitigating measures (,milderende maatregel') and related goals (,doelstelling'), the decision to integrate it in the implementation plan (,GRUP (plan)') and how it is done (,ruimtelijke vertaling').

Despite this detailed information on the integration of environmental measures in the implementation plan and the parallel political decision making on flanking policy measures, the Council of State is and remains convinced that the majority of measures, even when not clearly spatial, should be integrated in the implementation plan. As a consequence, the divergence in interpretation between government administration and the Council of State on the integration of measures in land use plans results repeatedly in the annulment of implementation plans by the Council of State.

Inspired by the success of environmental EU directives to link environmental policy goals intensively to planning policy, other sectoral policy domains have also developed legislation or even informal procedures to embed qualitative objectives in the assessment of the impact of new land use plans. Cultural heritage policy for instance successfully introduced similar preliminary assessments referring to conventions of the Council of Europe. The agricultural policy domain doesn't have such a European big stick but often demands in planning processes, without having any legal basis to do so, to conduct a more general agricultural impact study or a more detailed agricultural impact assessment.

Implementation plans or land use plans seem to have gathered a unique glance of robustness in the eyes of closely related policy domains. Instead of developing an own territorial policy, their strategy is focussed on linking their own policy to planning policy. This has led primarily to a formal overload of land use plans with sectoral policy goals. It makes the crocodiles obese and vulnerable instead of robust.

### 4.3 Sensitivity of individuals for interference of government with their private property rights

As already described in 3.1, the subregional land use plans of the 1970s defined a land use for every individual parcel in Belgium. Through this operation, every land owner in Belgium got a quite clear idea of the development potential of his property.

The introduction of new implementation plans at the end of the 1990s might have gone hand in hand with an operation to transform this property-led allocation of land uses into a more development-led allocation. Similar to larger countries, the definition of development rights of 'unused' – non prior – land might have taken the form of more general legislation while the precise allocation of land uses in land use plans might have been preserved for guaranteeing a qualitative urban or economic expansion or for the conservation of natural areas and landscapes. However, such a kind of operation appeared to be too complex and probably too costly. Indeed, after decades of daily planning practice with and jurisprudence about subregional land use

plans, the allocation of land uses at the level of individual parcels had resulted in a financial valuation of individual property that is linked to the potential to develop it extensively or intensively.

This financial value of individual property as a result of the allocation of land uses in land use plans and implementation plans makes individual citizens very sensitive for government's decisions on planning, even when these decisions are inspired by public interests. Already in the 1962 Act, the Belgian Parliament has introduced mechanisms, still existing today, dealing with this sensitivity: the possibility to reconsider land use allocation options as a result of objections during citizen's participation, expropriation and preemption rights, the possibility to compensate individuals for the loss of property value and, much less implemented, the possibility to claim from individuals the increase in property value because of changes in land use plans. Only recently, since 2014, a legislative initiative provides in the mechanism to exchange land uses and consequently exchange properties between two different areas.

In the mind of individuals, changes in land use plans are immediately linked to the loss or increase of individual property value. This is the result of the fact that a specific land use, and thus a development potential, has been allocated to every square meter in Flanders. Furthermore, changes in land use do not necessarily have to concern the individual property itself, also changes concerning neighbouring properties or even the larger surroundings of a property can have a positive or negative effect on the property value.

Knowing this, it is quite easy to realize that people often don't agree with the ambitions of an implementation plan. As these land use plans have become formally very vulnerable because of the lethal amount of linked sectoral policies, the chance of success through legal procedures, not on content but on formal and procedural aspects, is considerable. One can say that 'the implementation plan-crocodiles', already weakened because of the combination of the first two contextual aspects, have become easy preys for a lot of individuals.

## 5 CONCLUSION – DRASTIC SANITATION OF CONTEXTUAL ASPECTS

Instead of inventing a contemporary alternative for land use plans, this paper pleads, first, for a drastic sanitation of the societal and political context in which land use plans are expected to operate. The ambition is to prevent these 'crocodiles' from extinction because land use plans still have an optimistic and meaningful life expectancy. But, as crocodiles have adapted to and need a specific climate, we are convinced that land use plans can only survive when strictly used for the purposes they were conceived for originally.

Albrechts et al. (2010) stress the substantive and formal difference between the more visionary documents and the more legal documents in planning policy. This observation is very important. On the one hand, strategic plans, formulating a vision on the qualitative development of a territory, are built on a story line around which stakeholders are gathered in a supportive coalition. The outcome of the decision making process about these plans is formalized in agreement packages between the various stakeholders on measures to be taken. On the other hand, land use plans, being the legal documents in planning policy, were conceived solely as a framework for assessing the validity of building permits, nothing more and nothing less. In other words, they are the judicial means for civil servants at different policy levels to evaluate whether or not a permit can be granted to build, take away or alter the spatial configuration of a construction, an infrastructure, a natural element or a topography, etc. The land use plans and their successors, the implementation plans, should be recognised as legal documents. Their role was and still remains to offer a legally certain framework for building permits. They are not visionary documents or strategic instruments and shouldn't be expected to be so. Instead of burdening the implementation plans with impossible expectations we should leave these old crocodiles to focus on the role they were designed for. Only by doing so, these crocodiles can survive and remain their robustness.

The ambition to draw up a land use plan can be one of the actors' agreements in a strategic planning process. But often other instruments are more suited to guarantee a qualitative realization and are much more compatible with the informal way of decision making in contemporary network society. These instruments can eventually also address spatial aspects: there are more informal 'landscape (quality) plans' or there are very strict and legal instruments such as the 'classification' of valuable landscapes. Other instruments can help managing the land use in the most appropriate way through land exchange, expropriation or preemption. And finally, there are legal means to reach non-spatial goals in an appropriate way, such as water level management, nature development plans, social housing objectives, etc. Instead of automatically opting for a

land use plan, the stakeholders of a strategic planning process should consider this wide range of instruments and implement the most appropriate planning instrument. Instead of using the land use plan to achieve sectoral policy goals, the stakeholders should develop their own territorial policy instruments. Having a clear perspective on the wide spectrum of available instruments and their appropriate use should help directing the use of land use plans to the most relevant situations. Knowledge and a more common/appropriate use of other (planning) instruments should contribute to assess the surplus value of the land use and implementations plans in institutionalizing the outcome of the planning process.

A third necessary change in the contextual factors is a more explicit (legal) status for the overall package of measures at the end of a planning process. This package should become the nexus in tuning planning policy goals with other (sectoral) policy goals. By doing so, it is no longer the land use plan itself that should be assessed on its impact on for instance environment and natural environment. A clearer identity of the various elements in the package, including the land use plan, should allow citizens to focus their participation and legal procedures on the right policy instrument: the overall package of measures, the land use plan or another policy instrument. As a consequence, a legal procedure against a land use plan should be limited to the spatial aspects and especially the spatial aspects for the realization of which a building permit is necessary. Disagreement about non-spatial aspects or about spatial aspects that don't need a building permit should not be ventilated in procedures about land use plans.

When providing the right societal and political climate, the 'implementation and land use plan-crocodiles' will certainly survive. But, just like all living creatures, also land use plans themselves should adapt a little to the climate to survive. The following months, the research project in progress (mentioned in paragraph 2) will tackle this question by comparing the situation in Flanders with the way in which other European regions deal with the relation between land use plans and other (sectoral) policy ambitions: the Brussels Capital Region in Belgium, the Netherlands, Germany, France and Finland. Except for Brussels, the drawing up of land use plans is for instance limited to the local, municipal level what makes land use plans less prominent as a planning instrument. In that case, instruments and decisions at a more strategic level come to the fore for 'institutionalizing' the outcome of planning processes in a way that is perhaps more compatible with the contemporary societal and political climate characterized by networking, process management, mediation and participation.

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