



DECEMBER 2014

MANAGING SURPLUS GOVERNMENT REAL ESTATE

BALANCING PUBLIC INTEREST AND FINANCIAL GAIN

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ADVICE



MANAGING SURPLUS GOVERNMENT REAL ESTATE: BALANCING PUBLIC INTEREST AND FINANCIAL GAIN

1

1.1 Context and request for advice

Context

The Dutch government uses a great deal of land and many buildings to carry out its tasks. A shrinking government and increasing space efficiency means that much of this property will no longer be needed. The amount of surplus property that the national government is disposing of is substantial and will magnify the existing problems of empty offices, shops and public facilities. These vacancy rates have grown sharply in recent years, and this has implications for the ability of the national government to dispose of its property.

A sense of urgency

The national government is a major player in the property market. Between now and 2020, 3.5 million square metres of gross floor area (GFA) will become surplus. The abandonment of all this property will affect the spatial and economic quality of many areas.

Over the next few years, almost 1 million square metres of national government offices will be disposed of, about 700,000 square metres of which is rented and 300,000 square metres owned. In addition to this, 2.5 million square metres GFA of the national government's buildings will become surplus – 1.2 million square metres of special-use complexes and 1.3 million square metres of military buildings (Ministerie van BZK, 2013).

The Government wishes to strengthen the link between national government real estate management and other national policies. It has set out plans for doing this in the 2014 national government property portfolio strategy (*Rijksvastgoedportefeuillestrategie*, RVPS) published at the end of 2013 (Ministerie van BZK, 2013). Given the diversity of policy aims at the national level and the trend of shifting more and more tasks and responsibilities to regional and local governments, strengthening this link is no easy task. However, as spatial planning has already been devolved to provinces and municipalities to a large degree, there are few national objectives to speak of in this policy area.

At the same time, national government agencies are in the process of reorganisation. On 1 July 2014, four of the nine real estate management

agencies were merged to form the Central Government Real Estate Agency (*Rijksvastgoedbedrijf*, RVB). This created a major player in the Dutch real estate market.

RVPS 2014

The national government real estate portfolio strategy (RVPS) was adopted by the Council of Ministers (Cabinet) on 6 December 2013 with the aim of strengthening the role of policy in the management of national government real estate. To this end a dual mission statement has been adopted: to achieve higher social as well as financial returns. The RVPS outlines an overall strategy and general principles for managing national government real estate and is updated periodically.

Request for advice

Against the backdrop sketched out above the Minister of Housing and the Central Government Sector, also on behalf of the Minister of Infrastructure and the Environment, asked the Council for the Environment and Infrastructure (*Raad voor de leefomgeving en infrastructuur*, Rli) for advice on the best way for policy to guide the choices that need to be made on national government real estate. After studying the issue, the Council decided to orient its advice primarily to the question of what should be done with buildings (whether owned or rented) when they lose their current use, as this matter has the greatest urgency. These holdings include office space and special-use property and their grounds, such as prisons, military complexes and the like. This advice does not address the unbuilt land in the national government's possession. Partly in consultation with the chair of the Interdepartmental Committee for National Government Real Estate (*Interdepartementale Commissie Rijksvastgoed*, ICRV), three aspects of the disposition operation were selected for more in-depth examination: the general principles, the question of how to work towards the public interest and the related organisational matters.

1.2 Main messages of the advisory report

The main messages of this advice are presented below and will be elaborated in the following chapters.

Policy control over national government real estate

The Council shares the Government's ambition, articulated in the RVPS, of strengthening policy control over real estate management. The Council makes a distinction between policy on national government real estate and other national policies. This advice is directed primarily at the former.

General principles

In the Council's view, national government real estate management should be based on a few general principles. The Council wishes to draw attention to the way in which national government exercises its public and private responsibilities and how the interdependencies between governments are handled. Other principles are the desired level of transparency in decision-making, the ability of the national government to lead by example and its role in urban development.

The relationship between national government real estate management and other national policies

The Council recommends that new national policies which have a significant impact on national government real estate contain a section dealing specifically with the implications for real estate. This should spell out what effects the new policy will have on national government real estate (and, in turn, on society) and include these concerns in the policy decision. At this stage it is important not to assume maximum financial returns beforehand. The potential costs or gains of new policies in relation to real estate should, in the Council's view, be the responsibility of the department in question. The Council sees no need to reconsider established policy decisions should problems with disposition arise. The Council sees even less reason to refine or elaborate current policy frameworks to bring them more into line with national government real estate management decisions. In order to strengthen the link between national real estate management and other national policies it is important to strengthen interaction in the ICRV between government departments and agencies with real estate holdings.

Expanding the scope of policy considerations in national government real estate management

The Council observes that using the public interest as a guiding principle has implications for how decisions are taken on national government real estate. It would be useful to expand the scope of policy deliberation in three areas. First, wide-ranging consideration should be given to the public interest in addition to the purely financial aspects. Second, not only national policies, but also those of regional and local governments should be viewed as sources for identifying public interests. Third, it makes sense, where necessary, to consider the regional portfolio implications when making decisions on individual properties. These three points will be elaborated further.

Public interest as a guiding principle

The Council feels that the national government has a responsibility to the public to manage its surplus real estate in a way that supports the public interests that can be served by the use of that property. Since savings on rent or profits from property sales could also be used to further these or other ends, it is important to include the financial aspects in the decision-making. Financial valuations

should reflect the suitability of the property to accommodate a new use. The real market value (and not, if applicable, the book value or expected value) needs to be included in an assessment that takes the local context into account. This will also entail balancing 'soft' and 'hard' factors and a relatively complex weighing of multiple interests. As the balance between national policy, regional and local government policy, and financial gains will vary from property to property, maximising returns should not always be the dominant consideration from the outset. The national government should understand that disposing of a great deal of property in the short term may have detrimental effects on regional and other real estate markets.

From decisions on individual properties towards a regional portfolio strategy

The Council recommends searching at the regional level for a way to link policy aims (regional and local as well as national) to national and regional real estate portfolios. The Council feels that the regional agendas drawn up within the framework of the Multi-Year Programme for Infrastructure, Spatial Development and Transport (*Meerjarenprogramma Infrastructuur, Ruimte en Transport*, MIRT) can play a key role in this because they contain a description of the shared ambitions of the governments as well as a description of the most important issues in which real estate management could play a role. Because the MIRT excludes properties with purely local significance, the great majority of the portfolio can be dealt with bilaterally (i.e. between the national government and municipalities). Cases involving reuse, conversion or redevelopment will often require parties to work together to explore and evaluate alternatives.

The focus on public interests and the decision-making method advocated by the Council has implications for the organisation of national government agencies that hold property, which must be explicitly oriented towards the region. This orientation is crucial for making national government property management more responsive to public interests. The Council foresees a pivotal role for the new RVB as a link between the national and regional level and between policy and implementation.

1.3 Structure of this advisory report

Chapter 2 describes the general principles underlying the Council's advice. Chapter 3 contains the recommendations of the Council regarding the relationship between national policies in general and national government real estate management. Chapter 4 looks more closely at the public interest as a guiding principle. Finally, Chapter 5 deals with the decision-making architecture.

GENERAL PRINCIPLES FOR NATIONAL GOVERNMENT REAL ESTATE POLICY

2

This chapter formulates a number of general principles which, in the Council's view, provide the framework for the recommendations in this advisory report.

The public and private responsibilities of national government

Depending on one's political inclination, different conclusions can be drawn about the desirability and feasibility of the national government to separate, or indeed combine, its public and private roles in the real estate market. The Council feels that a complete separation of roles is largely an academic question. The reality is that the national government, by virtue of its holdings and the management of its properties, has become a significant player in the real estate market. A separation of interests whereby the national government would assume an exclusively public role would mean selling or transferring all of its property holdings. Selling this amount of property in the short term could inflict severe and lasting damage on the real estate market. Similarly, transferring property to municipalities (which have powers to grant planning permission) has disadvantages beyond the direct financial impact on the national government budget: some may receive a valuable and coveted building, while others could be saddled with unmarketable property and extra costs. Furthermore, this does nothing to resolve the confluence of public and private interests; it merely shifts it to the municipal level. Another way to bring about a separation of roles is to place the RVB as an agency at arm's length from policymaking. However, this is at odds with the desire of the Government (supported by the Council) to have real estate management work in the public interest. For these reasons, the Council adopts the general principle that the public and private roles of national government do not need to be entirely separate.

The interdependence of government authorities

The Council notes that the disposition of national government property has consequences for regional and local governments. This makes intensive consultation between government tiers crucial. In view of the devolution of national policy, spatial planning being a good example, these relationships can no longer be described as hierarchical. Instead, there is a mutual dependence between the different tiers of government, as can be seen when the national government asks a municipality to consider changing the designated use of land or buildings. Of course, the fact remains that it is the national government that decides whether or not to dispose of its own property; regional and local governments have no say in the matter. They can make their wishes known,

but this implies that both parties are proactive towards one another. As a final note, the Council wishes to draw attention to the legal concept of *détournement de pouvoir*, or abuse of power.¹ It is inappropriate for the national government to pressure a municipality to change a designated use just because it will benefit financially from this.

Transparency of decision-making

The Council believes that balancing public and private roles in the property market requires transparency in the decision-making on national government property. Considering that much real estate information is potentially market-sensitive, this transparency cannot always be provided at the start of the decision-making process. However, it will surely need to be accounted for afterwards.

The national government as a launching customer

The Council stresses that, even at times when disposition of surplus property has a high priority, it is still important to lead by example, for example by renovating or retrofitting property for reuse, or even in the selection of properties to dispose of. In this regard, the national government can act as a launching customer. National government properties often have a special cultural or social significance by virtue of a listed status, their location within the urban fabric, distinctive architecture or innovative construction. The efforts of the central government real estate agencies and the efforts of successive Chief Government Architects have produced inspiring developments at many locations, including the reuse and transformation of property. These are exemplary cases of good commissioning practice by the national government (Opdrachtgeverforum.nl, 2014).

Launching customer

The government is in a position to stimulate the market to innovate by serving as an example. As a launching customer (the first big client), the government can ensure that best practice becomes common practice. This can happen when national government explicitly demands innovative solutions when contracting out work.

Real estate holdings can also contribute to the corporate identity of the national government. Government buildings such as law courts, museums and ministries have a cultural significance and often function as landmarks in the urban fabric (such as the Rijkswaterstaat office tower in Westraven near Utrecht). The Council wishes to draw attention to the continued importance of such carriers of identity.

¹ An administrative authority shall not use the power to make an order for a purpose other than that for which it was conferred (art. 3:3 Awb).

Be cautious about initiating urban development

The Council welcomes the national government as an active *participant* in urban development. A property management decision by the national government can provide a boost to a development project, for example by locating a law court at the Kop van Zuid in Rotterdam or near Den Bosch's railway station.

The Council feels that the national government should be more cautious when it comes to leading development. The principle should be: leave it to the market, unless circumstances dictate otherwise. Since the founding of the Joint State Development Agency (Gemeenschappelijk Ontwikkelingsbedrijf, GOB) in 2005 and the State Property and Development Agency (Rijksvastgoed- en ontwikkelingsbedrijf, RVOB) in 2009, the national government has taken a leading role in urban development. Private-sector parties in particular have countered that it is not the government's job to turn a profit and, moreover, that it has insufficient knowledge and insight to operate effectively on the market. Despite this, the national government can still sometimes play an active role. In practice, this is confined to situations where the risks are too great for the market to handle, such as poor locations, serious land contamination and/or neglect.

Take existing legislation and regulations as a given

A brief survey carried out by the Council found no need to amend existing legislation and regulations at this time. Furthermore, many pertinent regulations are already being overhauled in the Environment and Planning Act (*Omgevingswet*). This law harmonises legislation and grants regional and local governments more latitude in decision-making. There is already a great deal of debate on how to interpret regulations on state aid, also with respect to the disposition of national government property. There are no obvious positions on this matter and the Council does not wish to embroil itself in this debate in this advisory report.

THE RELATIONSHIP BETWEEN NATIONAL GOVERNMENT REAL ESTATE MANAGEMENT AND OTHER NATIONAL POLICIES

3

In brief, the Council's advice is:

- Include a real estate statement in new proposals for national policy, and do not assume maximum returns beforehand.
- Problems with disposition do not give cause to go back on policy decisions.
- Intensify interaction between policy departments and property-holding agencies.
- Show restraint about building new national government buildings.
- Further elaboration of national government policy is unnecessary.

Include a real estate statement in new policy proposals, and do not assume maximum returns

The national government sometimes adopts policies that significantly impact its property portfolio, such as military cutbacks, concentration of national government services and mergers of tax offices. The Council proposes that in such cases the policy decision should be accompanied by a real estate statement. This statement should illustrate what effects the proposed decision would have on national government real estate – and by extension, on society – so that these considerations can be included in the decision-making process. The Council also advises against factoring in maximum returns from the sale of property in this real estate statement. Following the example of the rules governing real estate acquisition, the Council suggests assuming a maximum of 60% of the assessed market value.² Judging from the large volume of unoccupied property in the Netherlands, ex-ante calculations of returns have proven overoptimistic in practice. Moreover, this leads to an undesirable fixation on profits when disposing of national government property, while what is often needed is a more realistic appraisal based on local conditions and circumstances. The Council also feels that the relevant policy departments should benefit from any financial gains, but also have to bear any losses, resulting from new policies they implement.³

The Council recommends discussing and coordinating the real estate statements in the ICRV before taking a policy decision. It is important that the spatial, financial, economic and societal effects of the proposed policy are taken into

² The regulation in question (Kader Overname Rijksvastgoed, KORV), included as an appendix to the RVPS, contains rules on how to settle accounts between the RVB and other government departments when selling and transferring real estate.

³ By new policy the Council does not mean new safety or environmental standards or building codes.

consideration. If necessary, each of the parties represented in the ICRV can consult their political leadership.

Problems with disposition of real estate do not give cause to go back on policy decisions

Once everything has been duly considered and a policy decision taken, this should not be called into question if problems arise with respect to the disposal of property. In view of the impact on the real estate market, the quality of a particular area or other considerations, it might be necessary to consider options such as postponing the disposition, allowing temporary use of empty buildings, renting versus owning and regional differentiation. In addition, the social consequences of a new policy may seem very modest at the level of individual properties, but still have a significant cumulative effect. An example of this is the effect on regional employment of concentrating government agencies in a few cities: many cities and regions have seen a rise in vacant office space as a result. The closure of several military bases in the province of Gelderland has, directly and indirectly, led to job losses, which has had a detrimental effect on the province's economy. The announced departure of tax offices from Emmen and Venlo has in the eyes of the Dutch House of Representatives had too great an impact on the local economy (Tweede Kamer, 2012). The RVB can work with the Dutch tax authority to help to reveal the consequences for national government property and check whether the real estate statement advocated by the Council is based on accurate information.

Intensify interaction between policy and property-holding agencies

In connection with the previous recommendation, the Council recommends intensifying interaction between policy departments and property-holding agencies within the national government. This is a prerequisite for strengthening the link between national government real estate management and other national policies. The Council observes that the question of what to do with national government real estate assets is only considered when property runs the risk of becoming surplus. In other words, 'We have property about to become vacant, so what should we do with it?' The Council suggests turning this around: 'We have national policy aims, so how can we use our property to support these ends?'

Show restraint about new real estate development

Considering the enormous amount of vacant property in the Netherlands, the national government should be very cautious about initiating new development projects or stimulating private parties to build. The sustainable urbanisation procedure (*ladder voor duurzame verstedelijking*), pursuant to article 3.1.6, section 2 of the Spatial Planning Decree, must serve as a guideline in this regard. The Council feels that the initial position should be no publicly funded new building unless there is a compelling case for it. The national government's regional portfolio should first be scrutinised to see if it contains suitable properties, or ones which can be made suitable. In view of the high

vacancy levels, the Council recommends extending the search beyond national government real estate to property owned by regional and local governments and the private sector. If need be, a national government agency could be located somewhere else in the region than the preferred location if a suitable building happens to be available, or will become available in the short term (bearing in mind aspects such as accessibility, amenities, etc.). As the Minister of Housing and the Central Government Sector recently announced to the House of Representatives, 'No new square metres, but different square metres.' The norm is no longer new construction, but transformation and reuse (Tweede Kamer, 2014).

Further elaboration of national government policy unnecessary

The Council feels that refining national policy to bring it more in line with national government real estate management is at odds with the recently completed devolution and deregulation operations. More policy is no answer to the question posed by the ministers about how policy ambitions at the national level can be linked to concrete property management decisions. The Council's preferred approach is one in which policies of regional and local governments are included in the decision-making on national government property. This means that no further elaboration is needed of national policies, such as the National Policy Strategy for Infrastructure and Spatial Planning (Ministerie van Infrastructuur en Milieu [IenM], 2012).

PUBLIC INTEREST AS A GUIDING PRINCIPLE

4

In brief, the Council's advice is:

- Use public interest as a guiding principle in national government real estate management.
- Use regional and local government policies as well as national government policies to determine public interests.
- Make a realistic estimate of the financial returns from the disposition of real estate assets.
- Balance public interests and financial gain within the local context.

In this chapter, the Council examines in more detail the various considerations that need to be taken on board in national government real estate management. Section 4.1 deals with the identification and use of public interests. Section 4.2 goes into greater detail about the valuation that needs to be made. Finally, section 4.3 focusses on how to balance public interests and financial gains.

4.1 Use policies of regional and local governments as well as the national government to determine public interest

Give priority to the public interest

The Council feels that the national government, as part of its responsibility to the public, should let its property management be guided by the public interest. Financial gain from the sale of national government real estate can also be used to the same ends.

In the RVPS 2014, the Government attaches importance to working towards the public interest ('social return'). In the Council's view, this ambition is not adequately addressed in the RVPS. The letter of the Minister of Housing and the Central Government Sector to the House of Representatives in August 2014 on the government's efforts to dispose of and transform national government real estate includes some further pointers on how this can be achieved (Tweede Kamer, 2014).

Government efforts to dispose of and transform national government property

In a letter to the House of Representatives, the Minister of Housing and the Central Government Sector discussed an adjustment to the sales method to accommodate creative solutions originating from the market as much as possible and provide for agreements with municipalities on how to deal with specific properties. The Minister feels the key issue should be the potential properties have for the surrounding area. An appendix to the letter explains the approach to the transformation of national government property. Each property will be subject to a broad valuation and appraisal, as a result of which it will be placed in one of the following categories: (1) standard sale, (2) retention and temporary use, (3) change of designated use (planning permission) and sale, (4) transformation and (5) urban development. Demolition is not a sales strategy, but can result from transformation or urban development (Tweede Kamer, 2014).

The use of the terms ‘financial return’ and ‘social return’ in the RVPS can create confusion because they have different meanings in the maintenance and disposition phases. In this advisory report, which focusses on property that has become redundant, the Council prefers to use the terms *public interest* (the degree to which decisions to dispose of national government real estate contribute to the policy aims of national, regional and local governments) and *financial gains* (if the disposition of property generates income).

National government real estate management can contribute to the public interest and have a major impact on the spatial quality of places. At the same time, it can have detrimental effects on real estate markets at the regional and other levels (Stroink, 2014). A well-functioning market is one of the public interests that need to be taken on board when making decisions. Each decision should be made on a case-by-case basis: one region may have a lack of student accommodation, while another may need accommodation for an international research institute. Taking office property off the market makes more sense in declining regions than in those with growing economies. A portfolio strategy for national government real estate cannot be exclusively based on motives of efficiency, operational management and revenue models.

Examples of using national government real estate to achieve policy goals

- Investments by the national government in the Rijksmuseum boosts Amsterdam’s tourism sector and, in turn, the international competitiveness of the Netherlands (one of the stated objectives of the National Policy Strategy for Infrastructure and Spatial Planning).
- Taking national government offices off the market (by changing designated uses, transformation and occasionally demolition) aids recovery of the office market.
- The decision by the national government to build the new courthouse in Den Bosch was pivotal to the successful renewal of the Paleiskwartier near the rail station.

The same applies to the development of the Kop van Zuid in Rotterdam.

- The conversion of the customs building on the Westzeedijk in Rotterdam into student accommodation has reduced the shortage of student accommodation.

Use national, regional and local policies to identify and work towards the public interest

The principle that the national government, as a public entity, should act in the public interest immediately raises the question of which public interest should be served. The Council proposes confining the search for public interests to current national, regional and local policy objectives. Of course, the situation on the ground is also important, and there may be initiatives by non-governmental parties that require attention, but the Council feels that it is the government's responsibility to translate these factors into policy, especially if such initiatives lead to a different use. Which national and regional policy aims are most relevant for guiding decisions on national government real estate will vary from one situation to the other. Which combination contributes the most to the public interest will depend on the local context. In Chapter 5 the Council examines in more detail the consequences this has for decision-making.

The Council feels that it is important to include regional and local policies in the decision-making on national government real estate, not only because national policy is increasingly being formulated in general terms and many responsibilities have been devolved, but also because decisions on national government property affect the ability of regional and local governments to achieve their own policy goals.

Regional and local governments need to be proactive

The above means that one should also expect regional and local governments to take an active part in real estate management. It is important that municipalities work together – in some cases under supervision of the province – to develop a strategic vision on their property holdings. Many regions still do not have this, but rising vacancy rates have made a proactive attitude all the more urgent.

Describe in the RVPS the process by which relevant national policy aims can be identified and weighed

The RVPS gives direction to national government real estate management. The request for advice to the Council included the identification of national policies that could benefit from the strategic use of national government property. These policies include national spatial, economic, social and cultural policies. They are diverse, abstract and constantly changing. Moreover, they are only meaningful in a particular region or locality, or in the context of a specific case. It therefore makes little sense to make an inventory of policy goals beforehand. The urban agenda (*Agenda Stad*) is an important new policy programme in this

regard. The Council does not advocate including a non-exhaustive list of policy objectives in the next RVPS. A better idea is to have the RVPS include a procedure for identifying national policies relevant to specific regions or localities for consideration alongside regional and local policies. This point will be elaborated further in Chapter 5.

4.2 Value property on the basis of suitability for reuse

National government real estate represents a substantial financial value, but this is only marginally included in the national government budget, if at all.⁴ In addition, the financial gains from the sale of property or savings from renting less space can be diverted towards budget cuts and/or other policy goals. Therefore, when national government property becomes redundant, the possible financial consequences of this should be considered when deciding on the future of this property. This section contains a number of recommendations regarding valuation, but the Council first wishes to point out that if the national government is too optimistic in its initial estimates of the returns from the sale of its property (expected value), this can frustrate talks between government authorities about the potential contribution to be made by real estate assets to policy goals.

The valuation of property depends first of all on the purpose and method of valuation as well as the question of whether the property is readily marketable. When selling marketable property, the current market value (or real private sales value) can simply be determined on the basis of a sales valuation. Unmarketable property is more difficult as no market value can be determined from a comparison with similar transactions, either because no comparable properties exist or because not enough transactions exist that can be used as references. For both marketable and unmarketable property, there may be a big gap between the market value and the book value. The Council feels that decisions on the disposal of national government real estate should be based on a realistic estimate of the sales price rather than a possible book value or previously recorded expected values.

Potential new uses will be sought for unmarketable property, sometimes following physical transformation or a change in designated use. Planning permission is often needed for reuse – especially if the current designated use is very restrictive, such as a military base or a prison – and depends on the willingness of the municipality to cooperate. The new designated use may have a

4 Different government agencies use different book-value systems for their property holdings. The national government wishes to replace this with a single replacement-value system. In 2015, the Court of Audit (Algemene Rekenkamer) will publish its report on the valuation of national government real estate.

major influence on the final sales price, and the result of the negotiation process cannot be predicted beforehand. Neither the national government as the selling party nor the potential buyers should cling to a new use that would be most beneficial to them (a highest and best use valuation), but rather it would be better to first complete the planning process with all the involved parties before having the property valued.

Include public interests in the terms and conditions of auctions or tenders

In view of the fact that national, regional and local policies are taken as the point of departure for the decision-making on reuse and that this may lead to municipal planning permission for a change of use, it does not make much sense to just auction off property or put it out to tender. First, talks with the municipality need to take place about the scope of the new use. If property is sold to a private party without planning permission for a desired future use, it will be harder for the government authorities involved to have that property serve the public interest. It is advisable to consult the market in a way that allows for the active promotion of the public interest.

Take the intended use as a basis for determining who pays for the loss or gains from the profit

Estimations of profit or loss play a major role in negotiations on the reuse of property or changing designated uses. According to the Council, two situations are possible: a) the new use fits within the existing designated use, or b) planning permission (change of use) is necessary for the new use.

If no change is needed (a), it makes sense that the owner – for example the national government – takes the market price as a basis for the selling price. If a party other than the national government wants the property for a less profitable use, they will have to make up the difference themselves. In other words, if the value of a property is diminished by a public interest pursued by someone other than the national government, the national government should not – as the selling party – be penalised for this.

In cases where planning permission is needed to accommodate a new use (b), the new use can have either a higher or lower value than the existing use. In the first case, the profit (the difference in sales value between the current and new use) accrues to the national government as seller. A municipality can also place conditions on the planning permission, such as a monetary contribution for amenities like infrastructure. The second scenario is that the new use has a lower market value than the current use. In this case, the national government, as property owner, has the right to demand compensation if the municipality forces the issue. In practice, the municipality will include these costs in its negotiations with the party seeking permission for the less valuable use (unless that party is the municipality itself).

Sometimes lower returns have to be accepted

Urban development processes are often initiated to give real estate an appropriate new use. This is especially the case for unmarketable properties in regions with high vacancy rates. The development value can be disappointing, particularly in view of possible book values or previously stated expected values. The Council feels that the national government, just like private-sector owners, will need to accept lower returns.⁵

4.3 Balance public interests and financial gain within the local context

Potential financial gains play a part in the wider issue of how national government property dealings can contribute to the public interest. It is important to avoid a situation in which decisions are taken on the basis of a single policy area or portfolio and other interests are neglected. This is often a matter for elected officials.

The Council views the balancing act between public interests and financial gains as the outcome of a set of local circumstances and interests, usually preceded by an interactive process of sketching out and calculating alternatives. It is important to get a clear picture of all the factors in this process. The balancing of public interests and financial gains is one of weighing 'soft' and 'hard' values. Because this has proven to be a great challenge in practice, attempts are often made to express all factors in terms of objective criteria. This explains the search for uniform measures and the development of tools such as cost-benefit analysis (*maatschappelijke kosten-batenanalyse* in the Netherlands), best value procurement, most economically advantageous tender (MEAT) and social return on investment. All these tools have their worth, but also the drawback that the outcome is largely determined by assumptions made at the outset. The Council views the use of such tools primarily as a means to weigh up different alternatives at the end of a local process. If such tools are applied, it is advisable to increase the weight of social added value.

Urban development determines the choice of future use

The added value of a property for the quality of an area can lie in the preservation of an existing use, conversion and reuse and sometimes even through demolition (Tweede Kamer, 2014; Ministerie van BZK, 2014a). Which of these options is chosen will often be determined within the course of an urban development process in which various social interests are compared. A watertight land servicing agreement is a precondition for taking decisions in a particular development area. This is ultimately a political decision. The national government should also be aware of the common practice in urban development to agree that any financial gains are reinvested in the area itself.

⁵ Any profit or loss resulting from the sale of property with respect to the prevailing book value should in principle be borne by the owner.

FROM INDIVIDUAL PROPERTY DECISIONS TO A REGIONAL PORTFOLIO STRATEGY

5

In brief, the Council's advice is:

- Confer with municipalities at an early stage.
- Use MIRT meetings to close agreements on regional real estate portfolios.
- Align decision-making on the national government real estate portfolio with regional issues.

In practice, most decisions on surplus national government real estate are taken in consultation with municipalities. This makes sense. As a property owner, the national government must confer with the municipality, which, from the perspective of its own public responsibility, may need to decide whether or not to grant planning permission for a change of use. It is also possible that property decisions can make a positive contribution to collective policy ambitions identified by the governments in the regional MIRT area agendas. This is why the Council is in favour of critically reviewing real estate portfolios at all levels of government against the policy ambitions in the area agendas. This will allow for the timely identification of properties that could have significance beyond the local level.

5.1 Confer with municipalities at an early stage

The national government should engage municipalities proactively

The Council advises the national government to be proactive in notifying the relevant municipalities when its buildings or land holdings become redundant. From the point of view of spatial quality and development, it is important to discuss well in advance how surplus national government property can contribute to municipal policy aims. Giving municipalities ample warning that national government property will become surplus will give them time to formulate plans for the future of that property in its local context. If a property is of more than local significance, this may necessitate discussions at higher levels (see section 5.2). In any case, it is a good idea to view real estate from the perspective of a cohesive regional portfolio.

In many municipalities, national government real estate holdings are limited to a few small scattered properties. Consultation between the municipality and national government will always be required if the municipality, in the execution of its public responsibilities, needs to consider whether to change

the designated use of a government building. Even when this is not the case, discussing the sale of large properties with the municipality can be of value as the transfer of ownership and occupants can contribute to good urban planning in a municipality. It will often be necessary for the parties involved to discuss and evaluate alternatives before an appropriate new use is found.

Make agreements about the strategic use of property

The Council feels that it is important to develop a coherent strategy with municipalities and regions where a great deal of national government real estate will change hands. Such agreements should preferably be set down in a legal partnership agreement or contract. Such an agreement has been made with the municipality of The Hague, where many national government offices are being vacated. These agreements may cover matters such as the timing of the disposition, planning permission for reuse, temporary uses and especially a common strategy to minimise the negative social impacts in the area concerned. They could also include a decision to either vacate rented property or sell government-owned property.

Partnership agreement with The Hague

In 2013, the municipality of The Hague signed an agreement with the national government on a common strategy to tackle the problems of high vacancy levels. Both parties pledged to work together to minimise any adverse effects on the office and labour markets (Gemeente Den Haag & de Staat der Nederlanden, 2013). The aim of the partnership agreement is a common strategy to minimise structural vacancy and financial loss while preserving liveability and environmental quality in the city. As public bodies, the two parties will adopt an integrated approach that follows the principles of transparency, open government, urban quality, economic vitality, market competition and minimisation of financial losses. For example, the partnership agreement between the national government and the municipality of The Hague stipulates that a phased approach will be taken, a task force set up and special teams assigned for the largest and most important surplus properties.

Moreover, by making such agreements, the political representatives are directly involved in the decision-making and can be held politically accountable. This promotes transparency and democratic legitimacy.

Package deals

The Council is in principle in favour of package deals to allow profitable and unprofitable locations to be evened out. Like the common practice of municipalities negotiating with property owners (e.g. 'we can offer this piece of land if you vacate these premises'), it can also be expedient for governments to enter

into property exchanges of varying degrees of complexity. Package deals can also take place at a regional level.

5.2 Use MIRT meetings to close agreements on regional real estate portfolios

The Council recommends looking for opportunities at the regional level to link the policy aims of national, regional and local governments to national and regional real estate portfolios. In this sense, the Council agrees with the idea of using MIRT meetings as a vehicle for discussions and coordination between the various government authorities. Opinions may vary about the MIRT process, but the Council has yet to find a comparable coordination structure which is based on common agendas, embedded in administrative practice and can guarantee transparency and legitimacy. Since the inclusion of spatial planning, the MIRT programme seeks a broader and more integrated approach than when the focus was restricted to infrastructure. Moreover, the project to renew the MIRT programme aims to remove a number of concerns about how the MIRT currently functions. The Council feels that such change is necessary if the MIRT is to play the role described above regarding national government real estate. That being said, not all regional agreements have to be made within the framework of the MIRT's consultative process (BO MIRT). Sometimes a referral to existing talks between the parties in the affected area can suffice.

MIRT consultation in Noord-Brabant

The province of Noord-Brabant is a good example of a region where national government real estate is already being included in the MIRT process. An agreement was made to discuss any bottlenecks in the MIRT consultative process. The region views surplus national government real estate not only as a threat in terms of oversupply, but also as an opportunity. For this reason, the Crown's Commissioner set up a taskforce to actively lobby companies and organisations which fit the regional profile of BrabantStad (a network of the five largest cities in Noord-Brabant – Breda, Eindhoven, Helmond, Den Bosch, Tilburg – and the province) and that could be accommodated in surplus national government buildings.

Include a real estate statement on national, regional and local property in the MIRT area agendas

The Council recommends including a real estate statement in all area agendas. This statement should take stock of how the commonly identified ambitions in the area can be served by property held by the regional and local governments as well as the national government.

The MIRT area agendas contain an integrated vision shared by the respective governments on the future development of the region and the main development tasks. The area agendas are adopted in the MIRT consultative process and serve as a means to prioritise development programmes and projects and the different tasks of national and regional governments. Including a real estate statement in the area agendas will ensure that property is given due consideration in horizontal (between policy sectors) and vertical (between government tiers) policy coordination. The outcome of the MIRT consultative process is reported by letter to the House of Representatives and discussed during the parliamentary committee meeting on the MIRT. Including the real estate statement of the area agendas in these discussions gives the agreements on national government real estate management democratic legitimacy and transparency. The advantage of linking decision-making on national government real estate to MIRT is that this means the MIRT's regulatory framework can be used, which includes a role for cost-benefit analyses. This tool is used in the exploratory phase of MIRT to assess the viability and necessity of various project alternatives.

By comparing provincial real estate plans with the area agendas, national government properties can be selected that can potentially contribute to the ambitions in the area agendas. In the process, many national government properties will pass through the 'area agenda filter'. No further regional agreements will need to be made for these properties and, as described in the previous section, coordination between the national government and individual municipalities will suffice in such cases.

Convert sector master plans into provincial plans for national government real estate

The Council recommends, as a regional elaboration of the RVPS, converting the various national government real estate master plans (e.g. which now exist for each province on offices, military complexes and prisons) into comprehensive provincial plans. This will allow all national government real estate to be incorporated into the MIRT decision-making process and create a clear picture of the tenure (ownership/rental) of the national government in each region. This bundling of information will enable a broad-based assessment and deployment of national government real estate to support not only national but also regional and local policy aims.

If the master plans are broadened to include all real estate held by the national government, rental properties should also be included. The Council does not support the current strategy of accelerating the termination of leases without first analysing what effects this would have on regional real estate markets. From a portfolio perspective, holding on to a strategic rental property can be preferable to retaining an owned property.

The region will also need to develop a vacancy strategy

Regional governments need to get their policies in order. Most still have no common strategy for vacant government real estate in the region. In lieu of a strong legal instrument for regional coordination between municipalities, the Council feels that the province should play a part without taking over the role of municipalities. Provinces already play a coordinating role in the MIRT process.

Property-holding national government agencies should orient themselves to the region

The Council recommends that the property-holding national government agencies take a regional approach and build an organisational bridge between national and regional policy and decision-making on government property. It is important that they maintain close contact with the regions and build region-specific knowledge and networks. Given the desire to link up to the MIRT area agendas, it would make sense to use the same regional divisions.

5.3 Align decision-making on the national government real estate portfolio with regional issues

At the national level, the question is how decisions on cohesive national government real estate portfolios can contribute to national, regional and local government policy goals. These are assessed against the framework of the RVPS, with an important role for the Interdepartmental Committee for National Government Real Estate (ICRV), as an interdepartmental coordination unit, in which the most relevant departments are represented at directorate-general level.

Update the RVPS periodically

The Council feels that the next RVPS should pay explicit attention to the coordination between the policy and property-holding departments. The RVPS must clearly describe how national policy, operational management and implementation are consistent within and across the various government departments and agencies. The RVPS also should contain clear procedural rules for decision-making on national government real estate, and how the use of property can contribute to the realisation of national, regional and local policies.

Incorporate the public interest in instructions to property-holding agencies
The Council feels that it is important that the mission statement of the RVB and other property-holding agencies should explicitly include the pursuit of the public interest. The RVB's current mission statement concentrates on national government aims and does not explicitly include those of regional and local governments: 'the RVB uses real estate to achieve national policy goals in cooperation with and in consideration of its surroundings' (Rijksvastgoedbedrijf. nl, 2014).

Position the RVB as a link between policy and implementation

In the opinion of the Council, the RVB plays a role in both policymaking and implementation. Because all policy departments are highly focussed on their own policy area and their own political leadership, it makes sense that the RVB should handle the preparation of interdepartmental coordination in the ICRV. The Council is of the opinion that in the interests of optimising the portfolio strategy, the RVB should take on the organisational aspects of national government policy on office space. This means that the policy departments will have to allow the RVB to use its real estate know-how to find a sensible and appropriate way to put that policy into operation. As the RVB will be carrying out politically sanctioned policy, it will need to be able to switch between national policy departments and regions. For this reason, the Council opposes placing the RVB at arm's length from policy as an implementation agency.

Now that four of the nine national real estate agencies have merged to form the RVB, the question is whether the other property-holding agencies should also be incorporated within the RVB. The Council views the current merger as a complex operation and is a proponent of first consolidating the RVB. Further expansion should only be considered when synergy effects have been demonstrated.

Stimulate creative thinking on surplus national government real estate

The Council advocates strengthening and pooling creative capacity at the RVB to find new uses for surplus property. The RVB has already amassed a great deal of knowledge and experience on this topic and the 'Making Projects' design studio⁶ set up by the Ministry of Infrastructure and the Environment identified considerable demand for this (Vastgoedvanhetrijk.nl, 2014a). The quality of the area as a whole can be raised by taking the time and effort to explore development possibilities for surplus government buildings with the relevant local and/or regional parties (College van Rijksadviseurs, 2014; Rietveld, 2014).

5.4 Implementation

This section provides a summary of several previously identified procedural requirements to ensure effective implementation of the portfolio strategy for national government real estate.

⁶ This studio investigated how the sale or reuse of government real estate can produce better financial and social returns if done in conjunction with political ambitions and a spatial vision that includes the entire supply of real estate in the area and which links up to other policy goals and ambitions of the national and regional government (Stimuleringsfonds.nl, 2014).

The national government real estate portfolio strategy (RVPS)

The RVPS should contain the general principles, conditions and procedural agreements needed to manage national government real estate in support of government policies:

- These should be updated every couple of years and adopted by the Government.
- The next RVPS should contain explicit procedural agreements on:
 - The coordination between policy departments and real estate agencies and the role that the ICRV and RVB should play in this.
 - The resulting link with the MIRT process.
- New national government policy with substantial consequences for real estate should contain a real estate statement.

Integrated national government real estate plans for the eight MIRT regions

The national government should ensure that integrated national government real estate plans exist for the eight MIRT regions:

- Expand the current master plans for each MIRT region into integrated national government real estate plans that include rented property.
- Discuss these integrated national government real estate plans in the MIRT consultative process in each region against the backdrop of the MIRT area agendas.
- The national government explicitly should invite the regions to develop a common strategy for their property.
- Use the MIRT area agendas to identify property that can contribute to regional ambitions. National government property with no regional significance can be dealt with in bilateral discussions between the national government and municipalities.
- The national government should structure the property-holding agencies to reflect the MIRT regions.

Agreements/contracts with municipalities

Agreements or contracts should be drawn up with municipalities and regions where a substantial amount of national government real estate will become surplus. These will deal with the scheduling of disposition, reuse, temporary use and taking a coordinated approach to minimising the negative social impacts in the area.

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