

Land Policy Strategies – Different Approaches Examined

Marije LOUWSMA, Sanne HOLTSLAG-BROEKHOF, the Netherlands

Key words: Governance, land policy, participation

SUMMARY

Governments can follow several land policy strategies to realize location-bound aims as described in spatial policy. In this paper we examine the characteristics of three different strategies related to land: land purchase, land consolidation (mandatory and voluntary) and expropriation. These strategies are applied to a representative case in the rural area that implements several spatial policy aims. The effects of each strategy are explored and evaluated in terms of their efficiency, effectiveness, transparency and democracy. Efficiency relates the outcome to the effort. Effectiveness assesses the results against the planning objectives. Transparency refers to the openness and clearness of the followed procedure for involved citizens. Democracy refers to the level of public participation, i.e. the roles and responsibilities of the citizens and the government. Land purchase is based on voluntary sale of land. Therefore land purchase scores high on democracy, but scores low on effectiveness as it is unsure whether the needed land can be bought. The voluntary form of land consolidation scores high on efficiency and democracy, but scores low on effectiveness for the same reason as land purchase. The mandatory form of land consolidation scores high on effectiveness and transparency, but scores lower on efficiency. Expropriation scores high on transparency and effectiveness as the procedure is clear and all location-bound aims can be realized, but scores low on democracy as the affected citizens have little power over their land. Drawing on the findings, we reflect on the choice for land policy strategies and their pro's and con's to implement spatial policy in relation to the planning and policy context.

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1. INTRODUCTION

Spatial plans include by definition location-bound aims and regulations. These aims range from expanding residential areas, creating new industrial zones, building roads, protecting nature, to redesigning water courses. Apart from different aims the extent to which these aims are location-bound may vary. Some aims must be realized at a specific location, whereas others can be realized at more locations. The latter creates more flexibility as several options are available during the implementation process.

In a neo-liberal land market, governments have roughly three different strategies related to land to realize location-bound aims: land purchase, land consolidation (mandatory and voluntary) and expropriation. In this paper we examine the characteristics of the three different strategies. Moreover, the effects of each strategy are explored and evaluated in terms of their efficiency, effectiveness, transparency and democracy.

2. LAND POLICY STRATEGIES

2.1 Land purchase

Land purchase is based on a voluntary agreement between two parties on the sale of land. The land owner and the buying party agree, often after some negotiations, on the selling conditions for the land. Governments can operate in the land market like citizens, i.e. as selling or buying party, although some restrictions apply. Regulations in the Netherlands and Europe have to prevent that governments disturb the land market, e.g. by bidding above market prices or by dominating the land market by the large number of land transactions.

Land purchase is a favorable strategy for governments to acquire the land needed for spatial developments. It is pretty straightforward, flexible and voluntary. A drawback of the latter is that negotiations may take a long time and the land owner can withdraw at the last moment.

2.2 Land consolidation

Land consolidation is based on the exchange of land rights among land owners. Several forms of land consolidation exist (Demetriou, 2014). We focus on the two forms as described in the Rural Areas Development Act (2007) that are applied in the Netherlands; (1) formal land consolidation, and (2) voluntary reallocation. Governments mainly use these instruments for a comprehensive area to realize multiple aims, among which improvement of the agricultural sector, nature conservation and restoration, and water management. Governments can have a dual role in land consolidation and reallocation, being both the institution that initiates, and sometimes finances part of the process, *and* being a stakeholder as land owner in the designated area. Just like other stakeholders, the

government aims to have their land allocated at the desired position to develop in accordance with the spatial policy plans.

The formal procedure of land consolidation is described relatively extensive in legislation (Rural Areas Development Act, 2007), contrary to voluntary reallocation. Voluntary reallocation requires only a minimum of three land owners and results are based on voluntary participation of stakeholders. How the process of exchanging land takes shape is up to the involved stakeholders. Therefore, the followed procedures for voluntary reallocation differ from project to project. Smaller projects involve as little as three land owners that arrange everything themselves, while larger projects involve over a hundred land owners. Large projects generally follow a pre-arranged schedule that allows stakeholders to participate actively (Louwsma et al., 2014). The latter is the type and process of voluntary reallocation that governments use. Based on the wishes regarding the new allocation, participants together co-create the reallocation plan. A coordinator and technical expert facilitate the process. Governments participate like other stakeholders, and have to negotiate among participants to realize the proposed aims.

The procedure of formal land consolidation is based on a land use plan that contains the proposed spatial development for a specified area. After approval, stakeholders are asked to register land lease contracts, needed to include the exchange of use rights, and to submit their wishes regarding the new allocation. The government draws the reallocation plan, and stakeholders have the possibility to object to this decision if they disagree with the plan. At last the financial arrangements are published and, again, stakeholders have the possibility to object to this decision.

Governments decide upon formal land consolidation, including the designated area, policy aims to be realized, available budget and planning. The instrument has a compulsory character. Another feature of the instrument is the possibility to apply expropriation as part of land consolidation. When the government does not own enough land needed for the implementation of the plan, and consequently the exchange of land rights alone will not suffice, they can earmark part of the area for expropriation. This area is part of the land consolidation project, but follows another procedure similar to the regular expropriation procedure (section 2.3).

The attitude towards land consolidation among governments is mixed. Nowadays, voluntary reallocation is favored over formal land consolidation because of its voluntary, but yet comprehensive character.

2.3 Expropriation

Expropriation basically means that land is obligatory sold to the government. Contrary to confiscation, land owners get compensated for the expropriated property. Land owners are financially compensated for expropriated land. The procedure for expropriation has a legal basis as described in the expropriation act, which was introduced in the Netherlands in 1851. Expropriation cannot be applied in any situation, but is limited to those situations that involve a public purpose e.g. the construction of a new road, and should always include a full financial compensation for the land owner. This means that the land owner is not only entitled to receive the value of the property but also to receive financial compensation for the economic harm due to the compulsory sale of the property. The public interest is considered to prevail over the private interest of the land owner. First, the government has to inquire if the land owner is willing to sell the land. When both parties

do not come to an agreement, the government starts the administrative procedure by asking the crown (..) to take the decision to expropriate the specified land. After this decision, the judicial procedure starts with the government asking the court to expropriate the land and to determine the compensation. The court also checks if the administrative procedure has been followed correctly.

Generally, because of its compulsory character, expropriation is not preferred by many governments. Expropriation is often seen as a last resort when other strategies on a more voluntary basis have failed. Exemptions can be found in the field of road construction and expanding residential or industrial areas. Economic pressures are high and require a degree of certainty that the land can be at governments' disposal when construction work is planned to start. Although the full process of expropriation can be lengthy, the government can start construction work after an expropriation has been determined in court, which is generally two to three years after the start of the purchase process.

3. CASE

3.1 Introduction N18

We will exemplify the three land policy strategies using the case of the construction of a new road (N18) in the east of the Netherlands. The case is real, but the effect of the strategies is estimated as only one strategy was applied in practice. To show the effects for land consolidation (formal and voluntary) we use not the whole route, but just the southern part.

A bypass for through traffic had to be created to reduce travel time and to improve traffic safety and living standards in two villages (Eibergen and Haaksbergen). The bypass is about 28 kilometers long and is designed for through traffic, which means that intersections are kept to a minimum (Figure 1).

The new bypass affects the land owners on the chosen location directly as the government needs their land for road construction. Apart from that, indirect effects can occur in case the land is used for agriculture. Due to the new road, the old infrastructure network can become fragmented as roads might become disconnected without additional measures. This affects farmers as they have to take a detour to reach distant parcels.



Figure 1 Road design for the bypass (Rijkswaterstaat, 2016)



Figure 2 Route of new road projected on cadastral map

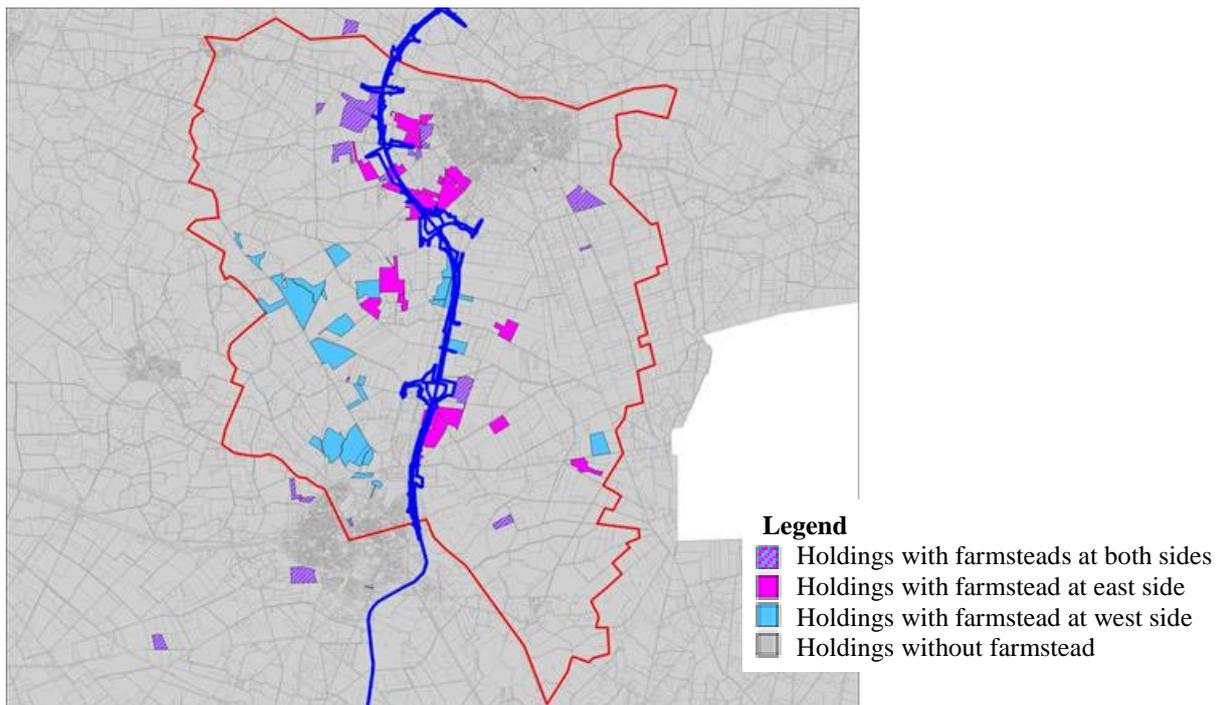


Figure 3 Holdings with distant parcels at the wrong side of the road for part of the route (Kadaster, 2014)

3.2 Case N18 with land purchase

During land purchase, the government fully depends on the willingness of landowners to sell their land to the government. Typically, the government starts with acquiring land which is already for sale in the area. If there is enough time for the realization, governments often closely watch the land market and attempt to purchase parcels that are offered for sale by land owners in the area. The government can also announce their interest in the land to each individual land owner in the area. If a land owners is willing to negotiate on a possible sale of their land, negotiations on the conditions of selling can start. However, the government has few options to make the sale attractive for the land owner, as they are committed to offer market-conform prices. By being creative on the conditions of selling, the government can sometimes come to an agreement with a land owner that was not planning to sell beforehand. For example, the government may be able to offer substitutive land, or to approve a permit that was rejected before. But, if a landowner remains unwilling to sell the land, the government is unable to force the land owner to sell.

For our case, voluntary land purchase means that the government is the only stakeholder that tries to realize their aim, i.e. getting the land needed for the N18. However, it is by no means guaranteed that the government will acquire the land. That depends on the outcome of the negotiation processes among stakeholders. The likeliness to get all land needed for the N18 is very small, because of the number of land owners that need to agree to sell their land and the inflexibility of the route. In this situation, the ‘holdout problem’ is a known phenomenon, in which land owners strategically refuse to sell, hoping to use their monopoly position to gain a better price for their land (Michelli and

Sirmans, 2007). More flexible aims, such as natural areas or recreation development have more chance to be realized using land purchase.

3.3 Case with expropriation

Expropriation is the most frequently used option during road reconstruction. Typically this is the logical follow-up of a (voluntary) land purchase process. The process typically starts with an analysis of the land ownership in the area, during the planning process of the road. The official acquisition process starts after the exact location of the road has been determined. The set route of the road is then projected onto the cadastral map to find each cadastral parcel on the route of the new road. This results in an expropriation plan that exists of a map of the road and a list of all parcels and the corresponding land owners. Landowner are informed on the expropriation plan and may respond. All land owners that own one or more of the parcels on the route are approached by the government for the purchase of their land. The government is obliged to start with voluntary purchase of the land, although they can already use the threat of expropriation in this process. After the responses on the expropriation plan are processed and the negotiations have led to compensation offers for each landowner, the government demands for a Royal Decree for expropriation with the 'Crown'. The approval is given on behalf of the King, by the Council of State. After the royal decree has been pronounced the 'voluntary' negotiations can continue for a maximum of two more years. During the voluntary process the government can still be creative in trying to find a solution (which can often be translated into new replacing land) for the land owner. If the land owner remains unwilling to sell after several talks and at least two official offers of the government, the government will make one last offer before the expropriation process starts. If the land owner does not agree with the final offer, expropriation is pronounced in court (Holtslag-Broekhof, 2016). In the first trial, the judge tests whether there are good grounds for expropriation. Often this is the case, and the judge will pronounce the expropriation. Also, the judge will determine a provisional compensation fee, which guarantees that the landowner receives temporary compensation for the land that is condemned. After the verdict has been registered in the Cadastre and the money has been transferred, the government is officially the owner of the land and can start with the works. In the following lawsuit, the ultimate compensation will be determined. No further appeal against this verdict is possible (Holtslag-Broekhof, 2016). For our case, the strategy of expropriation was the strategy that was used by the government during the implementation of the N18. It ensured the government that all properties could be acquired and that the road could be realized (figure 4). The government has acquired only the land that is necessary for the realization of the N18. The land owners have not been able to influence this process and were obliged to sell their land to the government.

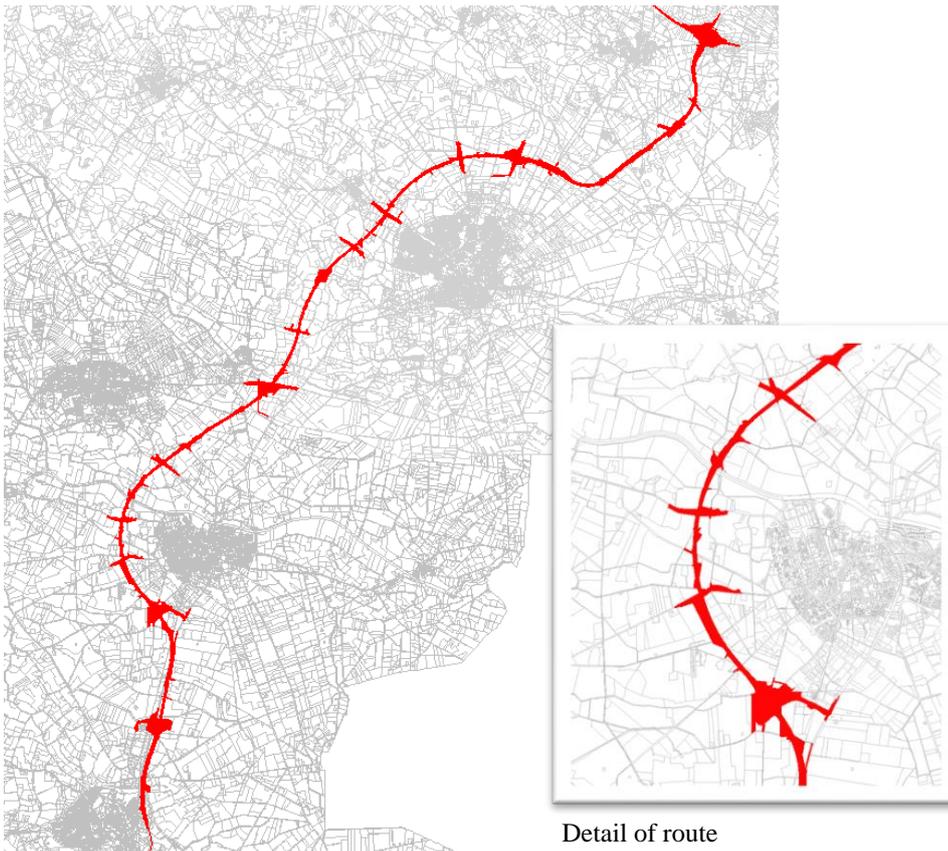


Figure 4 Owned land (in red) by government after expropriation

3.4 Case N18 with land consolidation

3.4.1 Formal land consolidation

The procedure for land consolidation is typically divided in five phases, in consecutive order: land use plan, registration of leased land, submission of wishes, reallocation plan, and list of financial settlements. The instrument of formal land consolidation allows government to obtain the needed land directly at the preferred location for the new N18 route due to some specific characteristics of the instrument. In the land use plan, governments have to designate the needed land for the new road. When the land use plan is approved, the government obtained the ownership rights. The land that is needed for the new route comes either from all landowners by means of collective 'reduction' or from the government that owns land elsewhere in the land consolidation project. The latter is comparable with the function of a land bank. When governments have not acquired enough land, a combination of both is possible. The maximum amount of reduction, 5% in the Netherlands, is prescribed by law (Rural Areas Development Act, art. 56). When reduction is applied, all owners are compensated in money. In practice, governments make sure that land is available to be able to compensate land owners in land, instead of money. Normally, land owners can indicate whether

they want to be compensated in money or land. Compensation in land is settled in the reallocation plan. Compensation in money is settled in the list of financial settlements or is paid directly. Participation of land owners and users is largely defined by the procedure as described in legislation (primarily Rural Areas Development Act, 2007 and General Administrative Law Act, 1992). Land owners and users are, at every phase, informed by the government and have the possibility to interact as well at specific moments. Most notably are the publication of the land use plan, the submission of wishes, that together with the land use plan form the basis for the reallocation plan, and the publication of the reallocation plan and list of financial settlements.

For our case, this means that stakeholders can put forward their opinion on the plans for the N18 in the phase of the land use plan. Once the land use plan has been approved, the route of the N18 cannot be discussed anymore and the land has been allocated to the government (see Figure 4). In the consecutive phases, government discusses with involved land owners and users, how the negative effects of the N18 (Figure 3), such as land fragmentation, accessibility, and distance to the holding's land, can be mitigated in the new allocation. Another valuable asset of land consolidation is that land owners often can be compensated in land, so the effect to their holding is minimized.

3.4.2 Voluntary reallocation

The typical procedure for voluntary reallocation that is followed nowadays, consist of several steps. A project starts with a public meeting to inform potential stakeholders and to sense interest among stakeholders to participate. Thereafter, the coordinator talks individually to stakeholders that indicated to be interested to participate in the reallocation. This is also the moment that information on leased land is collected. The following step is that stakeholders together discuss possibilities for the exchange of land among participants. A coordinator facilitates this process, e.g. to make sure that all participants can have their say, and captures the agreements. A second meeting with all stakeholders is organized to finalize the agreements and discuss needed permissions, e.g. for physical changes in the field, from government. Finally, stakeholders authorize the notary to make up the deed.

For our case, this strategy means that the government is one of the stakeholders that tries to realize their aim, i.e. getting the land needed for the N18. However, it is by no means guaranteed that will acquire the land. That depends on the outcome of the negotiation processes among stakeholders. The likeliness to get all land needed for the N18 is small, because of the length of the new road in combination with the number of stakeholders involved. Another impediment is the inflexibility of the route. Once the route has been determined, it is difficult to deviate from the route. More flexible aims, location wise, have more chance to be realized.

4. EVALUATION

4.1 Indicators

The effects of each strategy are explored and evaluated in terms of their efficiency, effectiveness, transparency and democracy. Efficiency relates the outcome to the effort (Hartmann and Spit, 2015). With effort we refer to the lead time of the procedure (from start to end) and total number of man-hours. Effectiveness assesses the outcome, i.e. the results against the planning objectives (Hartmann and Spit, 2015). Transparency refers to the openness and clearness of the followed

procedure for involved citizens (Hartmann and Spit, 2015). Openness is defined as the availability and accessibility of information.

Democracy refers to the level of public participation, i.e. the roles and responsibilities of the citizens and the government. We use the participation ladder of Arnstein (1969) to evaluate the level of democracy for the explained strategies (Figure 5). The two bottom rungs of the ladder, manipulation and therapy, represent no participation at all. We focus therefore on the rungs above, from informing to citizen control.

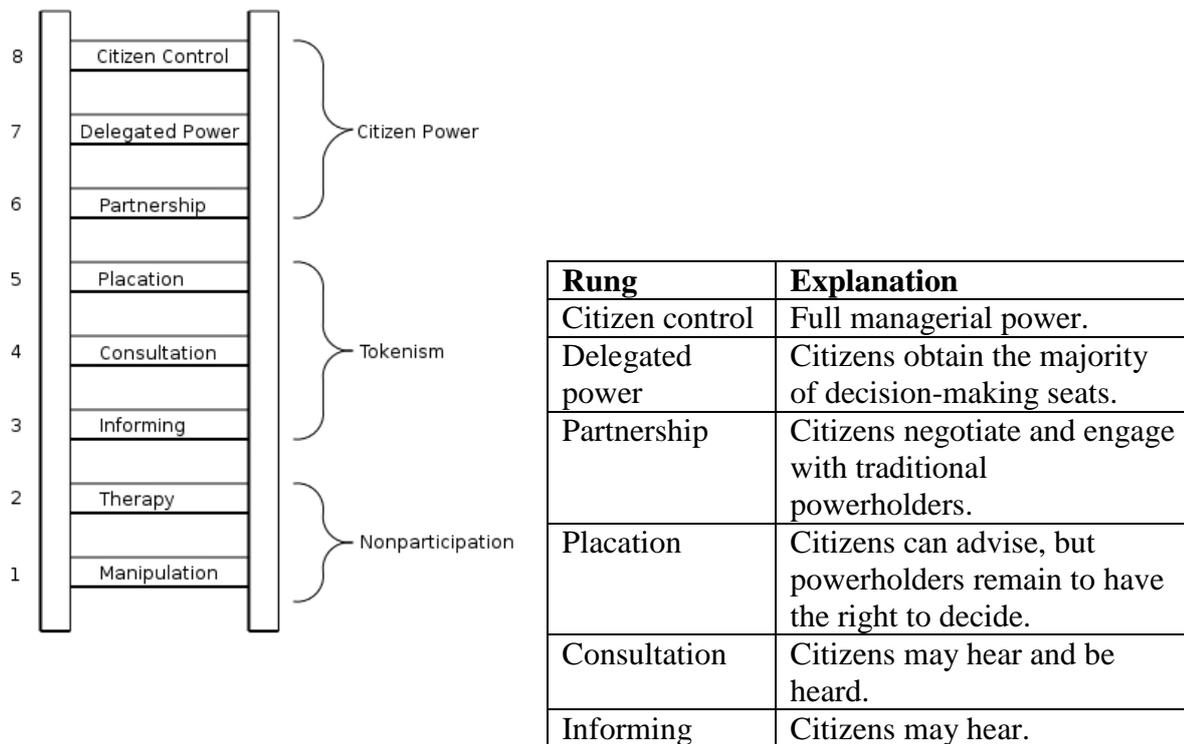


Figure 5 Different types of participation (Arnstein, 1969)

4.2 Results

We assess the results based on the aims in the spatial plan, in this case the new route of the N18. In which strategy can the government acquire most land, and against what effort? Is the followed process transparent for stakeholders, and to what extent have they the power to influence the results? For each indicator we discuss the results. Table 1 provides an overview of all results per strategy.

4.2.1 Effectiveness

Effectiveness of the strategies is measured in relation to the aim: acquisition of all the land is necessary for the realization of the new road. With a considerable length to be realized, and consequently many land owners to be affected, the chance that one or multiple land owners are not willing to sell their land is high. Land purchase is therefore not considered as an effective strategy.

With formal land consolidation and expropriation on the other hand, land acquisition is almost certainly guaranteed. Only in the event of careless preparation difficulties may arise. Voluntary reallocation is positioned somewhere between land purchase and formal land consolidation or expropriation. Land of owners that do not want to sell might be exchanged in the reallocation process with land from land owners that are willing to sell some land. Chances to realize needed land acquisition are therefore higher than chances are during land purchase.

4.2.2 Efficiency

Efficiency measures the outcome related to the effort. The least effort is needed for voluntary reallocation, while formal land consolidation requires relatively most effort. On the other hand formal land consolidation and expropriation get the best scores for outcome. Voluntary reallocation generally has a lesser outcome than the former mentioned strategies, and land purchase gets the lowest score based on outcome.

4.2.3 Transparency

Transparency of the procedure is clearly highest for expropriation and formal land consolidation as procedures follow distinctive phases in a set order that follow from legislation. Land purchase follows a less transparent process because negotiations with individual land owners take place. Land owners are not informed on how negotiations with others elapse. Voluntary reallocation sits somewhere in between, because negotiations and proposals for land exchange take place among affected land owners. So the land owners roughly know from each other what they want or do not want with respect to the new allocation.

4.2.4 Democracy

Land purchase fully relies on voluntary participation of involved stakeholders, i.e. land owners on the new route of the N18. Land owners in this regard have full power to influence the outcome. Although not completely aligned with the original meaning of Arnstein, this could be classified as 'citizen control'. Control is related to the choice of land owners to sell their land, not to the acquisition process of the road that lays in the hands of the government.

The process of formal land consolidation mainly consists of informing and consulting stakeholders at specific moments and sometimes with strict procedural regulations. According to Arnstein's classification, participation falls in the categories 'informing' and 'consultation'.

The process of voluntary reallocation as described, can be classified as co-creation or 'partnership' according to Arnstein's classification.

From all strategies, expropriation scores lowest on democracy. Stakeholders are informed and have the right to negotiate over financial compensation, but there is only limited opportunity to deviate from the price that is offered by the government. Also, land owners have no influence on the final decision, i.e. the land being expropriated.

Table 1 Results of strategies for each indicator

	Effective-ness	Efficiency		Transpa- rency	Democracy
		Outcome	Effort		
Land purchase	-	-	+	±	++
Formal land consolidation	++	++	±	++	±
Voluntary reallocation	±	±	++	+	+
Expropriation	++	++	+	++	--

5. CONCLUSION AND DISCUSSION

This paper compared land purchase, formal land consolidation, voluntary reallocation, and expropriation on their effectiveness, efficiency, transparency and democracy during the realization of location-bound aims. The case study on the realization of a new road showed that for land consolidation, the detriment of the new road is divided over many more land owners, than for expropriation. Contrary to land consolidation, expropriation only affects the land owners that own land on the new route. Land owners that are confronted with expropriation have little to no influence on the acquisition process, while land owners that are confronted with formal land consolidation, have the opportunity to denote their wishes concerning their property. It may be argued that the detriment in the situation of voluntary reallocation and land purchase is small or even absent, as the land owners are in these situations free to determine upon their cooperation. Although the results of each strategy will be similar in other planning situations, their suitability may vary. The construction of a new road is strongly bound to a specific location and is extremely inflexible. Other aims are often less specifically location-bound and more flexible in their design. This increases the chances for good results using land purchase or voluntary allotment. Unlike new roads, that cannot be constructed until 100% of the land has been acquired, other aims can be successful when 70% or 80% of the land has been acquired. This opens opportunities for less effective, but more democratic and transparent instruments. The choice for the most suitable instrument will therefore depend on the planning situation and planning aims.

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BIOGRAPHICAL NOTES

Marije Louwsma is senior advisor in the department of spatial planning at the Netherlands' Cadastre, Land Registry and Mapping Agency. She has a Master's degree in spatial planning from Wageningen University and a Master's degree in geo-information management and applications from Utrecht University. Currently, she works on product and process innovations in the domain of land management and spatial planning. She also conducts PhD research which concentrates on the role of e-government in interactive planning processes.

Sanne Holtslag-Broekhof is senior advisor in the department of product and process management at the Netherlands' Cadastre, Land Registry and Mapping Agency. She has a Master's degree in spatial planning from Wageningen University. Currently she works on product and process management in the domain of land management and spatial planning. In June 2016 she will defend her PhD thesis entitled 'Dealing with private property for public purposes. An interdisciplinary study to land transactions from a micro-scale perspective'.

CONTACTS

Marije Louwsma, MSc
Cadastre, Land Registry and Mapping Agency
PO Box 9046
7300 GH Apeldoorn
THE NETHERLANDS
Tel. +31 88 183 44 63
Email: marije.louwsma@kadaster.nl
Web site: www.kadaster.nl

Sanne Holtslag-Broekhof, MSc
Cadastre, Land Registry and Mapping Agency
PO Box 9046
7300 GH Apeldoorn
THE NETHERLANDS
Tel. +31 88 183 58 70
Email: sanne.holtslag@kadaster.nl
Web site: www.kadaster.nl

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Marije Louwsma and Sanne Holtslag-Broekhof (Netherlands)

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