Disclaimer

This is the English translation of the *Besluit van tot wijziging van het Besluit ruimtelijke ordening, het Besluit omgevingsrecht en het Besluit archeologische monumentenzorg in verband met de modernisering van de monumentenzorg en enkele technische aanpassingen (2011)* [Decree of xxx amending the Spatial Planning Decree, the Environmental Permitting Decree and the Archaeological Heritage Management Decree in connection with modernisation of the preservation of historic buildings and sites and various technical changes (2011)]. Please note that this English translation is not legally binding. It is the Dutch-language text of the Act that is legally binding. The most recent version of the text of the Act can be found, in Dutch, on the website: http://www.wetten.nl.

Further information can be obtained from the Ministry of Education, Culture and Science (www.minocw.nl; e-mail address: ocwinfo@postbus51.nl) or the Agency for Cultural Heritage (www.cultureelerfgoed.nl; e-mail address: info@cultureelerfgoed.nl).

Decree of xxx amending the Spatial Planning Decree, the Environmental Permitting Decree and the Archaeological Heritage Management Decree in connection with modernisation of the preservation of historic buildings and sites and various technical changes

On the recommendation of the State Secretary for Education, Culture and Science, no. WJZ/263173 (8279) of 6 January 2011, Legislation and Legal Affairs Department, made with the agreement of Our Minister of Infrastructure and the Environment;

Having regard to section 3.37 (1) of the Spatial Planning Act, sections 2.1 (3) and 2.26 (3) of the Environmental Permitting (General Provisions) Act and section 34a (1) and (2) and section 48 of the Monuments and Historic Buildings Act 1988;

Having heard the Advisory Division of the Council of State (advisory opinion no. W05.11.0013/I of 24 February 2011);

Having seen the further report of the State Secretary for Education, Culture and Science, no. WJZ/296032 (8279) of xxx, Legislation and Legal Affairs Department, published with the agreement of Our Minister of Infrastructure and the Environment;

Have approved and decreed:

ARTICLE I

Article 3.1.6 (2) (a) of the Spatial Planning Decree is amended as follows:

a. a description of the way in which cultural and historical assets in the area and historic structures that are, or may be expected to be, present in the ground have been taken into account;.

ARTICLE II

The Environmental Permitting Decree is amended to read as follows:

A

An article reading as follows is inserted after article 2.5:

Article 2.5a Historic buildings/sites

Notwithstanding section 2.1 (1), opening words and (f) of the Act, the categories of cases set out in article 3a of Annexe II do not require an environmental permit.

B

The following words are added to article 6.4 (1) (b): and involving an activity as referred to in point a (1°) to (4°).

C

Annexe II is amended as follows:

1. ', 2.5a' is inserted in the heading after '2.3', and the first indent is amended as follows:

– building activities, planning-related use activities and activities involving a listed historic building/site do not require an environmental permit;.

2. Article 2 (1) is amended as follows:

1. ordinary maintenance, provided that the detailing, profiling and design are not altered;.

3. A chapter reading as follows is inserted after article 3:

Chapter IIIa. Categories of cases in which activities involving a listed historic building/site do not require an environmental permit

Article 3a

An activity as referred to in section 2.1 (1) (f) of the Act does not require an environmental permit if the activity relates to:

1. ordinary maintenance as referred to in article 2 (1), provided that the type of material and colour also remain unchanged and, in the case of a garden, park or other planted area, the layout remains unchanged, or

2. an activity that results solely in indoor alterations to a part of the historic building that has no heritage value.

4. An article reading as follows is inserted in Chapter V before article 5:

Article 4a

1. Without prejudice to article 5, articles 2 and 3 apply only to an activity carried out in, on or near a listed historic building/site as referred to in section 1 (d) of the Monuments and Historic Buildings Act 1988, a historic building/site to which section 5 of the Act applies, a historic building/site listed pursuant to a provincial or municipal bye-law or a historic building/site to which such a bye-law applies *mutatis mutandis* before it has been listed, if the activity is referred to in:

a. article 2 (1) and (2), or

b. article 2 (4) to (21) or article 3 (4) to (8):

1°. in or on a part of the historic building/site that has no heritage value, or

2°. near a historic building/site.

2. Without prejudice to article 5, articles 2 and 3 apply only to an activity carried out in a listed urban or village conservation area, if the activity is referred to in:

a. article 2 (1) and (2), or

b. article 2 (3) to (21) or article 3 in the case of:

1°. indoor alterations;

2°. an alteration to a rear façade or rear section of roof, unless the façade or section of roof faces an area accessible to the public;

3°. a structure on grounds at the rear of a main building, unless the grounds are also part of the grounds at the side of the building or face an area accessible to the public; or

4°. a structure on grounds that are part of an area accessible to the public.

5. Article 5 is amended as follows:

(a) paragraph 3 is deleted;

(b) paragraphs 4 to 6 are renumbered 3 to 5.

ARTICLE III

The Archaeological Heritage Management Decree is amended as follows:

A

Article 3 (b) is amended as follows:

b. the decision referred to in section 4.2 (1) (a), (b) or (c) of the Environmental Permitting (General Provisions) Act or section 26 of the Underwater Excavation Act, and the request on which the decision is based,.

B

The colon at the end of article 10 (1) is replaced by a full stop.

C

Article 17 (2) (f) is amended as follows:

f. during the four years preceding the application the person in charge has not been convicted by a final and unappealable judgment of:

1°. a criminal offence as referred to in sections 6 1 and 62 of the Act as it read before the Act introducing the Environmental Permitting (General Provisions) Act came into force;

2°. a contravention of section 11, 45 (1), 53 (1) o r 56 of the Act; or

3°. a contravention of section 2.1 (1), opening wor ds and (f) or (h), 2.3, opening words and (b), 2.3a, 2.24 (1) or 2.25 (2) of the Environmental Permitting (General Provisions) Act, if the contravention concerns a listed historic building/site as referred to in the Act or a listed urban or village conservation area.

ARTICLE IV

1. An application for an environmental permit for an activity as referred to in section 2.1 (1) (f) of the Environmental Permitting (General Provisions) Act that concerns a listed historic building/site as referred to in the Act which is located outside the built-up area determined pursuant to the Road Traffic Act 1994, and that was submitted before article II of this Decree entered into force, remains subject to the Environmental Permitting Decree as it read before article II of this Decree entered into force.

2. Paragraph 1 does not apply to an activity as referred to in that paragraph that has ceased to require an environmental permit since article II of this Decree entered into force.

ARTICLE V

This Decree enters into force on 1 January 2012.

We order and command that this Decree and the explanatory memorandum pertaining to it be published in the Bulletin of Acts and Decrees.

State Secretary for Education, Culture and Science

Minister of Infrastructure and the Environment

EXPLANATORY MEMORANDUM

I. General

1. Introduction

This Decree implements certain measures referred to in the policy letter on modernisation of the preservation of historic buildings and sites ('the policy letter') that was submitted to the House of Representatives on 28 September 2009.[1] In the letter, the Minister of Education, Culture and Science ('the Minister') set out his views on the Netherlands' heritage of historic buildings/sites in present-day Dutch society. His proposal was that broader account be taken of cultural and historical assets at an early stage of the spatial planning process so as reduce the amount of sectoral legislation later. The purpose was not to abolish but to reform sectoral legislation and supplement it with area-specific policy.

To attain the goals set out in the policy letter, this Decree lays down details of the following measures:

1. making cultural and historical assets an integral part of spatial planning;
2. limiting the advisory role of provincial executives;
3. eliminating the permit requirement for alterations to listed historic buildings/sites and for construction work in, on or near listed historic buildings/sites, municipal and provincial historic buildings/sites, and in listed urban and village conservation areas.

The measures referred to in the policy letter and laid down in detail in this Decree should be seen in the context of the Act amending the Monuments and Historic Buildings Act 1988 and the Environmental Permitting (General Provisions) Act in connection with Modernisation of the Preservation of Historic Buildings and Sites,[2] which has already implemented four of the measures.

This explanatory memorandum has been drawn up in agreement with the Minister of Infrastructure and the Environment.

[1] Parliamentary Papers, House of Representatives, 2009-2010, 32 156, no. 1.
[2] Parliamentary Papers, House of Representatives, 2009-2010, 32 433.

2. Cultural and historical assets in spatial planning

Cultural and historical assets are visible or invisible vestiges, objects, patterns and structures that are considered to be valuable features of our environment and shed light on historical situations or developments. They often determine the identity of a place or area and provide starting points for future developments. Although such assets cannot all be designated as listed historic buildings/sites or conservation areas, they *are* part of the way in which we perceive, design and use this country.

Despite the efforts made in recent years to make cultural and historical assets an integral part of our spatial planning system, there is still a long way to go. Municipal officials responsible for historic buildings/sites, organisations for the preservation of historic buildings/sites and concerned citizens are often at a disadvantage when plans are drawn up, and lack a firm basis for negotiation. Moreover, since plans are only assessed for compliance with legislation on historic buildings/sites once the planning process is over, the preservation of historic buildings/sites tends to be seen as a nuisance factor. The policy letter acknowledged this pattern and proposed a greater focus on collection of knowledge, analysis and deliberation at an early stage. This can be done by giving cultural and historical assets a clearer legal status at the start of the planning process under the Spatial Planning Act, so as to reduce the amount of sectoral legislation and encourage a more environment-oriented approach to such assets both in urban settings and in the cultural landscape outside them.

The purpose of the amendment to article 3.1.6 (2) (a) of the Spatial Planning Decree is to ensure that cultural and historical assets are expressly taken into account when land-use plans are drawn up. This means that municipalities must carry out an analysis of such assets in a given planning area and use it to draw conclusions that will be incorporated into a land-use plan. The Decree already required the explanatory notes appended to land-use plans to indicate how certain interests, such as archaeology, had been taken into account. However, this did not yet cover cultural and historical assets in general. The spatial planning procedures that already applied to archaeology have now been extended as it were to all such assets.

Taking cultural and historical assets into account in land-use plans reduces the need to designate new listed historic buildings/sites, since the importance of such assets is already acknowledged in the spatial planning process. Under the Act amending the Monuments and Historic Buildings Act 1988 and the Environment Permitting (General Provisions) Act in connection with Modernisation of the Preservation of Historic Buildings and Sites, interest

groups and members of the public can therefore no longer apply for historic buildings/sites to be listed. Instead, they can make their views on the cultural heritage known during consultation procedures at an early stage in the preparation of land-use plans. However, this does not mean that all building plans will be assessed for their impact on cultural and historical assets. Land-use plans will not involve retrospective assessments but will provide clarity from the very outset. A further advantage of this is that the public, developers and municipalities know where they stand, since the assessment framework can no longer change in mid-process. The procedure ensures a dynamic approach based on up-to-date information, since under the Spatial Planning Act land-use plans remain in force for no more than ten years. After a maximum of ten years new research or insights can be used to obtain additional knowledge about existing cultural and historical assets. The amendment thus ensures that cultural and historical interests are properly taken into account early in the planning process, along with any changes to them.

3. Limiting the advisory role of provincial executives

The Decree stipulates that, when issuing environmental permits for alterations to listed historic buildings/sites located outside the built-up area, provincial executives will only be asked for advice in cases in which the Minister must also be asked for advice, i.e. cases in which the building or site may suffer substantial damage. In the case of listed historic buildings/sites outside the built-up area, the advisory roles of the provincial executives and the Minister have thus been placed on the same footing. Only those historic buildings/sites designated by the Minister under the Monuments and Historic Buildings Act 1988 ('the 1988 Act') are deemed to be listed. Under the previous arrangements, provincial executives were asked for advice on *all* changes to listed historic buildings/sites outside the built-up area.

The reason for limiting the advisory role of provincial executives is that one of the goals of policy on modernisation of the preservation of historic buildings/sites is to simplify permitting procedures. This is a corollary of the changes to the preparatory permitting procedure under the Act amending the Monuments and Historic Buildings Act 1988 and the Environmental Permitting (General Provisions) Act in connection with Modernisation of the Preservation of Historic Buildings and Sites. The Act stipulates that all relatively simple changes to listed historic buildings/sites are now subject to the regular preparatory procedure referred to in division 3.2 of the Environment Permitting (General Provisions) Act rather than the extended procedure referred to in division 3.3 of the same Act. This means that in some 70% of cases the permitting procedure is reduced from 26 to eight weeks. The question of whether changes are 'relatively simple' now depends on whether the competent authorities are

required to ask for advice. When issuing permits for changes to listed historic buildings/sites, the Minister and the provincial executive may be designated as mandatory advisors. Under article 6.4 (1) (a) of the Environmental Permitting Decree, the Minister is only asked for advice in four situations involving substantial changes to the building or site: total or partial demolition, extensive changes whose impact on the value of the building or site is tantamount to this, reconstruction, and change of use. This means that the Minister is not asked for advice on relatively simple changes, and that the regular procedure then applies.

As regards the advisory role of the provincial executive, however, article 6.4 (1) (b) of the Environmental Permitting Decree still stipulated that the competent authorities were required to ask for advice when issuing permits for changes to listed historic buildings/sites outside the built-up area. No distinction was made here between simple and substantial changes. The fact that the applicability of the extended preparatory procedure as referred to in the Environmental Permitting (General Provisions) Act was dependent on the mandatory advisor would create a serious discrepancy between owners of listed historic buildings/monuments inside and outside the built-up area: those outside the built-up area would always be subject to the extended procedure, whereas those inside the built-up area would only be subject to this procedure in some 30% of cases.

To eliminate this discrepancy and at the same time simplify the permitting procedure for owners of listed historic buildings/sites outside the built-up area, this Decree stipulates that provincial executives will now only be asked for advice in cases in which the Minister is also asked for advice.

The advice provided by the provincial executive – like that provided by the Minister – is of greater importance to the quality of the preservation of historic buildings/sites in cases in which substantial changes to the listed historic building/site are involved. The Act amending the Monuments and Historic Buildings Act 1988 in connection with, *inter alia*, the restriction of the duty of the Minister to provide advice on applications for listed building permits[3] is based on the principle that municipalities are responsible for issuing permits and that the Minister only provides advice on changes that affect the continued existence of the historic building/site.[4] This reduces the amount of red tape and ensures that applications are dealt with more quickly. The same arguments apply to limiting the advisory role of provincial executives. The aforementioned Act restricting the duty of the Minister to provide advice also stipulated that the duty of provincial executives to provide advice would henceforth be

[3] Bulletin of Acts and Decrees 2008, 563.
[4] Parliamentary Papers, House of Representatives, 2007-2008, 31 345, no. 3, p. 3.

downgraded to an option. The reason for this change was once again to simplify and speed up the provincial advisory procedure. When permitting for listed buildings was brought under the Environmental Permitting (General Provisions) Act, the Minister's duty to provide advice was brought under the Environmental Permitting Decree but otherwise left unchanged. However, the fact that it was no longer mandatory to obtain advice from the provincial executive and the greater latitude regarding cases in which advice was required were at odds with the procedures in the Environmental Permitting (General Provisions) Act. Advice by the provincial executive was therefore incorporated into the Environmental Permitting Decree as a general power to provide advice. The present Decree now explicitly restricts this advisory role to cases in which the Minister also provides advice. This change is largely in line with actual practice before the Act came into force – the provincial executives only provided advice on substantial changes.

4. Cases in which alterations to listed historic buildings/sites and construction work in, on or near a listed historic building/site or a municipal or provincial historic building/site or in a listed urban or village conservation area do not require a permit

The new policy on historic buildings/sites focuses on the owner of the building/site, for instance by reducing the amount of inspection during grant and permitting procedures and allowing more latitude. This is because the vast majority of owners are proud of their buildings/sites and are willing to make more effort and incur more costs in order to maintain them. The amendments in this Decree give such owners the trust they deserve and make sectoral legislation in the modern system of preservation of historic buildings/sites simpler and more effective.

4.1 Cases in which alterations to a listed historic building/site do not require a permit
Under the Environmental Permitting (General Provisions) Act, alterations to a listed historic building/site within the meaning of the Act, i.e. a historic building/site designated by the Minister under the 1988 Act, other than a listed archaeological monument as referred to in section 1 (c) of that Act, requires an environmental permit. The requirement used to be absolute, and there were no exceptions to it. Owners often had to wait too long for a permit to carry out even minor alterations. In some cases, however, a permitting procedure for alterations to listed historic buildings/sites does nothing to help preserve the building/site, but does inconvenience the owner. The widespread perception is that owners of listed historic buildings/sites cannot even put a nail in a wall without a permit. This has given the preservation of historic buildings/sites a bad name.

This Decree therefore creates two new categories of alterations to listed historic buildings/sites as defined above which no longer require an environmental permit under the Environmental Permitting Decree. The first category is ordinary maintenance which, as well as meeting the general criteria under the Environmental Permitting Decree (no changes in detailing, profiling or design), does not alter the type of material or colour. Examples include painting in the same colour, replacement of glass and replacement of gutters and downpipes using the same material. These examples are in line with existing practice in a number of municipalities. The second category which no longer requires an environmental permit is indoor alterations to a part of the historic building that has no heritage value. An alteration to a part of a listed historic building that has no such value in itself and, since it is indoors, is of no importance to the building as a whole does not need to be assessed for its impact on the cultural heritage. The indoor alterations that no longer require a permit are basically ones involving parts of a building that were added after it was listed. Examples include the replacement of a kitchen or bathroom that was installed at a later stage and has no heritage value, or the removal of plasterboard that was fitted at a later stage and likewise has no heritage value. Such indoor alterations to parts unrelated to the listing of the building do not need to be assessed for their impact on the cultural heritage. In such cases, owners are now trusted to act responsibly.

The part of this explanatory memorandum on individual articles provides a number of examples illustrating the aforementioned exceptions to the environmental permit requirement for alterations to listed historic buildings/sites. If owners are unsure whether a particular alteration requires a permit, they can always check with the municipality.

4.2 Cases in which construction work in, on or near a historic building/site does not require a permit

As well as for alterations to a listed historic building/site, the Environmental Permitting (General Provisions) Act also stipulates that construction work (section 2.1 (1) (a) of the Act) requires an environmental permit. Articles 2 and 3 of Annexe II to the Environmental Permitting Decree indicate the exceptions to this requirement. However, apart from ordinary maintenance and construction work required in accordance with the Housing Act (article 2 (1) and (2) of Annexe II to the Decree), the exceptions did not include construction work in, on or near a listed historic building/site, including a listed archaeological monument as referred to in section 1 (c) of the 1988 Act, or a municipal or provincial historic building/site. The cases in which construction work in, on or near such buildings/sites does not require a permit have now been extended. There are two new categories of cases in which the activities referred to in the other parts of articles 2 and 3 of Annexe II to the Decree do not require a permit in

connection with construction work involving historic buildings/sites. The first category is construction work in or on a historic building/site involving a part that has no heritage value. The second category is construction work involving structures and plots adjacent to the historic building/site. A distinction is thus made between (a) work that actually involves the building/site and (b) work carried out near it, i.e. work outside the plot or building identified in the designation as a listed historic building/site.

The first new category of construction work near historic buildings/sites that does not require a permit is subject to the same conditions as are laid down in division 4.1 for alterations to parts of a listed historic building/site. These are basically parts that were added after the building/site was listed and have no heritage value, or parts that the designation clearly shows to have no such value. In the interests of clarity it should be noted here that the entire property is always designated as a listed historic building/site, in the sense that all the elements forming an integral part of the property are listed; these include an extension to a historic building such as a conservatory or a kitchen, even if this has no heritage value. Structures that are built onto the building but do not form an integral structural or functional part of it are deemed part of the building only if they are identified as such in the designation.

Unlike alterations to a listed historic building/site the kinds of construction work that do not require a permit are not restricted to indoor alterations but may also involve the outside of the building. Of course, such 'outdoor' alterations must involve parts that have no heritage value and must be confined to the activities referred to in articles 2 and 3 of Annexe II to the Environmental Permitting Decree. If the 'outdoor' work involves a listed historic building, alterations to it do require a permit. This is because, even if no features of heritage value are destroyed, the appearance of the building may be adversely affected. The work must therefore be assessed for its impact on the cultural heritage under section 2.1 (1) (f) of the Environmental Permitting (General Provisions) Act, but not for its structural impact under section 2.1 (1) (a) of the Act. Hence, as a result of the amendments introduced by this Decree, indoor alterations to parts of historic buildings that have no heritage value no longer require a permit under section 2.1 (1) (a) and (f) of the Act.

The second new category of construction work historic buildings/sites that no longer requires a permit means that types of construction work that do not require a permit in general now do not require one in the immediate vicinity of historic buildings/sites either. This applies to grounds and adjacent structures that are not part of the building and are not themselves listed historic buildings. These normally have no heritage value. Adjacent structures that are not part of the building may include sheds or extensions.

Some kinds of construction work in or on parts of a historic building/site that do not have heritage value, or near historic buildings/sites, still require a permit under articles 2 and 3 of Annexe II to the Environmental Permitting Decree, namely the construction of dormer windows in the front section of the roof (article 3 (3)), adjacent structures (articles 2 (3) and 3 (1)) and structures used for recreational accommodation (article 3 (2)). Dormer windows on the front of a historic building or adjacent structure may spoil the appearance and hence the value of the building as a whole, and therefore still require a permit. The appearance and location of a new adjacent structure or a new structure used for recreational accommodation may have a major impact on the appearance of a historic building, and such structures therefore still require an environmental permit. The reason for this restriction on activities that do not require a permit is also the reason why a permit was formerly required for construction work not only in or on historic buildings/sites, but also near them. An environmental permit for alterations to a historic building/site can only apply to the building/site itself, but construction work in its immediate vicinity can certainly have an impact on its appearance and hence value. That is why construction work near historic buildings/sites formerly required a permit. However, the appearance of a historic building/site is usually only spoiled when new structures are erected next to it or major alterations are made to the front of an adjacent structure that faces an area accessible to the public. Work involving minor alterations to adjacent structures or alterations at the rear of such structures, or the installation of garden furniture, a flagpole or playground equipment, has little or no adverse impact on the appearance of historic buildings/sites, and therefore does not need to be assessed for its impact on the cultural heritage and does not require a permit.

These amendments to the Environmental Permitting Decree have eliminated procedures that do little or nothing to help preserve the quality of historic buildings/sites, but seriously inconvenience their owners. The amendments give owners of historic buildings/sites greater support in maintaining and developing them.

4.3 Cases in which construction work in listed urban and village conservation areas does not require a permit

More kinds of construction work in listed urban and village conservation areas as referred to in the 1988 Act and designated by the Minister and the Minister of Infrastructure and the Environment no longer require a permit. Before the amendments in this Decree entered into force, even minor alterations to listed urban or village conservation areas required a permit. The only exceptions were the activities referred to article 2 (1) and (2) of Annexe II to the Environmental Permitting Decree and those referred to in the other parts of articles 2 and 3

that only resulted in indoor changes. This inconvenienced the public and government authorities, particularly in cases where the changes made little or no difference to the structure and character of the area. This Decree has therefore eliminated a number of problems for the public in connection with such areas by extending the activities that no longer require a permit under Annexe II to the Environmental Permitting Decree. This Decree states that, in addition to the aforementioned activities, the activities mentioned in articles 2 and 3 of Annexe II to the Environmental Permitting Decree no longer require a permit, subject to a number of additional conditions regarding the location of the activities. First, these include changes to a rear façade or rear section of roof, provided that the façade or section of roof does not face an area accessible to the public. Second, they include the erection of structures on grounds at the rear of a main building, provided that the grounds are not also part of the grounds at the side of the building and do not face an area accessible to the public, or on grounds that are part of an area accessible to the public.

This approach is an extension of the 'front/rear approach' adopted in Annexe II to the Environmental Permitting Decree when determining which building activities no longer require a permit. This approach has been adopted to protect the spatial quality of the public realm. Owners are allowed more freedom as regards the use of space in the private realm, while the spatial quality on the sides of gardens and grounds that face areas accessible to the public is subject to strict supervision. The same approach has now been adopted in listed urban and village conservation areas, subject to the same additional conditions regarding the location of the activities that no longer require a permit. Changes to rear façades or rear sections of roof that do not face areas accessible to the public, or the erection of structures on grounds at the rear that are not also part of grounds at the side and do not face an area accessible to the public have little or no impact on the structure and character of listed urban or village conservation areas. In such locations, elimination of the permit requirement for the activities referred to in articles 2 and 3 of Annexe II to the Environmental Permitting Decree is therefore deemed acceptable even in listed urban and village conservation areas.

Given the kind of construction work involved, the erection of structures on grounds that are part of an area accessible to the public will also have no major impact on the character of an urban or village conservation area. The main category of structures involved includes those deemed necessary for purposes of infrastructure or public services. Even in urban and village conservation areas, such structures are part of the normal appearance of the area. Elimination of the permit requirement for such construction work is therefore also deemed acceptable in such areas.

As for the few cases in which, despite the additional conditions, other kinds of construction work in listed urban or village conservation areas that no longer require a permit as a result of this Decree will still have a publicly visible impact – e.g. on farms or in residential districts that are unusually conspicuous structural features of the area – these are ultimately felt to matter less than the reduction in red tape for owners of buildings in such areas.

5. Implications for municipalities and provinces

The amendments made by this Decree to the Spatial Planning Decree and the Environmental Permitting Decree have implications for both municipalities and provinces.

The amendments to the Spatial Planning Decree require municipalities to take specific account of cultural and historical assets when drawing up land-use plans. As a result, they must first make an analysis of existing cultural and historical assets, and interest groups and members of the public must be able to express their views about assets at issue in the area concerned. The great advantage of making such assets an integral part of the policy strategy and land-use planning system is that everyone can express their interests once the draft plans have been made available and before they are finalised.

The extension of the activities involving both listed historic buildings/sites and listed urban and village conservation areas that no longer require a permit under the Environmental Permitting Decree caters to the wishes of both owners and municipalities to reduce the regulatory burden. The cases concerned are ones in which preventive assessment via a permitting procedure does little or nothing to help protect historic buildings/sites, but merely inconveniences owners. As a result of the amendments, municipalities will no longer receive permit applications for such activities, or can immediately tell applicants that a permit is not required. However, they may receive queries from owners who are not sure whether a particular activity requires a permit.

Finally, the advisory role of provincial executives has been restricted. When applications are made for environmental permits to make alterations to listed historic buildings/sites, they will now only be asked for advice if the building/site is located outside the built-up area and the case concerned is one in which the Minister must also be asked for advice. Apart from restricting the advisory role of the provincial executives, this amendment therefore means that in some 70% of cases municipalities will no longer need to forward permit applications for listed historic buildings/sites outside the built-up area to the provincial executive.

6. Implementation and enforceability

Fortunately, even before the amendments introduced by this Decree, many municipalities were already taking cultural and historical assets into account when drawing up land-use plans, without being under a statutory obligation to do so. This is understandable, for such assets are an essential part of our environment. For municipalities that were not yet doing this, the requirement to take cultural and historical assets into account will initially lead to an increase in implementation costs. On the other hand, they will no longer be required to provide advice so often when historic buildings/sites are listed by the Minister, for now that cultural and historical assets are an integral part of spatial planning fewer historic buildings/sites will need to be listed. The fact that land-use plans now take such assets into account will also help make clear in advance which spatial planning projects are feasible and which are not. This means that municipalities will no longer be required to deal so often with permit applications for listed monuments/sites.

The Cultural Heritage Agency has drawn up an electronic 'Guide to Heritage and Spatial Planning' to help municipalities and consultancies take cultural and historical assets into account in the context of spatial planning, such as the preparation of land-use plans.

Elimination of the permit requirement for certain activities under this Decree will reduce implementation costs for municipalities. In a number of cases, alterations to listed historic buildings/sites or construction work in, on or near a listed historic building/site or a provincial or municipal historic building/site, or in a listed urban or village conservation area, will no longer require an environmental permit. Research shows that 20% fewer permits will be required in such cases. This will also reduce enforcement costs for municipal building and housing authorities. On the other hand, it is expected that municipalities will initially receive queries from owners about whether or not a given activity requires a permit. Municipalities were involved in drawing up the categories of activities that will no longer require a permit. These categories are in line with the simplified permitting procedures already used by certain municipalities and, where possible, the existing kinds of building activities that do not require a permit under the Environmental Permitting Decree (with which municipalities already have experience).

The Association of Dutch Municipalities was asked to submit an advisory report on the draft decree, and gave a positive assessment. However, it called for the creation of an advisory procedure for owners and municipalities concerning activities that no longer require a permit. This would enable owners to obtain advice on alterations from an independent party, and

could prevent unnecessary damage to historic buildings/sites. Such a procedure would also help municipalities keep informed of the current state of historic buildings/sites.

I will be having separate discussions with the various relevant parties on the creation of such a procedure. In my view, expert advice given to owners by municipalities concerning activities that no longer require a permit will certainly be of benefit to historic buildings/sites, and such a procedure would be a good thing. However, the procedure will not be statutory (and hence mandatory), for this would be at odds with the whole purpose of eliminating the permit requirement for certain activities, which is to reduce red tape.

The changes to the advisory role of provincial executives will not cause problems with implementation. The restrictions in this area are largely in line with existing practice before the Environmental Permitting (General Provisions) Act came into force. Readers are referred to the comments on the subject in section 3 above. The restriction was introduced in consultation with the Association of Provincial Authorities. The Association was also given an opportunity to submit an advisory report on this Decree, but saw no need to do so.

7. Administrative burden

Research has shown that the number of environmental permits for listed historic buildings/sites will be reduced by 20% as a result of the amendments introduced by this Decree. The reduction will affect both businesses and individuals.

Assuming a baseline situation of 1,500 permit applications a year by individuals and 1,500 by businesses, this will mean an overall decrease of 600 applications a year.

For individuals the 20% reduction will mean a decrease in the administrative burden of 8,080 hours and €1,081,414 in costs. For businesses the reduction is expected to be €166,743, from €1,027,300 to €860,557.

Elimination of the permit requirement for certain activities in listed urban and village conservation areas will also reduce the number of environmental permits by 20%. For individuals this will once again mean a decrease in the administrative burden of 8,080 hours and €1,081,414 in costs, and for businesses a reduction of €166,743 in costs.

For owners of historic buildings/sites outside the built-up area, the length of the permitting procedure will be considerably reduced in some 70% of cases. The provincial executives will

now only be asked to provide advice on substantial alterations to such buildings/sites; since, as a result of the Act amending the Monuments and Historic Buildings Act 1988 and the Environmental Permitting (General Provisions) Act in connection with Modernisation of the Preservation of Buildings and Sites, the procedure to be followed will now depend on whether or not an advisor has to be consulted, some 70% of activities will henceforth be subject to the regular preparatory procedure rather than the extended procedure referred to in the Act. This means that the length of the procedure will be eight rather than 26 weeks. The reduction in the administrative burden resulting from this Decree should therefore be seen in connection with that resulting from the aforementioned Act.

II. Comments on individual articles

Article I

The amendment to article 3.1.6 (2) (a) of the Spatial Planning Decree means that, where an environmental impact statement as referred to the Environmental Management Act is not drawn up in preparing the land-use plan, the explanatory notes to a land-use plan must at least include a description of the way in which cultural and historical assets in the area and historic structures that are, or may be expected to be, in the ground have been taken into account. The Spatial Planning Decree already required land-use plans to taking archaeological assets into account. The purpose of extending this to cultural and historical assets is to ensure that municipalities will also carry out an analysis of existing cultural and historical assets (in every respect) in a given planning area and use it to draw conclusions that will be incorporated into a land-use plan. Cultural and historical assets are visible or invisible vestiges, objects, patterns and structures that are considered to be valuable features of our environment and shed light on historical situations or developments.

In the amended Spatial Planning Decree, the term 'historic building/site' is no longer directly linked to cultural and historical assets, for the definition of cultural and historical assets is now broader than the definition of historic buildings/sites in the 1988 Act. The latter definition focuses on historic buildings/sites of public interest at national level, whereas there may be far more cultural and historical assets at local level. However, archaeological assets (historic structures that are present in the ground) are still specifically mentioned in article 3.1.6 (2) (a) of the Spatial Planning Decree, since there is a specific obligation to do so under the Valletta Convention.

Article II

Part A

The newly inserted article 2.5a of the Environmental Permitting Decree designates categories of cases in which alterations to a listed historic building/site do not require an environmental permit. Further details of article 2.5a are laid down in the new article 3a of Annexe II to the Environmental Permitting Decree. The cases concerned are set out in the notes on article II (C) of this Decree.

Part B

This amendment puts the advisory roles of provincial executives and the Minister regarding listed historic buildings/sites outside the built-up area on the same footing. In the cases referred to in article 6.4 (1) (a) of the Environmental Permitting Decree, the competent authorities are required to forward applications for environmental permits for alterations to listed historic buildings/sites outside the built-up area to the provincial executive for advice. In all other cases, forwarding such advice is no longer required.

Part C

Point 2 of this part provides a more specific description of the 'ordinary maintenance' activity referred to in article 2 (1) of Annexe II to the Environmental Permitting Decree, partly in view of the fact that ordinary maintenance of listed historic buildings/sites no longer requires a permit. Ordinary maintenance – work designed to preserve existing features – never required a permit as a building activity, and this remained so when the Environmental Permitting (General Provisions) Act was introduced on 1 October 2010. The present amendment codifies the conditions for ordinary maintenance. These conditions were developed in practice following discussions regarding the permit requirement for repairing and replacing door and window frames. The circular of 19 December 2003 (MG 2003-25), see www.rijksoverheid.nl) discussed this at length and clarified when replacement of door and window frames goes beyond ordinary maintenance. It is still considered ordinary maintenance if the detailing, profiling and design remain unchanged, and hence may be so considered if the type of material or colour changes. Since these criteria are suitable for general application to maintenance work, a decision has now been made to explicitly add them to article 2 (1) of Annexe II. However, one reason why this has been done is to distinguish such work from 'ordinary maintenance' of listed historic buildings/sites which no longer requires an environmental permit under this Decree, in cases involving alterations to the building or site. Article 3a (1) of Annexe II to the Environmental Permitting Decree (part C (3)) makes ordinary maintenance of listed historic buildings/sites subject to two additional

conditions: not only must the detailing, profiling and design remain unchanged, but so must the type of material and the colour. Provided that ordinary maintenance meets these conditions, building activities as referred to in section 2.1 (1) (a) of the Environmental Permitting (General Provisions) Act and alterations to historic buildings/sites as referred to in section 2.1 (1) (f) of the Act do not require an environmental permit. In this connection reference is made to, *inter alia*, the new article 4a (1) in the Annexe. This also means that, in cases of ordinary maintenance that do not entail a change in detailing, profiling or design but do entail a change in the type of material or colour, the building activities referred to in section 2.1 (1) (a) of the Environmental Permitting (General Provisions) Act do not require an environmental permit, but the alterations to the listed historic building/site (the activity referred to in section 2.1 (1) (f) of the Act) do.

A new chapter IIIa on categories of cases in which activities involving a listed historic building/site do not require an environmental permit has been added to part C (3). This is an exception to the permit requirement for acts as referred to in section 2.1 (1) (f) of the Environmental Permitting (General Provisions) Act: alterations to a historic building/site listed by the Minister under the 1988 Act, other than a listed archaeological monument as referred to in section 1 (c) of that Act. The new article 3a deals with these exceptions to the permit requirement. For an explanation of the term 'ordinary maintenance' in part 1, readers are referred to the earlier comments on the subject in the explanation of the amendment to article 2 (1) of Annexe II to the Environmental Permitting Decree (part C (2)). In connection with listed historic buildings/sites, this concerns activities that include:

- welding rotten wood in door and window frames;
- painting in the same colour;
- replacement of broken glass with the same type of glass;
- repair, replacement or renovation of gutters and downpipes using the same material;
- replacement of wrought iron;
- replacement of sections of roofing;
- minor alterations to modern shop windows;
- partial replacement of roof tiles using the same material, or repairs to holes in thatched roofs.

Ordinary maintenance work must respect the existing work as far as possible. Materials may therefore only be replaced with the same type of material, with the same appearance and detailing.

In the case of gardens and parks, this means that repairs to the structure and profile of paths using the same material and replacement of vegetation with the same type of vegetation do not require a permit.

Painting that involves the removal of all the older topcoats or alterations to the paint system still requires a permit if the detailing, profiling, design, type of material or colour changes. So does the replacement of historic glass with modern glass (insulated or otherwise), particularly if the glazing bars and window frames are replaced, since this involves a change of material.

The second category of activities that no longer require a permit under article 3a is activities that only result in indoor alterations to parts of a listed historic building/site that have no heritage value. These are often parts added after the building was listed. The category covers the removal of structural components that were not part of the original design and can be assumed not to have been either typical or innovative features of the architectural period concerned, are not of general interest because of their beauty or scientific importance and have little or no cultural or historical value. Examples include the removal of hardboard, softboard and plasterboard, partition walls, kitchens or bathrooms and lowered ceilings fitted after the building was listed.

Part C (4) adds a new article 4a to chapter V of Annexe II. This is a continuation of the former article 5 (3) of Annexe II, which laid down the conditions under which construction work in, on or near historic buildings/sites or in urban or village conservation areas did not require a permit. Those conditions are now set out in the new article 4a, including the extension of kinds of construction work that do not require a permit under this Decree, as already explained in sections 4.2 and 4.3 of the general part of this explanatory memorandum. The decision to introduce a new article 4a rather than reword the former article 5 (3) was made in the interests of clarity and readability. The structure of the article has been altered for the same reasons. Instead of stating when articles 2 and 3 of Annexe II are *not* applicable to historic buildings/sites and conservation areas, the article now states when they *are* applicable.

Article 4a (1) of Annexe II to the Environmental Permitting Decree indicates when construction work in, on or near historic buildings/sites does not require a permit under articles 2 and 3 of Annexe II. This covers buildings and sites, including archaeological monuments, listed by central government and by provinces and municipalities. It also applies to structures that are subject to preliminary listing. Under the former article 5 (3) of Annexe II, construction work near such buildings/sites required a permit unless the work could be

considered ordinary maintenance or was required in accordance with the Housing Act (articles 2 (1) and (2) of Annexe II). This Decree has now introduced a third category of cases in which construction work in, on or near a historic building/site (article 4a (1) (b) of Annexe II to the Environmental Permitting Decree) does not require an environmental permit, namely cases involving activities as referred to in the other parts of article 2 (other than point 3) and article 3 (other than points 1 to 3) of the Annexe in or on a part of a historic building/site that has no heritage value, or near a historic building/site. This concerns construction work in or on parts of historic buildings/sites that have no heritage value and in or on grounds and adjacent structures near historic buildings/sites. The parts that have no heritage value were usually added after the building/site was listed, and the grounds and adjacent structures referred to are located in the immediate vicinity of the building/site but were not identified as part of it in the designation. If the grounds or adjacent structures *were* mentioned in the designation, this is no longer considered construction work *near* a historic building/site but in or on it, which requires a permit unless the part of the building/site involved has no heritage value. Adjacent structures may be either annexes or detached structures such as sheds. In this connection, readers are referred to the definition of the term 'adjacent structure' in article 1 (1) of Annexe II to the Environmental Permitting Decree.

The new article 4a (2) of Annexe II to the Environmental Permitting Decree deals with kinds of construction work that do not require a permit in urban or village conservation areas. As with historic buildings/sites, the rule used to be that construction work in such areas always required a permit. Again as with historic buildings/sites, the exceptions to this rule set out in the former article 5 (3) were the cases referred to in article 2 (1) and (2) of Annexe II to the Environmental Permitting Decree, namely ordinary maintenance and construction work required under the Housing Act. Activities as referred to in the other parts of article 2 and in article 3 of Annexe II to the Environmental Permitting Decree likewise did not require a permit, provided that they would only result in indoor alterations. This Decree has added a number of categories to the existing exceptions.

Activities referred to in articles 2 and 3 of Annexe II to the Environmental Permitting Decree and involving changes to a rear façade or rear section of roof no longer require a permit unless the façade or section of roof faces an area accessible to the public. Activities referred to in articles 2 and 3 and involving the erection of a structure likewise do not require a permit if they are carried out on grounds at the rear of the main building in question, unless the grounds are also part of the grounds at the side of the building or face an area accessible to the public, or on grounds that are part of an area accessible to the public.

For a clear understanding of the above, it is important to know whether the part of the grounds at the rear of a main building that is located beyond the rear façade is also part of the grounds at the side of the building. That is why, in extending the kinds of construction work in listed urban or village conservation areas that no longer require a permit in article 4a (2) (b) (3°), an express provision has been included that the work must be carried out on grounds at the rear of the main building that are not also part of the grounds at the side of the building. This is specifically not the same as 'rear grounds' as defined in article 1 (1) of Annexe II to the Environmental Permitting Decree, since these also include grounds at the side of the main building (at a distance of more than 1 m from the front of the building) that do not face areas accessible to the public. However, elimination of the permit requirement for construction work on all or part of the grounds at the side is undesirable in urban or village conservation areas, since such grounds are often visible from the public realm at the front of the building and the quality of the conservation area may be impaired as a result. Such work must therefore be assessed beforehand via an environmental permit application procedure.

Even if the work is carried out on grounds at the rear of the main building that are not also part of the grounds at the side of the building, a situation may still arise in which it is visible from the public realm. In particular, this may occur if the grounds at the rear face an area accessible to the public, such as a road. Article 4a (2) (b) (3°) therefore includes the additional condition that the part of the rear grounds on which the work is carried out must not face an area accessible to the public. Article 4a (2) (b) (2°) lays down the same condition for construction work that does not require a permit on a rear façade or rear section of roof in a listed urban or village conservation area. The underlying principle is the same.

As for the extension of permission to erect structures without a permit in a listed urban or village conservation area on grounds that are part of an area accessible to the public, the structures concerned are usually ones deemed necessary for purposes of infrastructure and public services. Given the nature of such structures, they will have little adverse impact on the conservation area, besides which they have a public function. They therefore no longer require a permit even in listed urban or village conservation areas.

Article III

Part A

Following the introduction of the Environmental Permitting (General Provisions) Act, section 42 of the 1988 Act was repealed. The intention was that the matters dealt with in that section would henceforth be covered by section 4.2 (1) of the new Act. Unfortunately, the Act

introducing it failed to make due provision for this. This error was corrected with retroactive effect to 1 October 2010 by the Act amending the Monuments and Historic Buildings Act 1988 and the Environmental Permitting (General Provisions) Act in connection with Modernisation of the Preservation of Historic Buildings and Sites. Under this Act, two new points (a and b) transferring the provisions of section 42 of the 1988 Act were added to section 4.2 (1) of the Environmental Permitting (General Provisions) Act. Article 3 of the Archaeological Heritage Management Decree must therefore now also refer to section 4.2 (1) (a) and (b) of the Environmental Permitting (General Provisions) Act. The same applies to the reference to section 15.20 of the Environmental Management Act, whose provisions of relevance to archaeological heritage management were transferred to section 4.2 (1) (c) of the Environmental Permitting (General Provisions) Act when it came into force. These provisions concern financial compensation decisions relating to measures taken to protect the environment in cases in which archaeological heritage management is also covered by the specific decision.

Part C

Following the introduction of the Environmental Permitting (General Provisions) Act, the penal provisions of the 1988 Act were transferred to the Economic Offences Act. Article 17 (2) (f) of the Archaeological Heritage Management Decree must now therefore also refer to the latter Act. Since the provision concerns offences committed during the last four years, the article still also refers to the provisions of the 1988 Act that were transferred by the Act introducing the Environmental Permitting (General Provisions) Act.

Article IV

This article contains transitional provisions regarding the amendments to the Environmental Permitting Decree. Paragraph 1 allows municipalities to continue dealing with existing permit applications concerning listed historic buildings/sites outside the built-up area under the extended preparatory procedure referred to in the Environmental Permitting (General Provisions) Act. In the absence of such a provision, municipalities would suddenly have no more than eight weeks to reach decisions on existing applications. Indeed, in some cases this deadline might already have passed.

However, this does not apply to permit applications for activities that no longer require a permit under article II of this Decree, since municipalities can immediately notify applicants that no permit is required.

Halbe Zijlstra

State Secretary for Education, Culture and Science