

QUESTION 2b ACC TO NLVOW

2. With respect to each of the windfarm projects *Windpark Zuidlob* and *Windpark Noordoostpolder*, please provide:

- (a) ...
- (b) An English translation of the parts of the above documents for each windfarm that you consider support your allegations that:
 - (i) The location could no longer be changed as it had been laid down in agreements between the national government and the province in question;¹
 - (ii) The developer and the national government had already settled most issues relating to spatial planning and licenses, permits and exemptions in formal and informal agreements;²
 - (iii) No stricter limit for noise or shadow flicker than the levels set out in the Activities Decree and Activities Regulation could be imposed.

NLVOW REPLY TO THE QUESTION 2b

In relation to the Land-use plans for wind farm Noordoostpolder and for wind farm Zuidlob paragraph 44 of the Communication states “The location can no longer be changed as it is laid down in agreements between the national government and the province in question, while the developer and the national government have already settled most issues relating to spatial planning and licenses, permits and exemptions in formal and informal agreements.”

Sub-question (i) - locations could not be changed

As a preliminary observation: in this question of the Committee the use of the verb “could” is somewhat confusing as the verb may be understood as referring to an action that is hypothetically possible. However, the relevant sentences in the NLVOW Communication do not refer to what is hypothetically possible, but to what actually took place.

Zuidlob

In view of the size of wind farm Zuidlob (in excess of 100 MW) formal decision-making was in the hands of the national government. However, the provincial government and the municipalities concerned were fully and actively involved in preparing all decisions required by law.

For wind farm Zuidlob the above allegation is supported by the following facts and considerations.

1. At the time the province Flevoland had committed itself vis-à-vis the national government to find space for the realization of 1.200 MW of wind power in 2020. At the time the power of an average wind turbine was in the range of 3 to 4 MW. Therefore, Flevoland was under an obligation to find space for 300 to 400 turbines.
2. This explains why the province took a most active role. As was explicitly stated on p. 3 of Explanation of the Land-use plan (see “Full text land-use plan wind farm Zuidlob as adopted): “The plan has been developed by the developers in cooperation with the province” (sentence in the plan marked in yellow). Note the words: “in cooperation with”- not “in consultation with”.
3. Several other references in the Zuidlob Land-use plan also make clear that in fact the plan is a



joint initiative of the developers, the province and the municipality concerned. For example, on p. 20 of the plan it is noted that the province considered the plan a “pilot project” (also marked in yellow).

4. The draft plan submitted to the public for comment shows the location of the new wind farm

Zuidlob and its turbines - see the red lines; the green line refers to an existing wind farm.

5. The analysis of the changes made in the draft plan as a result of public participation (question 2a) shows that any comments on the location of the park or its turbines did not lead to any changes in the final plan as adopted. Accordingly, the locations in the final plan are identical to the locations in the draft plan.
6. In fact, the location of the farm could not be changed as the national and the provincial government had agreed earlier that the area in question was suitable for large scale windfarms. This agreement was confirmed in 2011 in the SVIR (for the document see the directory for NLVOW reply to Question 3) and later in 2014 in the SvWOL (for the document see the directory for NLVOW reply to Question 4).
7. Finally, the developers and the national government had concluded a formal agreement on the costs of land exploitation. See the paragraph marked in yellow on the first text page of the Land-use plan. This agreement too made it impossible for the government to change the location of the wind farm without breach of contract.

Noordoostpolder

The plan for wind farm Noordoostpolder also exceeded the 100 MW limit, implying that for this plan as well formal decisions were in the hands of the national governments, while the province and the municipalities in question actively participated in preparing those decisions.

1. Windfarm Noordoostpolder is also located in the province Flevoland, implying that it too is part of the commitment of the province vis-à-vis the national government to realize 1.200 MW of wind power in 2020; see point 1 above under Zuidlob.
2. The above point 5 is also applicable here: for this wind farm too the developers and the national government concluded an agreement on the costs of land exploitation. See the paragraph marked in yellow on the first text page of the Land-use plan for wind farm Noordoostpolder
3. More specifically on the location of the farm: the draft plan contained the following map.



All wind turbines are to be placed along the western dyke, some on land, some in the water.

This map is identical to the map in the final plan: no changes in the location of the farm or its turbines.

Unlike the plan for wind farm Zuidlob, this plan was subject to a great deal of criticism. As a result more than 500 comments were received, both from government agencies and the public at large.

The analysis of the changes made in the draft plan as a result of public participation (see question 2a) shows that not a single comment on the location of the park or the turbines led to a change in the final plan.

4. Perhaps most importantly, for the Noordoostpolder too, the location could not be changed as the national and the provincial government had agreed earlier that the area in question was

suitable for large scale windfarms. This agreement was confirmed in 2011 in the SVIR (for the document see the directory for NLVOW reply to Question 3) and later in 2014 in the SvWOL (for the document see the directory for NLVOW reply to Question 4).

5. That the location of the wind farm and its turbines could not be changed is also evident from some of the considerations in the Land-use plan. See in particular p. 31 of the Explanation where it is stated that the location of the farm had already been established in earlier policy decisions (sentence marked in yellow) and p. 41 where it is said that the location is in line with the spatial zoning policies of the province (also marked in yellow).

Sub-question (ii) - developer and government had settled most issues

The Land-use plan for wind farm Zuidlob is about 80 pages long (two for the formal decision by the ministers in charge; four for a summary of the changes made to the draft plan; about 40 for the Explanation of the plan; and another +/- 30 for various annexes). The same document for wind farm Noordoostpolder is about 100 pages (two for the formal decision by the ministers in charge; four for a summary of the changes made to the draft plan; about 65 for the Explanation of the plan; and another +/-25 for the applicable Rules).

And these documents are just the tip of the iceberg: they build upon a most detailed environmental impact assessment (EIA) and on a range of other even more detailed reports dealing with sound, flicker shadow, nature, specific birds and bats, archeology, etc. Taken together, for a wind farm of the size of Zuidlob and Noordoostpolder all these documents together may easily amount to several thousand pages.

To illustrate the point, this is the table of content of the Land-use plan for wind farm Zuidlob

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2. Description project, location and spatial aspects
Introduction, wind turbines, space required for construction and maintenance, location and spatial consideration
3. Zoning policies
Introduction, policies national government, policies province, policies municipalities, conclusions
4. Investigations
Introduction, EIA in general, impacts on: ecology, landscape, archeology, soil and water, surface water, living and living environment, access and maintenance roads, etc.
5. Legal aspects
National zoning plans, legal form of plan and applicable rules
6. Feasibility
7. Consultations

The Land-use plan for wind farm Noordoostpolder is even more detailed.

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2. Present situation

3. The initiative

4. Land-use plan and EIA

5. Policy evaluation

6. Evaluation EIA aspects

7. Legal form plan

8. Financial-economic feasibility

9. Societal feasibility

The purpose of showing these Tables of contents is not to demonstrate how thoroughly decisions are being prepared in the Netherlands. The purpose is to show to what extent national, provincial and municipal authorities involve developers in preparing Land-use plans on wind farms before these decisions are submitted to the public for comment. Fact is that each and every relevant aspect of the above tables of content has been reviewed and discussed with developers and other government agencies.

This is not to say that developers always get what they want, but fact is that they have every opportunity to help shaping draft decisions on land-use plans before the public gets a chance to express its views. In fact, often before the public is even aware that a plan is being developed. Fact also is that as a result of such a coordinated preparatory process national, provincial and municipal authorities have essentially lost the ability to change their minds once the plan is made available - at last! - for public scrutiny: on all significant points they have already committed themselves, formally and informally, vis-à-vis the developers. And each other.

So, yes, the developers of wind farm Zuidlob and the developers of wind farm Noordoostpolder and the national government had already settled most issues relating to spatial planning and licenses, permits and exemptions in formal and informal agreements before the public could *pro forma* participate in decision-making.

This chain of events should not surprise: the national government wanted to realize 4.500 (later: 6.000) MW wind power on land in 2020; the provinces had agreed with the national government to find space for a specific amount of wind power; and developers were indispensable for the realization of these ambitions and commitments.

Sub-question (iii) - no stricter limits noise and shadow flicker

As a preliminary observation: in this question too the use of the verb “could” is somewhat confusing as well. As mentioned before, the verb may be understood as referring to an action that is hypothetically possible, but the relevant sentences in the NLVOW Communication do not refer to what is hypothetically possible, but to what actually took place.

Paragraph 4.3 of the Land-use plan for wind farm Zuidlob evaluates the farms’ environmental impacts. Subparagraph 4.3.5 addresses the impact on living and living conditions. On noise it concludes as follows (p. 29, marked yellow)

Conclusion

The acoustics study shows that the wind farm will largely meet the standards that have been set with regard to noise levels at regular homes, permanently inhabited holiday homes and in designated silence areas. In those situations where these standards are not fully met, technical measures can be taken to comply with them. These measures are described in the EIA and consist of changing a turbine’s default setting so as to reduce power and noise. These measures will be laid down in the Environmental Permit. There are no legal limits for noise exposure at the homes of the developers, but even so good spatial planning requires an acceptable situation.

At the time of the adoption of the Zuidlob Land-use plan the present 47 dB Lden en 45 dB Lnight norms were not yet incorporated in the Activities Decree adopted by the national government. Another set of norms did apply, but these also allowed the setting of (stricter) norms that are tailor-made for local conditions. **That option was not used as technical measures were supposed to take care of any noise problems.**

On shadow flicker paragraph 4.3.5. (p. 30, marked yellow) states:

Conclusion

Research into the occurrence of shadow flicker demonstrates that at the location of homes within the impact area of the wind turbines, the norms of the Activities Decree are met. Shadow flicker does not hinder the implementation of the plan

Chapter 6 of the Land-use plan for wind farm Noordoostpolder evaluates the outcomes of the EIA. Paragraph 6.2 deals with sound and this what the governments concludes (p. 46, marked yellow):

Conclusions for this plan

The State is aware that the acoustic quality of the environment diminishes as a result of this plan. Yet, in the opinion of the government the (remaining) quality is not so unacceptable that it presents an obstacle to approving a land-use plan for this location. The state balances the reduction of the acoustic quality of the environment against the importance of sustainable energy. Also relevant is the fact that with the accumulation of other sources and existing wind turbines no account has been taken of (agricultural) activities that periodically cause high noise levels. In addition, acoustic quality levels concern in part business-related homes associated with existing turbines or the homes of the developers of the new wind farm. The new wind farms can meet the cumulative 47 dB Lden and 41 dB Lnight norms at the location of the surrounding homes.

The 47 dB Lden en 41 dB Lnight norms are set forth in article 3.14a of the Activities Decree and are therefore generally binding legal norms. **The citation above shows that de national government decided not to use its power under that same article to adopt stricter norms in view of special local conditions.**

On shadow flicker paragraph 6.4 (p. 50, marked yellow) of the plan concludes that with a special standstill facility all turbines will meet the applicable norm (on sensitive objects shadow flicker is allowed for more than 20 minutes during at most 17 days a year). For shadow flicker authorities have no power to adopt stricter norms.

On behalf of the NLVOW,



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