BENCHMARKING CASE STUDIES ON PLANNING LAWS IN FIVE COUNTRIES

Morocco | Netherlands | South Africa | Republic of Korea | the United Kingdom of Great Britain and Northern Ireland

URBAN LEGAL CASE STUDIES | VOLUME 15

UN-HABITAT

Strengthening the Urban Planning Legal and Institutional Frameworks in the Sultanate of Oman

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EXECUTIVE SUMMARY

The case studies have provided a spectrum of regulatory models and schemes for the reform agenda in the Sultanate of Oman. These include:

1. Coordinated planning hierarchy:

Regarding the coordinated hierarchy of national and regional plans, the main findings are as follows:

a. National and regional plans can be legally binding (e.g., in the Republic of Korea, where the Comprehensive National Land Plan and the Provincial Comprehensive Plan are binding for lower levels); or

b. They are not binding, but with strong control provided by the national Government. This is exemplified in the Netherlands, where national and provincial spatial frameworks are not legally binding, but the national Government and the provincial government may adopt an imposed land-use plan for the land concerned. England, in the United Kingdom of Great Britain and Northern Ireland, has a similar approach and plans at all levels (including local core strategies and local land-use plans) are not binding (except for the London Plan) but the Planning Inspectorate has the power to scrutinize and examine all plans and can intervene when national principles and rules have not been considered.

c. At the subregional level (i.e., metropolitan scale), plans are binding in the three countries that have such a level of planning, i.e., England, the Republic of Korea and South Africa.

d. At the local level, all the planning systems have a comprehensive framework that contains two main planning tools: a structure vision for spatial local development and the local land-use plan. In Morocco, the structure plan seems to conform to higher levels but is not necessarily binding (the Land use Planning Director Scheme must align with the Land-use Plan).

However, it is worth pointing out that the national plan is not operational and so planning orientations at the local level are the only binding directions for the land-use plan. In the Netherlands, on the other hand, the Municipal Structure Vision is not binding, but national and regional levels can still impose their vision on land-use plans. The local land-use plan, which must conform to higher level plans (e.g., metropolitan plan, if present) is legally binding in all five countries assessed.

e. Plans at the district level do conform to local plans of the area they are in. The case of England is a prime example, as the neighbourhood plan becomes an integral part of the local land-use plan.

2. Decentralization of spatial planning:

In the Netherlands and South Africa, municipalities can independently formulate and adopt their own land-use plans and also have the fiscal autonomy to control expenditures and budget. Additionally, in Morocco, autonomous institutions in the sphere of the national ministry elaborate the land planning documents that municipalities are mandated to implement. In England, planning is administratively highly decentralized, although there is strong control of conformity by the national Government. At the same time, fiscal decentralization is legally permitted through land-based financing mechanisms which allow local authorities to capture the value of the land, e.g., the community infrastructure levy, or the Section 106 Agreements (developer exactions).

3. Established coordination mechanisms:

In the Netherlands, through the Spatial Planning Law, permitting and other land-use implementation decisions are jointly submitted for public inspection by a single body, the Administrative Law Division of the Council of State. The law also includes requirements for municipalities to coordinate in the preparation of overlapping land-use plans, as well as for spatial planning authorities to consult the competent water boards. This is also the case in South Africa, whereby, according to the Spatial Planning and Land Use Management Act 16 of 2013, institutions must promote cooperative government and intergovernmental relations in respect of spatial development planning and land-use management systems.

For instance, municipalities normally consult any organ of the State responsible for administering legislation relating to spatial planning activities that require approval and reach a written agreement with the given authority. In England, the Localism Act 2011 introduces the "duty to cooperate" to ensure that local planning authorities and other public bodies work together in relation to the planning of sustainable development that extends beyond their own administrative boundaries. Local planning authorities must demonstrate their compliance with the duty to cooperate when their local plan is examined by the Planning Inspectorate.

4. Codification and climate-friendly urban planning:

In the Netherlands, the Environment and Planning Act 2021 represents an ambitious approach to streamlining environmental and planning considerations and promoting a coherent approach to the physical environment in policy, decision-making and regulations. Additionally, in the Republic of Korea, the Framework Act on the National Land contains an "Environment Friendly Management of National Land" section obliging those state and local governments dealing with formulation and execution of the plans or projects in the country to consider any impacts on the natural and living environments. The same applies in South Africa, whereby the Spatial Planning and Land Use Management Act establishes that sustainable development of land requires the integration of environmental considerations in both forward planning and ongoing land-use management. In Morocco, national efforts in formulating climate change policy put on the table the inclusion of sustainability considerations in land-use plans and schemes at all levels.

5. Comprehensive compensation schemes for expropriation:

In South Africa, the 1996 Constitution grants the right to a just and equitable compensation for public expropriation; the amount, time and manner of payment are decided by a court having regard of the indicators set nationally (e.g., current use of the property, market value, purpose of the expropriation etc.). The same approach is applied in the Netherlands, as the law includes provisions regarding compensation of individuals adversely affected by planning decisions and there are instruments to recover the costs of plan development from landowners ("exploitation plans").

In Morocco, expropriation under public utility is a recognized right of the State and local authorities, whereby compensation is based on the property value. In England, there are strong legal compensation rights for those affected by land acquisition for public purposes The overriding principle of compulsory purchase compensation is "equivalence": neither more nor less than the value of the land taken. As well as compensation for the market value of any land taken, additional compensation may be payable; for example, occupiers of residential properties may also be entitled to a statutory payment for home loss.

6. Meaningful public participation:

In the Netherlands, the public inspection period takes place once the decision to prepare a land-use plan has been issued; all persons who have land in the affected area(s) are identified through the land register and notified; any person is able to state their views on the preparation of a land-use plan to the municipal councils; the municipal council approves and adopts the final plan, which includes any amendments that have been made, within 12-weeks of the end of the inspection period. In South Africa, public participation is a constitutional imperative and legislative mandate for all spheres of government. Consequently, public participation mechanisms must be included in the preparation and amendments of spatial planning at all levels, especially at the local level. The same applies in the Republic of Korea, where the public must be consulted during plan formulation as evidenced in the development of the Busan and Seoul Master Plans. In England, local planning authorities are required to state their "promise to consult" in a statement of community involvement: this commonly means a six-week public consultation (six weeks on issues and options paper, and six weeks on preferred options, as a pre-submission consultation). Since 2012, in addition to their statement of community involvement, English local authorities must also prepare a statement of consultation, which sets out how they have undertaken community participation and stakeholder involvement in the production of their local development plan.

7. Active land information system:

In the Republic of Korea, there is an operational land information system which includes 37.5 million parcels and is constantly updated. There are competent authorities at each governmental level who are responsible for entering information into the system which can be shared nationwide for various tax-related

administrations, land-use plans and site selection. In Morocco, land registration and cadastre are centralized in a national agency with important information assets covering the entire territory. In England and the Netherlands, the ownership of land is comprehensively registered which provides landowners with a land title guarantee as well as with a title plan that indicates the property boundaries. This information is available in an online register and accessible to anyone to search by address or by location.

8. Harmonized intersectoral planning permissions:

In the Netherlands, there is the All-in-one Permit for Physical Aspects that is an integrated permitting procedure instead of applying for several individual permits, increasing the efficiency and harmonization of the planning system. In England, planning permission is not needed when the existing and the proposed uses fall within the same use class; also, some changes from one use class to another are covered by "permitted development" rights, to streamline the process. Moreover, the Housing and Planning Act 2016 has suggested that sites in approved plans zoned for housing or brownfield land may have planning permission in principle.

9. Effective enforcement mechanisms:

In the Netherlands, municipalities can use administrative law, private law (contractual obligations) and criminal law to enforce planning and building regulations. Under this model, criminal charges are used as a last resort to enforce compliance. In Morocco, sanctions are clearly defined by national law in cases of noncompliance with planning provisions. Executive authorities can impose punitive measures ranging from monetary fines to ordering compliance work or partial or total demolition of a construction. In England, the local planning authority can investigate cases of unauthorized development and require the offending party to take corrective action. This needs to be proportionate and could include, in less serious cases, applying retrospectively for planning permission or in extreme cases demolition.

10. Effective appeals procedure (dispute-resolution):

In South Africa, there is a double system to address planning or land disputes, one internal before the administrative authority and one external before the judicial authority, as well as appeals.

In England, there are three main procedures to appeal a planning decision: written representations, a hearing or an inquiry. Strict timeframes and procedures are in place to ensure that relevant information is submitted in a timely manner and to enable all parties to have the opportunity to comment. The whole process from submission to decision should take around three months. Additionally, in the Netherlands, an "interested party" can lodge an appeal with the Administrative Jurisdiction Division of the Council of State against several decisions, including the decision to adopt a land-use or integration plan. Interestingly, the law provides for the Ministry of Infrastructure and Water Management to set up a foundation which is responsible for drafting expert reports at the request of the courts relating to appeals lodged. A particular feature in Morocco is that land disputes can be resolved by the mediating faculties of registrars, before transferring the case to courts of first instance and courts of appeal, which lessens the burden on the judicial system.

INTRODUCTION

UN-Habitat and the Sultanate of Oman, through the Ministry of Housing and Urban Planning, are collaborating on a project on "Strengthening the urban planning legal and institutional frameworks in the Sultanate of Oman". The project will ensure that the Sultanate of Oman taps into urbanization opportunities to bring about social and economic transformation as well as enhancing effective service delivery and sustainable urban development. This will require assessing the legal and institutional framework related to urban planning with a view to catalysing a discussion that will lead to proposals for urban law and governance reform. Specifically, the project will propose a green paper for developing a new and functional spatial planning act, as well as strengthening the institutional framework and capacity that can facilitate sustainable urban development.

Planning law refers to the body of laws (national statutes, ministerial proclamations, state/provincial laws and local bylaws or regulations) that govern both the making of spatial plans – at city, town, village or district level – as well as the regulation of land use and land development. Crucially, they reflect key areas of a country's constitutional law, particularly the division of powers between city (or local) government and national or regional/state/provincial government, as well as the content of important human rights, such as the rights to property, to housing or shelter and to a decent environment. By this definition, it is evident that planning law is inherently complex as it must balance the many competing interests of stakeholders and their existing legal rights. All too often, the basic elements of urban planning are not clearly defined in the regulatory framework governing the planning system or reflected in the plans, making planning ineffective in shaping cities and achieving sustainable and inclusive results. Therefore, to achieve sustainable and inclusive urban development, the Sustainable Development Goals and the New Urban Agenda recognize the role of spatial planning calling for a paradigm shift in the way urban areas are planned and designed. For instance, the New Urban Agenda supports the "development of urban planning and design instruments that support sustainable management and use of natural resources and land, appropriate compactness and density, polycentrism and mixed uses, through infill or planned urban extension strategies" (New Urban Agenda, p.15).

The Sultanate of Oman has various planning laws that regulate urban spaces through various planning instruments at the national,

regional, local and neighbourhood levels, and they provide technical guidelines and standards for land management, zoning and building and construction. However, the system is not without challenges. These include sprawl and limited land-use regulation which is not fully integrated into the spatial planning framework (i.e., lands allocated in inappropriate locations as well as prohibited land uses not clearly defined). Additionally, due to the myriad legal instruments, planning standards are applied differently, which has created gaps in the quality of the urban environment as well as services provision. There is also a disconnect and subjectivity in the current dispute-resolution system (courts) as cases are based on the judge's interpretation of sharia law. Therefore, these issues are reflected in the benchmarks for the assessment, which include the following: scope of planning; institutional mechanisms and arrangements; planning processes; land management; and dispute-resolution.

The present report, on benchmarking case studies on planning laws in five countries, assesses the impact of planning laws in different country contexts on sustainable urban development. This can provide a spectrum of regulatory models and schemes for the reform agenda in the Sultanate of Oman.

As mentioned, planning laws and policies vary significantly from country to country. To develop a better understanding of different planning models, the planning legal frameworks of Morocco, the Netherlands, South Africa, the Republic of Korea, and the United Kingdom were assessed. These countries were selected by UN-Habitat based on a methodology (discussed below) that prioritized feasibility and comparability with the context in the Sultanate of Oman; relevance and efficacy of planning mechanisms and structures; and regional diversity. The selected countries were then assessed by UN-Habitat through developing five country case studies. Staff at the Urban Law Center at Fordham University in the United States of America, with support from UN-Habitat, then developed a comparative analysis which contained a set of recommendations.

Figure 1. Selected countries

Source: Author

Disclaimers

The designations employed and the presentation of material on this map do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties. Final boundary between the Republic of Sudan and the Republic of South Sudan has not yet been determined.

A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

The scale = 1:5 million.
Source: United Nations Geospatial

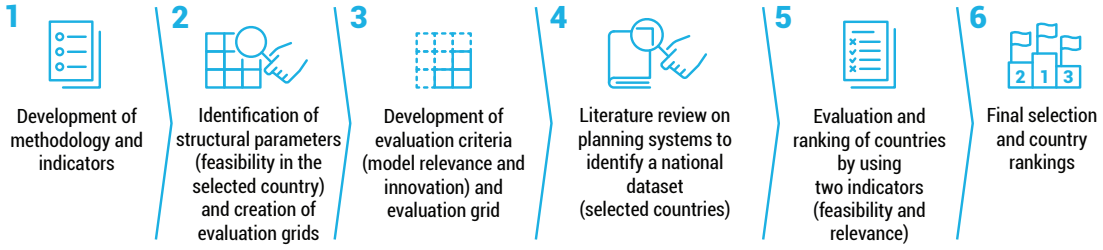
METHODOLOGY

For the case studies and comparative analysis to produce any meaningful results, it must first be recognized that some legal systems or social backgrounds might simply be too different to the extent that some aspects of those systems cannot be meaningfully compared or used as benchmarks in the Sultanate of Oman. Thus, to identify planning law models that are relevant, successful and comparable to the context of the Sultanate of Oman, a methodology to select the countries was developed. This methodology contained indicators, parameters and variables for assessment.

First, to ensure comparability with the context in the Sultanate of Oman, a set of structural parameters was developed focusing on the social, institutional and economic aspects of each country. In addition, qualitative criteria were prepared to assess the countries in terms of relevance, meaning which countries had the most relevant and functional spatial planning laws and mechanisms. A thorough literature review was then carried out to identify examples of relevant legislative provisions for spatial planning. These countries formed the dataset for country selection and were the following: Australia, Denmark, Kenya, Morocco, Netherlands, South Africa, the Republic of Korea and the United Kingdom.

Figure 2. Country selection process

Source: UN-Habitat



The final selection was made considering a weighting of the score achieved in each of the indicators identified in the methodology:

1. Feasibility and comparability with the context in the Sultanate of Oman
2. Relevance of spatial planning laws
3. Regional diversity

The following countries made the final selection as they scored the highest: Morocco, Netherlands, South Africa, the Republic of Korea and the United Kingdom.

In addition to these countries, the authors found it necessary to add an annex with a regional specific planning law study from Catalonia, Spain, to show the richness and unique approach of how the technical aspect of city and district planning have enabled the region, with the significant involvement of private developers, to maintain compact, connected and integrated urban development.

INDICATORS FOR COUNTRY SELECTION

The selection of countries for the case studies was based on a weighting of the following indicators:

» **Feasibility and structural similarities with the Sultanate of Oman:** This indicator ensured that the countries selected were comparable to the institutional and socioeconomic context of the Sultanate of Oman.

» **Thematic relevance (spatial planning laws):** This indicator guaranteed that the selected countries had effective and functional spatial planning laws, mechanisms and structures.

» **Regional diversity:** This indicator aimed to achieve regional diversity and balance in the country selection. The first two indicators had more weighting than the regional diversity indicator. However, based on the results from the first two indicators above, the highest scoring countries from each region, or subregion when applied, were allocated an additional point to ensure regional diversity in the final selection.

Table 1 summarizes what each indicator contained while table 2 shows the evaluation grids for each indicator. The minimum requirement for the selection of a country was an overall score of 5/10 and a minimum of 50 per cent in indicators A and B.

This result can be interpreted as a viable and relevant case study for the Sultanate of Oman. If a country does not get a at least 50 per cent in indicator A (2 points), the country will not be classified to be assessed under indicator B.

TABLE 1. Summary of indicators

Indicators	Parameters	Type of assessment	Weighting
(a) Feasibility and structural similarity	Institutional framework	Qualitative	4
	Socioeconomic variables	Qualitative and quantitative	
(b) Thematic relevance	Relevant and functional spatial planning systems and laws	Qualitative	5
(c) Regional diversity	Geographical region	Qualitative	1

Source: UN-Habitat

TABLE 2. Evaluation grids for the indicators

Feasibility and structural similarity to the Sultanate of Oman	3-4/4 The country has an institutional and socioeconomic context similar to the Sultanate of Oman and is a good comparator
Current context of the Sultanate of Oman (as of 2020-2021) is: Institutional framework Form of state: unitary State Centralization of planning mandates: Highly centralized Socioeconomic parameter variables: Urban population: 87 per cent Urban population growth: 3.1 per cent GDP per capita (US$): 16,439.30	1.75-2.75/4 The country has an institutional and socioeconomic context that is moderately similar to the Sultanate of Oman and can be comparable
	0-1.5/4 The country does not have enough elements to be comparable to the Sultanate of Oman

Thematic relevance The functionality and effectiveness of spatial planning laws and mechanisms is addressed under the following categories: Scope of planning Institutional mechanisms and arrangements Planning processes (public participation, permissions, timelines, enforcement of violations) Land management (allocation, uses, security of tenure, tenure types, acquisition, compensation, land-based financing) Dispute-resolution mechanisms	4-5/5 The country has excellent examples of spatial planning laws and mechanisms 2.5-3.5/5 The country has good spatial planning provisions and mechanisms 0-2/5 The country does not have good spatial planning provisions or mechanisms in any of the five areas
Regional diversity The Sultanate of Oman geographic region:* Asia The Sultanate of Oman geographic subregion:* Western Asia *According to the United Nations Statistics Division	1/ Based on the results from the first two indicators above, the highest scoring countries from each region, or subregion when applies, will be rewarded an additional point to ensure regional diversity in the final selection

Indicator	**Results**
Feasibility and structural similarity to the Sultanate of Oman	/04
Thematic relevance	/05
Regional diversity	/01
Total	**/10**

Source: UN-Habitat

STRUCTURAL PARAMETERS

TABLE 3. Structural parameters

COUNTRY	Form of State	Levels of decentralization	Urban population (% of total pop., 2021)	Urban population growth (annual per cent in 2021)	GDP per capita (current US$, 2021)	GDP per capita (PPP current international US$, 2021)	Inequality-adjusted Human Development Index (value 2021)	Geographic region
THE SULTANATE OF OMAN	Unitary State	Subnational: - governorates (Muhafazah) - provinces (Wilayats)	87	3.1	16 439.3	31 117.76	0.70	Asia – Western Asia
AUSTRALIA	Federal State	3 tiers involved, but mostly State/regional level	86	0.3	59 934.1	55 807.44	0.88	Oceania
DENMARK	Unitary State	3 tiers involved (national, regional and local).	88	0.6	67 806	64 651.22	0.90	Europe – Northern Europe
KENYA	Unitary State	2 tiers involved, local level (county government). national Government - national physical and land-use development plan	28	4.0	2 006.8	5 023.51	0.43	Africa – Eastern Africa
MOROCCO	Unitary State	Subnational: - Regional (regions, prefectures, provinces) - Local (communities or municipalities)	64	2.0	3 496.8	8 143.53	0.50	Africa – Northern Africa

NETHERLANDS	Unitary State	Subnational: - Regional (provinces and water districts) - Local (municipalities)	93	0.9	58 061.0	63 766.89	0.88	Europe – Western Europe
SOUTH AFRICA	Unitary State	Subnational: - Regional (provinces, subdivided in metropolitan + district municipalities) - Subregional (regions if constituted) - Local (municipalities, wards)	68	2.0	6 994.2	14 420.17	0.47	Sub-Saharan Africa – Southern Africa
REPUBLIC OF KOREA	Unitary State	Subnational: - Regional (provinces, special cities, metropolitan cities) - Local (municipal: cities, counties, districts; sub-municipal level: towns, township, neighbourhood, village)	81	-0.2	34 757.7	46 918.47	0.84	Asia – Eastern Asia
UNITED KINGDOM	Unitary State	Sub-national (England "Home Nation" devolved government) - Sub-regional (counties, Metropolitan Authority of Greater London) - Local (cities and neighbours)	84	0.7	47 334.4	49 675.30	0.85	Europe – Northern Europe

EVALUATION OF STRUCTURAL PARAMETERS FOR "FEASIBILITY"

TABLE 4. Evaluation of structural parameters for "feasibility"

COUNTRY	Form of State Unitary=1 Federal=0	Levels of decentralization - Highly centralized= 1 - Centralized with some degree of autonomy; or decentralized but with control by central government= 0.5 - Highly decentralized= 0	Urban population (% of total pop., 2021) 70-100=2 60-70=1 <60=0	Urban population growth (annual per cent in 2021) +/-1.5=2 +/-2.5=1 Other=0	GDP per capita (PPP current int US$, 2021) +/-30=1 +/-60=0.5 Other=0	IHDI +/-0.1=1 +/-0.15=0.5 Other=0	Score /8	Score /4
AUSTRALIA	0	0	2	0	0	0	2	1
DENMARK	1	0.5	2	1	0	0	4.5	2.25
KENYA	1	0.5	0	2	0	0	3.5	1.75
MOROCCO	1	0.5	1	2	0	0	4.5	2.25
NETHERLANDS	1	0.5	2	1	0	0	4.5	2.25
SOUTH AFRICA	1	0.5	1	2	0.5	0	5	2.5
REPUBLIC OF KOREA	1	0.5	2	0	0.5	0.5	4.5	2.25
UNITED KINGDOM	1	0.5	2	1	0.5	0.5	5.5	2.75

ASSESSMENT CRITERIA FOR THE RELEVANCE INDICATOR

TABLE 5. Assessment criteria for the relevance indicator

Criteria	Subcategories and definitions
Scope of planning	Planning objectives: the definition of urban planning contained in the legislative text, the objectives of which must be consistent and based on clear policies. Hierarchy and content of plans: the definition of the urban planning instruments contained in the legislative text, their content and the hierarchical order in the sectoral or scale axis.
Institutional mechanisms and arrangements	Planning institutions mandates: the definition of the institutions in charge of executing the spatial planning policies contained in the legal text, as well as their roles and responsibilities. Coordination mechanisms: the mechanisms established by law for the different institutions to coordinate in order to implement spatial planning policies. This coordination can be horizontal or vertical. Non-state actors involvement: the mechanisms provided by law to include non-state actors in urban planning and urban development processes.
Planning processes	Public participation: mechanisms provided by law to involve citizens and stakeholders in urban planning and urban development processes. Permits and timelines: legal definitions of permits related to urban planning and urban development, the institutions in charge, processes and issuance time frames. Enforcement of planning laws and instruments: the sanctions established by law in case of violations of planning laws and instruments, and the institutions in charge of enforcing them.
Land management	Land allocation and land-uses: uses that are allocated to the land, mainly through planning instruments that regulate and guide urban development. Land acquisition for public purposes and compensation schemes: mechanisms established to acquire land for public purposes, such as expropriation, as well as the compensation mechanisms stipulated by law. Security of tenure and land tenure types: the types of tenure recognized by law and mechanisms to ensure security of tenure, extending beyond recognition of property. Existence of a land information system (cadastre/land registry). Land-based financing: the mechanisms provided by law by which the State captures the increase in the value of land, for the purpose of financing public goods and equitable urban development.

Dispute-resolution mechanisms	Alternative dispute resolution, specifying timeframe for the decisions to be taken from the institution, accessibility of mechanisms etc. Mechanisms for appeal (administrative and judicial) and judicial review, specifying timeframe for the decisions to be taken from the institution, accessibility of mechanisms etc.

ASSESSMENT OF COUNTRIES ACCORDING TO "RELEVANCE"

TABLE 6. Assessment of countries according to "relevance"

COUNTRY	Scope of planning /4	Institutional mechanisms and arrangements /4	Planning processes /4	Land management /4	Disputes resolution mechanisms /4	Score /5
DENMARK	4	3	3	4	3	4.25
MOROCCO	3	3	2	3	3	3.5
NETHERLANDS	4	3	4	3	4	4.5
SOUTH AFRICA	4	3	4	4	4	4.75
REPUBLIC OF KOREA	4	3	3	4	3	4.25
UNITED KINGDOM	3	4	4	4	4	4.75

FINAL SELECTION

COUNTRY	Score for the structural parameters /4	Score for the relevance assessment /5	Final Score /9	Final score after regional diversity score /5
DENMARK	2.25	4.25	6.5	6.5
MOROCCO	2.25	3.5	5.75(+1)	6.75
NETHERLANDS	2.25	4.5	6.75	6.75
SOUTH AFRICA	2.5	4.75	7.25	7.25
REPUBLIC OF KOREA	2.25	4.25	6.5(+1)	7.5
UNITED KINGDOM	2.75	4.75	7.5	7.5

Photograph of brown concrete building, Timmel, Morocco © Pommelien da Silva Cosme/unsplash

COMPARATIVE ANALYSIS

The Urban Law Center at Fordham University in the United States, with support from UN-Habitat, examined the approach used in the case study countries on the following essential elements of planning law: scope of planning; institutional mechanisms and arrangements; planning processes; land management; and dispute-resolution. This analysis found that there was notable variation in how the subject countries distributed planning responsibilities across various levels of government and in the degree of hierarchical authority imposed on regions and localities by national Governments. Much of the differences in each country's mechanisms were tied to their structural parameters, economy and culture. However, the frameworks used by the countries also had a good deal in common, most notably the factors considered when developing plans, the institutions responsible for planning permissions and the ways in which the countries organized and regulated their land.

1. SCOPE OF PLANNING

This section features analyses of the planning objectives of the five case study countries. In addition to the content and considerations required of planning objectives in each country, this section contains an examination of the level of government responsible for setting these objectives and the amount of hierarchy and centralization embedded in each country's planning framework.

1.1. Planning objectives

The case study countries — Morocco, the Netherlands, the Republic of Korea, South Africa and the United Kingdom — generally lie along a spectrum ranging from countries that centralize the planning of specific objectives and decision-making at the national level to countries that have more decentralized models that allow local governments to set specific objectives and make planning choices. At one end of that spectrum, the Republic of Korea contains comprehensive land-use plans for the nation, provinces ("Do") and cities/counties ("Si"/"Gun") in the Framework Act on the National Land of 2009. Neighbourhood district plans are only relevant in Seoul and six metropolitan cities.

This contrasts most sharply with the way planning objectives are structured in the United Kingdom, which provides a robust national framework for local planning authorities to operate within but does not have a comprehensive plan at the national level. Instead, the United Kingdom only has the National Infrastructure Plan (a nationwide investing strategy) and the National Planning Policy Framework (2012), which gives broad guidance and objectives for local planning authorities when designing their plans, but leaves detailed planning to those authorities. In the United Kingdom, 15- and 20-year visions, development rights and controls, and decisions on applications and permissions are delegated to local planning authorities. The only regional planning objectives in England are set from the Greater London Authority, which formulates a spatial development strategy for London. All other regional planning objectives were abolished in 2012.

The remaining three countries fall between these poles. The Netherlands operates more closely to the United Kingdom and employs a national Environment and Planning Act (2021) to establish health and environmental standards. Otherwise, the Netherlands relies on an open norm that gives discretion to all levels of government.

Morocco and South Africa are closer to the Republic of Korea, with strong national frameworks that shape planning objectives for the rest of the country.

In Morocco, legislation and guidance documents at all levels are subject to the principles and guidelines of the National Charter for Land Use Planning and Sustainable Development, which establishes major objectives for countrywide planning, including consolidation of national unity, solidarity between components of national territory, human-centred development, and others. These are more specific and tangible than standards laid out by the United Kingdom, which are limited to "economic, social and environmental objectives".

South Africa sets development principles, norms and standards for land use and management at the national level through the Spatial Planning and Land Use Management Act of 2012. This legislation sets policy guidelines to direct land development, planning and relevant decision-making at all levels of government. "Forward planning" and "development control" are delegated to local governments by the Act and are subject to objectives established in the legislation.

TABLE 7. Planning objectives summary

Country	National	Regional /sub-regional	Local / district
Morocco	National Charter for Land-Use Planning and Sustainable Development National Land-Use Planning Scheme: general orientations for land-use planning at the national level	Regional Land-Use Planning Scheme: orientations and directions of regional development; including, priorities on major public services and infrastructures Guided by standards set by national laws	Land use Planning Director Scheme: main urban development orientations at the scale of one or more municipalities Land-use plan: intended uses of the land and zoning rules Guided by standards set by national laws
Netherlands	Environment and Planning Act National Structure Vision: main features of the proposed development and main elements of the national spatial policy to be pursued	Provincial Structure Vision: main features of the proposed development in their respective areas and main elements of the spatial policy to be pursued Wide discretion	Municipal Structure Vision: main features of the proposed development in their respective areas and implementation plans on how to realize it; elements of the spatial policy to be pursued Land-use plans: intended uses of the land and rules regarding those intended uses. Wide discretion

Country	National	Regional /sub-regional	Local / district
South Africa	Spatial Planning and Land Use Management Act (SPLUMA): coherent set of policy guides to direct and steer land development, planning and decision-making in all spheres of government (Ch.2, S.6-8) S.8(1): norms and standards for land-use management and land development prescribed by the national Government National Spatial Development Framework includes a set of principle-driven spatial investment and development directives and a set of strategic spatial areas of national importance	Provincial Spatial Development Framework: spatial representation of the land development policies, strategies and objectives of the province and incorporates any spatial aspects of relevant national development strategies and programmes (SPLUMA, S. 15-16-17) Potential Regional Spatial Development Framework if a region is constituted for spatial planning reasons	Forward planning Development control Policy and guidelines for land use development and management, including: Municipal Spatial Development Framework: five-year spatial development plan for the municipality's spatial form; a longer-term spatial development vision, indicating the desired spatial growth and development pattern for the next 10 to 20 years (SPLUMA, S. 21) Land-use scheme: scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone, etc. (SPLUMA, S. 24-25) All subject to national standards

Country	National	Regional /sub-regional		Local / district	
Republic of Korea	Framework Act on the National Land establishes the objective of each level of planning Art. 6 defines the objective of the comprehensive national land plan: a long-term development direction of national land, covering its entire areas	Province comprehensive plans indicate a long-term development direction of the relevant areas under the jurisdiction of the province (Framework Act on the National Land of 2009, Art. 6)	Metropolitan urban plans: policy direction-setting for matters necessary to achieve the objectives of designating the relevant metropolitan planning zone (2002 National Land Planning and Utilization Act, Art. 12)	City and county master plans: basic spatial structure and the sustainable long-term (20 years) development direction. It incorporates spatial structure, land use, infrastructure, park green space, landscape, etc. (2002 National Land Planning and Utilization Act, Art. 19) City and County Management Plans: detailed local zoning long-term (10 years) plan that translates the direction presented by the city/county master plan in the urban space. It incorporates: designation of zones and districts and of development-restriction zones; maximum limit or the minimum limit on the height of buildings; etc. (2002 National Land Planning and Utilization Act, Ch. 4)	District unit plans: detailed zoning plans used to steer land use development of small neighbourhoods and individual blocks in densely populated areas (2002 National Land Planning and Utilization Act, Art. 52)

Country	National	Regional /sub-regional	Local / district	
United Kingdom (England)	National Planning Policy Framework: policy priorities and principles for spatial development; guidance on plans' preparation and planning decision-making	Greater London Authority Act (S. 334) states that the spatial development strategy" for Greater London, i.e., the London Plan, includes "general policies in respect of the development and use of land in Greater London"	Core strategies: General policy guidelines Land-use plans: vision and framework (strategic priorities and policies) for the future development of an area and use of land (15 and 20-year Visions) Development rights and controls Decisions on applications and permissions	Neighbourhood development plan: policies in relation to the development and use of land in the whole or any part of a neighbourhood area (Planning and Compulsory Purchase Act 2004, S. 38A (2))

Source: UN-Habitat

1.2. Planning hierarchy and contents

As with planning objectives, the degree to which the case study countries employ a planning hierarchy varied. The least hierarchical and centralized was the Netherlands, which uses a non-binding National Structure Vision (2011) to lay out the main features of proposed developments. In instances where national interests are at stake, the Minister for Infrastructure and Water may adopt an imposed land-use zoning plan after hearing from the relevant municipal and regional councils. At the regional level, the Netherlands uses provincial structure vision plans, but these plans are also non-binding. If a regional council wishes to exercise binding authority over land-use plans, it must pass a principal ordinance regarding the content of land-use plans and any relevant decision. The main land use work is done at the local level, where local councils establish general land-use plans, which can include broad rules that range across interests such as social rental housing, social purchase housing or private commissioning, and branches of retail trade and catering. These plans are binding and are not subject to approval of higher authorities.

The United Kingdom uses slightly more hierarchy than the Netherlands. Like the Netherlands, strategic land use and zoning in England is left to local authorities to establish in local plans. These local plans are subject to scrutiny from higher authorities (mostly at the national level, but also from the Greater London Authority for planning in that region) and must take material considerations from higher authorities into account. However, there are no legally binding elements in the National Planning Policy Framework and review from higher authorities only ensures broad consistency with national priorities. The United Kingdom's national policy does not include any uses for specific geographic areas.

Morocco employs slightly more control over municipalities, but this control comes from the regional rather than the national level. Morocco's National Land Use Planning Scheme (2000) is designed to contain a territorial assessment of the entire nation and proposals for specific project areas, but Morocco has never operationalized this document, and regional and local policies have not been impacted. Morocco gives local governments the authority to make rules and decisions in local land-use plans, however, these plans are subject to regional land-use planning schemes, which establish rules and priorities for sustainable and cohesive regional development.

The Republic of Korea and South Africa are the most hierarchical. In South Africa, the National Spatial Development Framework

(2013) sets principles, standards and policies on spatial planning that must be adhered to by all lower tiers of government. The national Government takes an active role in monitoring the planning of lower-level governments and works to establish one coherent and effective framework (though direct intervention in the plans of lower governments is not the norm). Local plans are used to make land-use decisions but must comply with national standards and with provincial development frameworks and cannot affect national interest.

Like South Africa, all levels of land-use planning in the Republic of Korea are subject to national standards via the Comprehensive National Land Use Plan of 1972. Regional and local plans are typically not highly restrictive and must conform to the Comprehensive National Land Use Plan. Local plans must also conform to any regional plans in place and must be approved by provincial and national representatives.

TABLE 8. **Planning hierarchy summary**

Country	National	Regional / sub-regional	Local / district
Morocco	National Land Use Planning Scheme not operationalized	Regional land-use planning scheme must be incorporated by local plans	Land-Use Planning Director Scheme, binding for the land-use plan Land-use plans, binding and must satisfy regional and local standards
Netherlands	National Structure Vision, non-binding Imposed Land-Use Zoning Plan, binding but circumstantial, requires regional and local input	Provincial Structure Vision, non-binding Any binding rules must be passed as ordinances Imposed Land-Use Zoning Plan, binding but circumstantial	Municipal Structure Vision, non-binding General Land-Use (Zoning) Plans, binding and not subject to approval from higher authorities

Country	National	Regional / sub-regional	Local / district
South Africa	National Spatial Development Framework, binding for all lower levels of government	Provincial development frameworks, binding and must conform to national standards	Integrated development plans (Municipal Spatial Development Framework and land-use schemes), binding and must conform to national and regional standards
Republic of Korea	Comprehensive National Land-Use Plan, binding for all lower levels of government	Provincial comprehensive plans, binding, must conform to national standards Metropolitan Area Plans, binding, must conform to national standards	City county comprehensive plans (urban master plan and urban management plan), binding, must conform to higher tiers plans and standards District unit plans, must conform to higher tiers plans and standards
United Kingdom (England)	National Planning Policy Framework, non-binding but national plan making rules and principles need to be considered by lower levels. Requires national oversight and scrutiny of local plans	London Plan, binding. No legal requirement to conform with national standards, but is scrutinized	Local Development Framework (Core Strategies and Land-Use Plans) and neighbourhood plans, non-binding and must be in broad consistency with national policies and standards (as they are scrutinized). Legal requirement to conform with London Plan (if under the Greater London area)

Source: UN-Habitat

1.3. Environmental considerations

All five countries have environmental and sustainability considerations in their national land-use policies. The level to which these impact local plans would reflect the level of hierarchy used by each nation in their land-use planning structures. South Africa arguably goes the furthest in this respect by including a series of environmental rights in their Spatial Planning and Land Use Management Act. Beyond general considerations at the national level, South Africa, the Republic of Korea, the Netherlands and the United Kingdom all require or conditionally require that environmental impact assessments be done at the local level as part of land-use plans. Some countries, namely the Netherlands and the United Kingdom, also have notable, separate environmental legislation that impacts the zoning process by setting standards for emissions reductions, building standards and other environmental initiatives.

TABLE 9. **Laws/policies establishing environmental considerations for planning**

Country	National	Regional	Local
Morocco	National Charter for Land-Use Planning and Sustainable Development	Regional Land-Use Planning Scheme	Information not available
Netherlands	Environment and Planning Act Environment and Planning Permits Act (Wabo) The Environment and Planning Act (Omgevingswet) Environmental Management Act Noise Nuisance Abatement Act The Building Decree 2012 Almost energy neutral building requirements	Information not available	Information not available
South Africa	Spatial Planning and Land Use Management Act	Information not available	Information not available
Republic of Korea	Framework Act on the National Land	Information not available	Information not available

Country	National	Regional	Local
United Kingdom (England)	National Planning Policy Framework Climate Change Act of 2008 Renewable and Low Carbon Energy Strategies Town and Country Planning Regulations 2017 Net Zero Strategy 2021	Greater London Authority, London Environment Strategy	Yes. Example: City of Bristol One City Climate Strategy

Source: UN-Habitat

1.4. Planning standards

Planning standards vary widely across the subject countries. The Republic of Korea has set standards for permitting, public space and other technical standards incorporated into its comprehensive national land-use plan. South Africa, the Netherlands and the United Kingdom all have similar standards at the national level but have codified these in separate pieces of legislation (the National Building Regulations and Building Standards Act for South Africa, and several pieces of legislation each for the Netherlands and the United Kingdom).

Morocco does not seem to have any planning standards set at the national level. At the subregional level, the Greater London Authority (England) has specific standards set in the London Plan of 2021.

At the local level, the Netherlands relies on municipal buildings rules set by local governments. Similarly, planning standards in Morocco are set in the land-use plans of individual localities.

TABLE 10. Sources of planning standards

Country	National	Regional	Local
Morocco	Information not available	Information not available	Local land-use plans
Netherlands	Environment and Planning Permits Act (Wabo) National Spatial Planning Act Building Decree of 2012	Information not available	Municipal building rules
South Africa	National Building Regulations and Building Standards Act	Information not available	Information not available
Republic of Korea	National Land Planning and Utilization Act	Information not available	Information not available
United Kingdom (England)	Technical Housing Standards Nationally Described Space Standards	London Plan	Information not available

Source: UN-Habitat

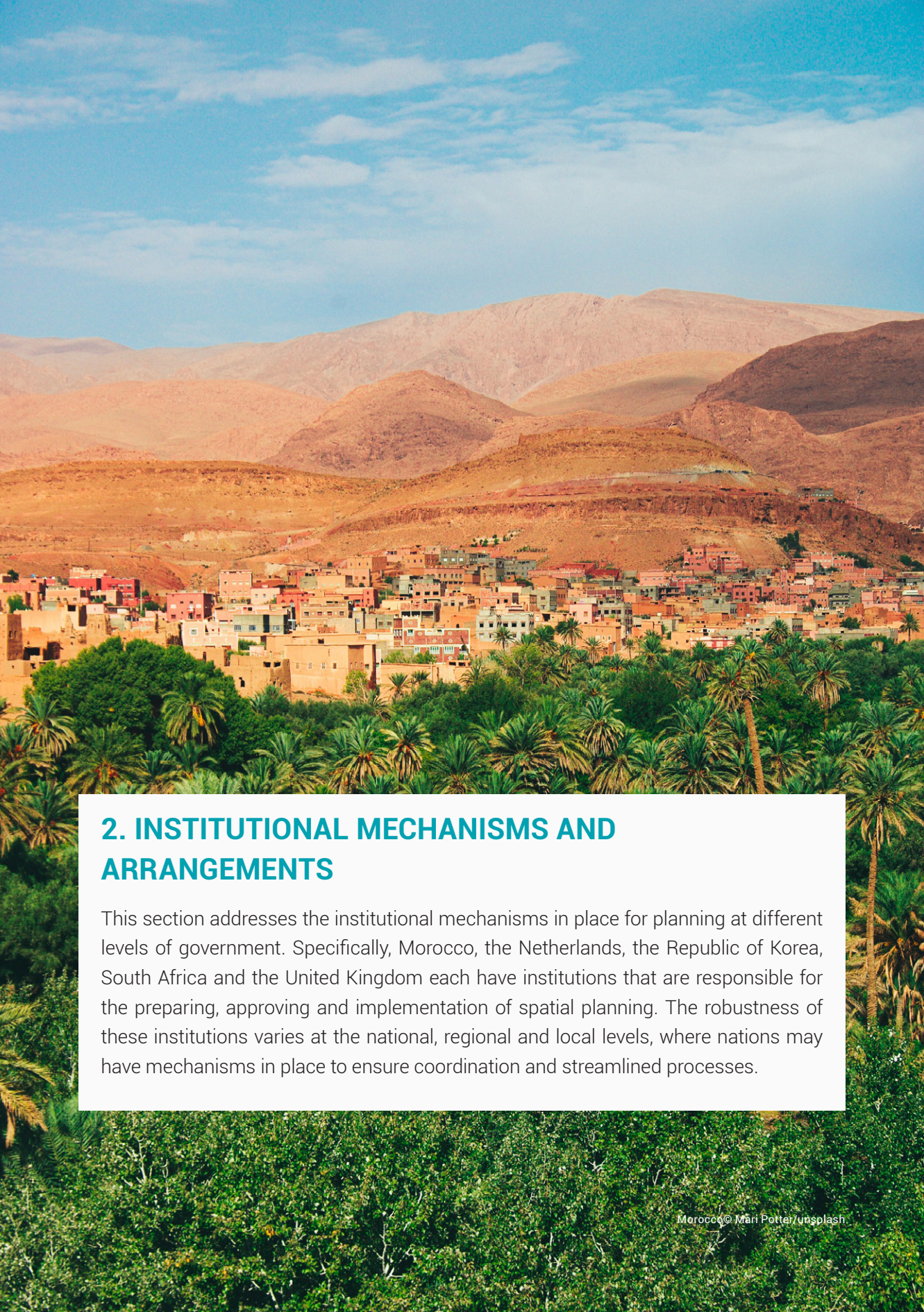
1.5. Recommendations

1. The planning legal framework should clearly define planning objectives for each level of planning which is part of sound policymaking to articulate the scope of the planning instrument as well as an opportunity to reflect the local needs and challenges. Additionally, these objectives must be expressed in a way that is easily understandable for all.

2. The planning legislation should establish a hierarchy for plans as well as the contents for each plan which will properly guide urban practitioners such as urban planners to effectively conceptualize the planning instrument.

3. The regulatory framework should outline the applicable planning standards, either at the national or all subnational levels, and these standards should be in line with international norms and standards to provide a basis for controlling land use to attain compact, connected and integrated spatial development.

4. The planning instruments should contain environmental and climate change considerations in planning objectives and contents, and Governments should adopt environmental and climate strategies and policies at either at the national or all subnational levels to promote low carbon and climate smart development.



2. INSTITUTIONAL MECHANISMS AND ARRANGEMENTS

This section addresses the institutional mechanisms in place for planning at different levels of government. Specifically, Morocco, the Netherlands, the Republic of Korea, South Africa and the United Kingdom each have institutions that are responsible for the preparing, approving and implementation of spatial planning. The robustness of these institutions varies at the national, regional and local levels, where nations may have mechanisms in place to ensure coordination and streamlined processes.

Morocco© Mari Potter/unsplash

2.1. Primary planning agencies

National level

Each of the subject countries has national institutions specifically for planning, implementation, approvals and oversights. There is a general trend that the specific leader of a regional jurisdiction controls the planning and implementation processes, whether it be a mayor, governor or premier. Additionally, certain national institutions cover subject matters such as environmental protection, infrastructure and transportation.

UNITED KINGDOM (ENGLAND)

The United Kingdom has robust institutions in place, with governmental entities overseeing local governance and subject-matter specific agencies. Specifically, the Department for Communities and Local Government is responsible for ensuring local government works effectively to meet the needs of their communities, with a particular emphasis on housing and growth more generally.

Public bodies

The United Kingdom also has public bodies, called Executive Non-Departmental Public Bodies, also known as quasi-non-government organizations or "quangos", that are fully or partially funded by the central Government, and have various responsibilities with a direct impact on planning. Many quangos have the power of statutory consultees who must be consulted by local planning authorities in preparing plans or with regards to considering whether particular planning projects should be approved or not. These public bodies cover several industries, including (1) the Planning Inspectorate, which provides scrutiny and oversight on planning matters by ensuring that planning rules are followed, and (2) the Homes and Communities Agency, which helps to provide public land for housing and employment purposes and provides funding for social housing providers.

Environmental protection

In the United Kingdom, public institutions that are concerned with environmental protection include (1) the Department of Business Energy and Industrial Energy, which works to generate cheaper, cleaner energy through backing enterprise and long-term economic growth, and (2) the Department for the Environment and Rural Affairs, which protects the environment, food and farming and rural communities (with an impact on

land use). Other public bodies with a role in environmental practices include (i) the Environment Agency which, among other things, has a major role in managing flood risk and advises on new development, (ii) Natural England, which protects biodiversity, landscapes and provides ecosystem services, and (iii) National Park Authorities, which are independent planning authorities for areas of national parks.

SOUTH AFRICA

Different to the United Kingdom's specific departments and agencies in place, many institutional mechanisms in South Africa are subject to approval at different levels of government. Specifically, the Minister for Rural Development and Land Reform, after consultation with Parliament, composed of the National Assembly and the National Council of Provinces, and with the public, compiles and publishes a National Spatial Development Framework at least every five years. The minister must review the framework at least once every five years and any proposed amendments are approved and adopted by the Cabinet and published in the Official Gazette and the media. Levels of the Government, including the president, members of the Cabinet, premiers, mayors and their offices engage with all sectors to monitor the implementation of the planning process.

MOROCCO, THE NETHERLANDS AND THE REPUBLIC OF KOREA

These countries also have specific institutions at the national level, with departments in place subject to approvals at different levels of government. In Morocco, the Ministry of National Territory Planning, Land Planning, Housing and City Policy oversees the design and implementation of the national land-use planning policy through the Department of Land-Use Planning. The plan is submitted to the Superior Council for Territorial Planning, instructed and approved as a regulatory text.

In the Netherlands the Ministry of Infrastructure and Water Management is responsible for adopting one or more national structure schemes, imposed land-use ("integration") plans and general planning regulations. Structure schemes are referred to the House of Representatives of the States General to be subject to public debate.

In the Republic of Korea, the Ministry of Land, Infrastructure and Transportation provides a spatial framework for the country that guides its development. Specifically, it oversees and approves city master plans and designates the urban planning boundaries in the country. The plan is formally approved by the president.

Regional level

Each of the subject countries has regional institutions specifically for planning and implementation, approvals and oversight. There is a general trend that the specific leader of a regional jurisdiction controls the planning and implementation processes, whether it be a mayor, governor or premier.

ENGLAND

In England, the Greater London Authority (Mayor of London and London Assembly) is responsible for planning and implementation in that region. The Mayor of London is responsible for preparing and publishing a spatial development strategy (known as the London Plan). The London Plan must go through a process of "examination in public", which involves scrutiny by a panel of planning inspectors, appointed by the Secretary of State for Levelling Up, Housing and Communities. The plan is then approved following an examination of the Secretary of State, public consultation and any potential vetoes from the London Assembly.

NETHERLANDS, THE REPUBLIC OF KOREA AND SOUTH AFRICA

In the Netherlands, the Provincial Council is responsible for drafting and adopting provincial structure schemes, imposed land-use (integration) plans and provincial planning ordinances. The Provincial Planning Commission serves a coordinating function in provincial planning.

In the Republic of Korea, the provincial governor/metropolitan city mayors prepare strategic metropolitan or provincial plans depending on its status as province or metropolitan city. They thereafter implement the plans, oversee and approve land-use plans prepared by local governments. The province/metropolitan plans are approved and overseen by the Ministry of Land, Infrastructure and Transportation.

In South Africa, the premier[1] of each province must create and publish a framework known as the Provincial Spatial Development Framework for the province. An Executive Council must adopt and approve the framework and the Executive Council may amend it and must review it at least once every five years. (A.15.5) A Provincial Spatial Development Framework comes into operation on approval by the Executive Council and publication in the Provincial Gazette.

1 In South Africa, under the constitution, executive authority over each of the nine provinces is vested in a person known as a premier.

MOROCCO

In Morocco, a regional council under supervision of the President of the Regional Council is responsible for the preparation of the plan, submitted for approval to the Ministry of Interior. The Wali of the region, which is the governor of one of 12 regions, assists the President of the Regional Council in the execution regarding oversight, the permanent commission for spatial planning at the level of the regional council at the initiative of the President of the Regional Council or under request of the Wali of the region.

Local/neighbourhood level

ENGLAND AND THE REPUBLIC OF KOREA

England and the Republic of Korea have institutions in place both at the local and neighbourhood level. In England, these institutions include the local planning authorities, (usually the council or the national park authority for the area), 32 London borough councils, 36 metropolitan borough councils, 201 non-metropolitan councils, 55 unitary councils and 10 national park authorities. They are responsible for local land-use planning (prepare local plans), public housing and decide on planning applications. They also oversee local functions including education, social care, health and well-being and education, much of which has spatial planning implications in a given area.

In conducting large-scale strategic projects, including the development of new towns and cities or the regeneration of certain areas, the United Kingdom created free-standing, location-specific development corporations. These are statutory bodies set up to regenerate a designated area, bringing land and buildings into effective use, and acting as the planning authority for that area. They often have control over the land and have effectively become a freestanding planning authority in their own right. They are responsible for proposals for the new developments, master planning, project development, bringing on board private investment, partnering with developers and overseeing completion. Examples include (1) Ebbsfleet, which was designed to create a new garden city on the edge of London, and (2) the London Legacy Development Corporation, which was originally designated to develop the Olympic Park at Stratford, west London, and now ensures that the whole site fulfils its regeneration potential.

Institutions also exist at the neighbourhood level, including parish and town councils and neighbourhood forums, designated by the local planning authority.

Procedurally, the local planning authorities are the part that would arrange the independent examination of the plan, decide to submit the plan to a referendum and adopt it in case of majority; while the parish or town council/neighbourhood forum takes care of the development of the plan.

REPUBLIC OF KOREA

In the Republic of Korea, local authorities are responsible for strategic planning and the creation of zoning regulations for their territory. The city/county mayor and authorities formulate and implement city/county master plans and management plans, as well as the district unit plans (neighbourhood level). Ministers may draft the city/county plan either ex officio or on request from the heads of the related central administrative agencies. The provincial governor may draft the city/county plans either ex officio or on request from the city/county mayors when the planning area extends over two or more cities/counties. City/county plans and district unit plans are approved and overseen by national and regional governments (Ministry of Land, Infrastructure and Transportation and provincial governor or metropolitan city mayor).

SOUTH AFRICA

In South Africa, each municipal council must adopt a single, inclusive and strategic plan for the development of the municipality, a written process to guide the planning, drafting, adoption and review of its integrated development plan. Each district municipality, after following a consultative process with the local municipalities within its area, must adopt a framework for integrated development planning in the area as a whole. The adopted framework binds both the district municipality and the local municipality in the area of the district. The municipal manager, as head of administration, is responsible and accountable for the implementation and monitoring of the municipality's integrated development plan.

NETHERLANDS

In the Netherlands, the municipal council is responsible for adopting municipal structure schemes and municipal land-use (zoning) schemes. The mayor or alderman is responsible for preparing these schemes, though in practice most municipalities outsource the drafting of their structure and land-use plans to private consultants due to constraints in human resource expertise.

MOROCCO

Lastly, in Morocco there is less autonomy for local leadership regarding implementation of projects at the local level. Unlike countries that focus on elected officials and councils at the local level, implementation of local projects is overseen by the relevant federal agency. Specifically, urban agencies, under the supervision of the Department of Land Use Planning (under the Ministry of National Territory Planning, Land Planning, Housing and City Policy), are in charge of the elaboration of urban planning documents. Each agency has a territorial jurisdiction over one or more prefectures/ provinces. They also have power over urban administration – building permits processing, approvals and compliance checking. Municipalities only have a consultative role in the elaboration of planning documents. The plan is approved by decree under the proposal of the Ministry of National Territorial Development, Urban Planning, Housing and Urban Policy. Municipalities oversee the implementation of the urban planning documents, which include the following: (1) the Master Plan for Urban Development, which is referred to by the acronym SDAU from its French name Schéma Directeur d'Aménagement Urbain, and (2) a land-use plan, known by the acronym PA for Plan d'aménagement. In terms of urban development, they participate in urban upgrading programmes for municipal infrastructure in under-serviced areas through specific programmes or municipal budgets. The ministry is also in charge of overseeing implementation.

TABLE 11. Primary planning agencies

Country	National	Regional	Local	Neighbourhood
United Kingdom (England)	Department for Communities and Local Government Department of Business Energy and Industrial Energy Department for the Environment and Rural Affairs Executive non-Departmental Public Bodies Planning Inspectorate Homes and Communities Agency Environment Agency Natural England National Park Authorities	Mayor of London London Assembly London borough councils Planning officers in councils Planning Inspectorate Secretary of State for Levelling Up, Housing and Communities	Local planning authorities 32 London borough councils, 36 metropolitan borough councils, 201 non-metropolitan councils, 55 unitary councils and 10 national park authorities. Development corporations Combined authorities	Parish or town councils (if present) or neighbourhood forums, designated by the local planning authority Government Guidance on Neighbourhood Plans
Netherlands	Ministry of Infrastructure and Water Management	Provincial Council Provincial Planning Commission	Municipal Council Mayor or Alderman	
Republic of Korea	Ministry of Land, Infrastructure and Transportation	Province Governor / metropolitan city mayors	City/county mayor Ministers Province Governor	
South Africa	Minister of Rural Development and Land Reform	Premier Executive council	Municipal council District municipality Municipal manager	Minister of the Municipality
Morocco	Ministry of National Territory Planning, Land Planning, Housing and City Policy Superior Council for Territorial Planning	Regional council President of the regional council Wali of the region	Urban agencies, under supervision of the Department of Land-Use Planning Ministry of National Territorial Development, Urban Planning, Housing and Urban Policy	

Source: UN-Habitat

2.2. Non-governmental/private sector role

Regarding the private sector, certain non-governmental organizations can have a role in spatial planning. Within each country, the role of the private sector varies, from private companies having an influential role in everyday public life (the United Kingdom) to laws in place that require merely considering private actors in planning (South Africa).

UNITED KINGDOM

Private companies influence everyday life in terms of spatial planning in the United Kingdom. At the national level, most development takes place on land that is privately owned and/or is largely funded by the private sector, with the goal to increase profit through real estate processes. Property development companies, the construction industry and private sector planning consultants, among others, collectively make a significant contribution to the overall economy.

In 2010, following the disbandment of the regional development agencies, 38 local enterprise partnerships were created, which are public-private partnerships intended to guide the economic growth of the city regions of wider functional areas. They cover the whole country and seek to shape the economic growth potential of particular areas.

Other examples of companies that have transferred from being public to private entities include utility companies which, under licence and state regulation, are able to deliver services at a profit. They are also responsible for managing, renewing and refreshing the infrastructure. These include most public transport, water (potable and wastewater), energy production, supply and consumption, and telecommunications infrastructure. The rationale is that the competitive market improves efficiency and reduces costs.

THE NETHERLANDS

In the Netherlands, most of the planning law still falls within the public sector, while some of the implementation has fallen to the private sector (known as private developers), particularly since the 1990s. In the past, municipalities actively acquired the land and serviced it, which was then subsequently sold to developers (which were, in many cases, state-subsidized housing associations). This had been very successful in both delivering affordable housing and containing urban sprawl.

In the 1990s, however, municipalities lost their monopoly on the land market, land prices increased and the planning gain had to be shared with the private sector.

Housing associations were no longer exclusively social entrepreneurs, but also became commercial property developers. The municipality was still able to assemble and service the land with the voluntary cooperation of the private sector. A symbiotic relationship followed, where the private sector owned the land but needed the municipality to reassemble and service it.

At the local level, the preparation of plans is increasingly carried out by planning consultancies. Only a few municipalities, such as Amsterdam, have the capacity, skills and training to prepare their own plans, but still rely on specialist legal advisors.

MOROCCO

Morocco also calls on increased support from stakeholders in land-use planning within their National Charter for Land-Use Planning and Sustainable Development. Specifically, the necessity of the increased involvement of the public sector, defined as "individuals, private companies and professional organizations", is recognized.

The implementation of the Regional Land-Use Planning Scheme must be in consultation with private sector representatives. While these are the only non-governmental actors recognized by the region's law, procedural regulations are defined by each region and, in that sense, other stakeholders may be involved (art. 89).

SOUTH AFRICA

Lastly, within South Africa, the National Spatial Development Framework requires that policies, plans and programmes of private bodies that impact spatial planning be considered. Moreover, at the local level, "communities", as defined within regulations, have been more broadly construed to encompass private actors. For example, the Municipality System Act 2000 defines "local community" or "community" as including any civic organizations and non-governmental, private sector or labour organizations or bodies which are involved in local affairs within the municipality.

TABLE 12. **Non-governmental/private sector involvement**

Country	National	Regional	Local	Neighbourhood
United Kingdom	Property development companies The construction industry Private sector planning consultants	Local enterprise partnership	Utility companies Third sector organizations and civic society	Neighbourhood forums
Netherlands	Information not available	Information not available	Private developers Housing associations	
Republic of Korea	Information not available	Information not available	Information not available	
Morocco	National Charter for Land-Use Planning and Sustainable Development: role of individuals, private companies and professional organizations	Information not available	Information not available	
South Africa	Information not available	Information not available	"Local community" or "community" defined under the A. 22.1.b.1 Municipal System Act 2000	

Source: UN-Habitat

2.3. Institutional coordination mechanisms

Each country, except the Republic of Korea, has mechanisms in place, typically through laws, that allow for multi-level governance to implement planning in the midst of various institutions. A common thread in these laws includes mechanisms for cooperation along with mechanisms for the federal and local governments to coordinate where there may be different policy goals or concerns on a given project. Table 9 sets out the various coordination mechanisms in each country studied.

UNITED KINGDOM

In the United Kingdom (England), vertical coordination exists at the national level in the form of planning inspectors, who are from the Government's Planning Inspectorate and are tasked with examining local plans. If an inspector has significant concerns about a local plan or other procedural requirements, the inspector will inform the local planning authority and may suspend the examination process until the local authority has addressed the issue.

Moreover, the Localism Act 2011 introduced the "duty to cooperate" to ensure that local planning authorities and other public bodies work together in relation to the planning of sustainable development that extends beyond their own administrative boundaries. Under this Act, local planning authorities, when preparing local development plans, must cooperate with other planning authorities and related organizations on cross-boundary strategic issues. These issues include homes and jobs, commercial development, infrastructure, health, security and cultural infrastructure, climate change mitigation and adaptation.

The Neighbourhood Planning and Infrastructure Bill 2016–17 also has provisions to strengthen neighbourhood planning by forcing the local government to support neighbourhood groups more transparently through improving the process for reviewing and updating plans.

The Government is also working for local authorities to coordinate through the idea of "combined authorities". Here, the core cities are being offered the opportunity to reconfigure themselves based on the idea of more functional city regions. These "combined authorities", currently combinations of local authorities working together on a voluntary basis, will have an elected mayor to oversee powers and competences that they have been given/negotiated. The city region would prepare a structure plan for the whole region within which the local plans for the metropolitan boroughs would be expected to fit.

THE NETHERLANDS

Unlike the United Kingdom, the Netherlands' planning reforms much more strongly favour the intervention of the national Government over local decision-making, but there are still systems in place to safeguard against disagreements between municipal and provincial authorities. Specifically, the 2008 Spatial Planning Law establishes coordination mechanisms for decision-making associated with the realization of developments. Through these mechanisms, the necessary implementation decisions, including environmental permits, can be coordinated with land-use designations established in municipal zoning plans or provincial or national integration plans. The law established a "coordination scheme" for each level of governance (municipal, provincial and national) whereby decisions are made jointly available for inspection across levels of governance. As a result, the competent authority can save considerable time by coordinating implementation decrees and the zoning plan.

These requirements extend to all levels of government. For example, at the national level, the Minister for Infrastructure is required to (1) refer any national structure schemes to the House of Representatives of the States General to public debate; (2) draw conclusions from this debate and make the modifications deemed necessary; and (3), if the House does not decide to hold a public debate on the outline of the structure scheme within four weeks, the adoption of the structure scheme can be initiated in any case.

There is also horizontal coordination between institutions charged with mandates on the environment and planning. Specifically, the Spatial Planning and Environment policy, an area-based policy to better integrate spatial planning and environmental policy, brings together actors across policy sectors and from various levels of scale.

On a regional scale, provincial governments must coordinate with the national Government on planning schemes. Specifically, the provincial government will be advised by a representative of the Ministry of Infrastructure and Water Management to coordinate from provincial policy to national policy.

Municipal structure visions are important in planning coordination, which is where the municipal council may adopt a structure scheme in cooperation with the councils of adjoining municipalities for an area lying within the municipalities concerned. When conflict arises between the provinces, national Government, or municipalities, as outlined in their respective structure visions, local authorities may draft a land-use plan (known as *inpassingsplan)*, after consultation with the municipal council and the provincial parliament, that overrides an existing land-use plan by the municipality.

The local municipality and the province sometimes use this method where there is a mutual agreement to avoid delays in planning processes. The national and provincial governments may also define general rules *(algemene maatregel van bestuur* or *provinciale verordening)* to safeguard their interest or direct municipalities to draft a land-use planning fulfilling specified criteria *(aanwijziging)*.

There is other local legislation that supports coordination, including zoning and environmental planning. Specifically, this is under land-use plans, where the administrative body charged with the preparation of a zoning plan should consult with the administrations of municipalities and water boards involved and with those departments of the provincial and national Governments that are involved in spatial planning or are charged with representing interests that are at stake in the plan. The Provincial Executive and the minister, respectively, may determine that under certain circumstances or in certain cases no consultation is required with the departments of the province or the central Government involved in the care for spatial planning. Additionally, under the Environment and Planning Act, Article 2.2, an administrative body must consider the duties and powers of other administrative bodies and, if necessary, coordinate with these bodies. Administrative bodies may perform their duties and exercise their powers jointly.

SOUTH AFRICA

Under the Spatial Planning and Land-Use Management Act 16 of 2013 there are also mechanisms in place to facilitate cooperation in spatial planning. At the national level, the spatial development framework must consider any matter relevant to the coordination of policies, plans and programmes that impact on spatial planning, land development and land-use management. At a regional level, provincial spatial development frameworks must coordinate, integrate and align with the plans, policies and development strategies of municipalities.

At a municipal level, in addition to providing for the coordination of policies in all municipal departments, a municipality must consult any organ of the State responsible for administering legislation relating to any aspects of a spatial planning activity that requires approval to coordinate and avoid duplication. The council of two or more municipalities may also reach a written agreement to establish a joint municipal planning tribunal to exercise powers and perform the functions of such a tribunal.

MOROCCO

Morocco has no legal framework in place to require government coordination. The region's organic law recognizes collaboration with different entities, but no provisions require any specific collaboration. There is recognition, however, of harmonization between different planning documents.

Article 12-09 of the law on urban planning (enacted in 1992, amended in 2016) establishes that the provisions of local land-use plans cannot contradict those of the Land-use Planning Director Scheme. In case of contradiction, there must be a deliberation by the communal council on which provision to implement.

TABLE 13. Coordination mechanisms

Country	National	Regional	Local Neighbourhood
United Kingdom (England)	Planning Inspectors from the Government's Planning Inspectorate examine local plans Duty to cooperate under the Localism Act 2011	N/A	Combined authorities Duty to cooperate under the Localism Act 2011 Neighbourhood Planning and Infrastructure Bill 2016–17
Netherlands	2008 Spatial Planning Law establishes a "coordination scheme" Spatial Planning and Environment Policy	Provincial Planning Committee	Municipal structure visions Land-use plans
Republic of Korea	N/A	N/A	N/A
Morocco	N/A	Organic law recognizes collaboration	Article 12 of the law on urban planning establishes that the provisions of local land-use plans cannot contradict those of the Land use Planning Director Scheme
South Africa	Cooperative government and intergovernmental relations under the Spatial Planning and Land Use Management Act 16 of 2013	Provincial spatial development framework under the Spatial Planning and Land Use Management Act 16 of 2013	Municipal spatial development framework under the Spatial Planning and Land Use Management Act 16 of 2013

Source: UN-Habitat

2.4. Recommendations

1. The planning legislation should clearly outline the roles and responsibilities for each institution at all planning levels, which will set transparent government processes to allow the public to recognize decision-makers and, in turn, will enhance smooth implementation and avoid institutional wrangles.

2. The planning legislation should promote coordination between institutions at the national level with institutions at the regional and local levels for the planning, implementation, approval and oversight of development projects, plans and documents.

3. The regulatory framework should create specialized institutions to address complex subject matters such as environmental protection, infrastructure and transport.

4. The planning legislation should outline clear approval structures that each institution at the national, regional and local levels should adhere to for effective implementation of development projects.

5. The planning legislation should encourage the establishment of institutions with citizen membership, including councils or assemblies for development projects, especially at the local and neighbourhood levels, as participatory governance promotes buy-in, ownership of the project and increases the prospect of compliance.

6. The planning legislation should establish transparent parameters to govern planning and outline the specific processes required for the oversight of development projects to avoid discretionary decision-making.

3. PLANNING PROCESS

This section assesses the planning processes each country has in place through (1) public participation in such processes, (2) planning permissions required and (3) enforcement of such permissions. Specifically, each nation either encourages or requires a level of citizen participation in spatial planning. Further spatial planning and development will require a level of permissions, through zoning requirements, timelines and approvals. Lastly, to ensure effective planning processes, each country has a mechanism in place to ensure the enforcement of such permissions, typically at the municipality level.

Mia, Gangbuk-gu, Seoul, Republic of Korea © Clark.gu/unsplash

3.1. Public participation

Each country has systems in place to foster public participation at each step of the spatial planning process. Specifically, the Netherlands, the Republic of Korea, South Africa and the United Kingdom (England) have several mechanisms in place for public participation, while Morocco has some mechanisms built into law, but these are not as robust.

SOUTH AFRICA

In South Africa, public participation is a constitutional and legislative mandate in all spheres of government. The Minister for Rural Development and Land Reform, as well as municipalities, are required to consult the public before the preparation and amendment of a spatial plan at all levels, as well as during monitoring and evaluating. There are provisions within the Spatial Planning and Land Use Management Act 16 of 2013 that allow for such participation. For example, the public is invited to submit written representations in respect of proposed spatial development frameworks within 60 days of the publication of the proposed spatial plan. Thereafter, the relevant authority must take into consideration all the received representations. Moreover, the Minister for Rural Development and Land Reform may, after public consultation, regulate the process for public participation in the preparation, adoption or amendment of land-use schemes.

Other regulations include the Municipal System Act 2000, where the Minister for Rural Development and Land Reform issues regulations or guidelines concerning the participation of the local community in the affairs of the municipality and where municipalities must consult, engage and ensure participation of local communities in governance.

The council of each municipality and local communities have specific rights and requirements in engaging with spatial planning. The council of a municipality has the duty to (1) encourage the involvement of the local community and consult them about the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider, or (2) the available options for service delivery. Local communities also have right to (1) contribute to the decision-making processes of the municipality and (2) to submit written or oral recommendations, representations and complaints to the municipal council or to another political structure.

Lastly, there must be a culture of municipal governance that complements formal representative government with a system of participatory governance.

This participatory governance is meant to encourage and create conditions for preparation, implementation, establishment, budgeting and strategic decisions.

UNITED KINGDOM

The United Kingdom's *Planning & Compulsory Purchase Act (2004)*, related to England, Wales and Scotland, establishes the requirement that local planning authorities state their "promise to consult" in a statement of community involvement. Since 2012, in addition to that statement, English local authorities must also prepare a statement of consultation, which sets out how they have undertaken community participation and stakeholder involvement in the production of their local development plan.

According to the Planning Policy Statement 12: Local Development Frameworks, local planning authorities are expected to fulfil several obligations in terms of openness and transparency in the local plan-making process. The Town and Country Planning Regulations of 2004 divide the preparation process for local development plan documents into four stages and envisages community involvement from the first phase of pre-production (conducting surveys). The public is consulted on planning issues to be addressed and policy options which are available to deal with those issues for normally six weeks; then, during the preparation of the plan and before its approval, the public is consulted for another six weeks on preferred options.

Before the approval, the plan is submitted to the Secretary of State for the independent examination, which is preceded by the possibility to "make representations" (e.g., written representations, representations by way of electronic communications) within the period of six weeks from the submission to the Secretary of State (Article 29 of the above-mentioned Regulations of 2004). Additionally, in England, local communities are involved in neighbourhood planning from the onset, developing a statutory plan and curating the process: they define problems and set agendas; organize public consultation; develop policies and actions for the neighbourhood and enable the plan to pass through its local referendum.

There are also feedback mechanisms, including the planning appeal complaint procedure, where if after the decision on an appeal has been published, the Planning Inspectorate receives a complaint against an inspector's decision, or the inspector, or the way a case was administered, an independent customer quality team processes the case. All complaints are investigated thoroughly and impartially. There is a streamlined process in submitting complaints online.

In terms of transparency, there are planning webpages to submit applications and to provide publicly available information.

Planning applications are available online for consultation. Most local authorities also have interactive maps where key policies and planning applications can be explored on a spatial basis.

As a matter of law, the Freedom of Information Act of 2000 creates a general right of access to all types of recorded information held by most public authorities.

REPUBLIC OF KOREA

The Republic of Korea has community-based initiatives in place to encourage public involvement in local governance and spatial planning. Under community-based activation plans, citizens can propose policy options or urban regeneration projects to local governments. These plans take a neighbourhood-level approach, encourage the participation of diverse groups and individuals, and create a long-term community vision. The national Government subsidizes selected urban regeneration projects proposed by local governments, and one of the criteria for selection is that citizens have participated in their elaboration. Citizens' proposals shape the dialogue with the local authorities, although the final decision rests with the local government.

The participatory process brings together three main types of actors: residents (including the private sector), the public administration and experts, including the head of the Urban Regeneration Support Centres, and local advocates.

During the development of the Seoul Master Plan, citizens were involved in (1) preparation through an expert advisory group to identify basic direction and implementation structure of the plan; (2) a public participation group in the form of 100 citizen members to help realize the vision and key tasks; (3) drafting, where the 2030 Seoul Plan Development Committee categorized plans by issue, spatial structure and land-use issues, regional plans and action plans; and (4) collecting input and administrative procedures, where citizens, experts and administrations revise and finalize the plan.

NETHERLANDS

Citizens can formally submit views on draft plans or draft decisions under Section 3.4 of the General Administrative Law Act. Explanations of zoning plans and the spatial substantiation of a project decision must describe how citizens and civil society organizations are to be involved.

The Netherlands also enables the public to be involved in land-use plans, empowering citizens that will be most impacted by such plans. During a consultation period of six weeks, each individual or party that is affected by the plan has the chance to submit a viewpoint/opinion to the municipal

executive and, after studying the responses, the municipal executive draws up a final, definitive plan, including any amendments that have been made. This plan must be approved by the municipal council.

Those who have submitted a viewpoint can lodge an appeal, otherwise the plan is definitive.

MOROCCO

There are not many instruments in urban planning laws in Morocco for public participation. Democracy and participation are still considered to be among the guiding principles in the National Charter for Land-Use Planning and Sustainable Development.

The charter recognizes that participation can be carried out through consultation when the project or action has an impact on people's daily lives. It also recognizes participation through representatives.

3.2. Planning permissions

Each country has a series of planning permissions required, including permits, land-use zoning approval and environmental impact assessments, some of which include specified timelines in the relevant legislation.

UNITED KINGDOM

In the United Kingdom (England), planning permissions are divided into small- and large-scale planning applications, requiring either outline or full planning permissions. For an outline permission, the applicant is seeking permission to develop a site, while for a full planning permission, once all the details have been accepted, the applicant has three years to start the development.

England has a series of laws in place that govern timing of permissions. Specifically, in Article 34 of the Town and Country Planning (Development Management Procedure (England) Order 2015, the central government prescribes a time limit for normal planning applications at 8 weeks, 13 weeks for major development applications and 10 weeks for applications for public service infrastructure development. Where applications require an environmental impact assessment, the timeline is 16 weeks. Where a planning application takes longer than the statutory period, a decision should be made within 26 weeks at most in order to comply with a "planning guarantee", which is the Government's policy that no application should spend more than a year with decision-makers, including any appeal.

If the planning authority repeatedly fails to decide applications on time, Section 62B of the Town and Country Planning Act 1990 (as amended) allows the Secretary of State to designate local planning authorities that "are not adequately performing their function of determining applications", when assessed against published criteria. Section 62A of the same Act allows applications to be submitted directly to the Secretary of State (if the applicant wishes) as long as the designation remains in place.

SOUTH AFRICA

In South Africa, the municipality has the authority to review any relevant land development applications. Specifically, municipal planning tribunals are designated as the appropriate entity responsible for land-use and development permission under the Spatial Planning and Land-Use Management Act 16 (chapter 6, parts B, C and D). The law provides that a municipality must establish a municipal planning tribunal but may also authorize an employed official to consider and determine certain land-use and land development applications.

The Minister for Rural Development and Land Reform is responsible for determining the relevant timeframes, while the municipal planning tribunal considers an application. A party may appeal a tribunal decision by giving written notice and supporting reasons to the city manager within 21 days of the date of notification of the tribunal's decision. The city manager then places the appeal before the Executive Authority of the municipality, who acts as the appellate authority.

South Africa also has certain regulations in place, specifically with respect to environmental impact assessments. For example, under the National Environmental Management Act, environmental impact assessments are conducted when a new development or activity is proposed. Such an assessment is required to evaluate a series of factors, including the potential impact on the environment, socioeconomic conditions and the cultural heritage. The assessment must be reported to the relevant organ of state charged by law with authorizing, permitting or otherwise allowing the implementation of an activity.

Environmental authorizations refer to permission or approval granted by a competent authority to a developer to undertake a specific activity that may have an impact on the environment after the environmental impact assessment process has been completed. Different players in the assessment process include the National Environmental Management Act competent authority, the applicant, the environmental assessment practitioner, the interested and affected parties, and the relevant state departments. These departments are either concerned with issues relating to environmental authorization or are responsible for administering a specific law relating to any other matter affecting the environment.

Such departments include the Department of Health or the Department of Water and Sanitation with respect to water resources, quality and quantity.

Other planning permission laws include the National Building Regulations and Building Standards Act 103/1977, which aims to promote uniformity in the law relating to in the construction of buildings, and the Occupational Health and Safety Act, requiring parties intending to carry out construction work to take at least 30 days before that work is carried out to apply for a work permit to perform construction work.

THE NETHERLANDS

In the Netherlands, the permitting system is fairly streamlined. The "all-in-one Permit for Physical Aspects" (*omgevingsvergunning*), issued by the municipality, fulfils the various permitting requirements in an integrated procedure rather than requiring applications for individual permits. The only requirements not included in the all-in-one permit are an environmental management notification, a notification of occupancy (for fire safety) and a water permit. Usually, the municipality decides on all-in-one permits within eight weeks, though complex applications may take up to six months. The law also outlines an appeal process if a permit application is rejected, where the rejected party can (1) object to the municipality directly; (2) appeal to the courts within six weeks of the municipality's decisions on the objection (which must be decided on within a year of the closure of the appeal period); and (3) appeal (again) by either the applicant or the municipality.

Permits given on an individual basis include construction, installation of an alarm system, building, rebuilding or renovating, fire safety, felling trees, renovation or demolition of protected monuments, nature conservation, temporarily placing an object on a public road, advertising or demolition (and/or asbestos removal).

REPUBLIC OF KOREA

In the Republic of Korea, planning permissions are governed under Article 56 of the 2002 National Land Planning and Utilization Act. Parties seeking permissions are required to engage several institutions at multiple levels of government, including the special metropolitan city mayor, the metropolitan city mayor, the mayor of a special self-governing city, the governor of a special self-governing province, or the head of a *Si/Gun*.[2] Planning permissions are required for several types of development projects, including (i) construction of buildings or erection of structures; (ii) changes in the form and quality of land (not including such changes prescribed in

2 In the Republic of Korea, "Do" refers to a province, "Si" refers to a city, "Gun" refers to a county, and "Gu" refers to a district.

the Presidential Decree for cultivation), (iii) extraction of earth and stone; (iv) partition of land (not including the partition of a site where a building is located); and (v) piling up goods within an environmentally protected area for at least one month.

Additionally, Article 11 of the Building Act of South Korea governs the process of retaining building permits. Specifically, the law requires any person who intends to erect a building or undergo substantial building repairs to obtain a permit from a special self-governing province governor or the head of a *Si/Gun/Gu*, provided that the party intends to erect the building in the proper use and size prescribed by Presidential Decree. The law also requires that a building with 21 or more floors, within a special metropolitan city or a metropolitan city, needs a permit from the special metropolitan city mayor or the metropolitan city mayor.

MOROCCO

Planning permissions in Morocco are issued by the president of the relevant municipal council in accordance with title IV, chapter 1, 3 of the urban planning law. Such permits include building permits, required for designating a building perimeter, or to modify an existing building, housing permits or certificates of conformity.

3.3. Enforcement of planning permissions

Regarding enforcement of planning permissions, laws and regulations typically empower local municipalities to act where there are violations. Depending on the nature of the violation, enforcement may vary from allowing parties to take corrective action where there is an unauthorized development, to forcing the demolition of wrongful construction.

UNITED KINGDOM

Enforcement of planning permissions falls on local planning authorities. If it is suspected that a building has been erected without planning permission or is being used for a purpose other than its original use, the local planning authority can investigate and require the individual responsible for the unauthorized development to take corrective action. Such corrective action must be proportionate. In less serious cases, local authorities may allow a party to apply retrospectively for planning permission. In more extreme cases, an authority may pull the development down.

THE NETHERLANDS

In the Netherlands, municipalities are empowered to enforce planning permissions. While the relevant legislation allows for municipal executives to designate officials to enforce planning rules, officials often knowingly tolerate violations of planning regulations and typically only act after complaints are lodged. Generally, illegal building activities such as building or destruction of buildings without planning permissions rarely happen and municipalities usually act on these cases. The land registry (*kadaster*) is the registry of all real estate and the associated property rights. Given all data is digitized and can be accessed by everyone, illegal building activities are relatively easy to uncover. While most unlawful activity is tolerated, most violations concern land use regulations, such as residential uses in buildings where permanent living is not permitted. When municipalities enforce planning and building regulations, the Netherlands' legal toolbox includes administrative law, private law and criminal law. Specifically, municipalities use an administrative enforcement order (*bestuursdwang*) to reinstate the law. The municipality can then force the offender to undo the damage or may recover the costs from the offender. Alternatively, the municipality may impose a penalty payment (dwangsom) to ensure that the offence is rectified and to prevent further violations. In some cases, the municipality may use private law to indirectly enforce land-use plans, particularly if it concerns private land owned by the State or existing private contracts between the municipality and private persons. Finally, violations may qualify as an economic delict under criminal law, which is usually used only as ultima ratio, either if the administrative route fails to enforce the law or if the nature and consequences of the violation are substantial.

MOROCCO

In Morocco, Title IV of the Urban Planning Law establishes enforcement actions for violating the law and urban planning regulations, empowering the president of the municipal council, the governor and the president of the communal council. Specifically, the president of the municipal council can order the immediate suspension of construction. Furthermore, under the request of the governor, the president of the municipal council can order the demolition of irregular constructions. Where there is a violation of urban planning regulations, the president of the communal council can file a complaint with a public prosecutor to initiate proceedings against the offenders. There are also monetary fines for violating various provisions ranging from 1,000 to 100,000 dirhams.

SOUTH AFRICA

In South Africa, municipalities can designate a municipal officer or may appoint an inspector to investigate non-compliance with its land-use scheme. Furthermore, a municipality may apply to a court for an order, which may (a) enjoin any person from using land in violation of its land-use scheme; (b) authorize the demolition of any structures erected on land in contravention of its land-use scheme, without any obligation on the part of the municipality or the person carrying out the demolition to pay compensation; and (c) direct any appropriate preventive or remedial measure.

REPUBLIC OF KOREA

In the Republic of Korea, for land matters, the Minister for Land, Transport and Maritime Affairs, the city mayor/Do governor, or the head of a Si/Gun may restrict permission for development activities subject to their area of responsibility. This could be done only after the deliberation with the central urban planning committee or the local urban planning committee respectively (2002 National Land Planning and Utilization Act). As for building matters, the 2008 Building Act establishes the role of the project supervisor. In case of violations of the Act and failure to follow architectural plans and drawings in executing the project, the project supervisor should notify the project owner of his/her finding and request the contractor to take corrective measures or execute reconstruction and may, if the contractor fails to comply with the request for corrective measures or reconstruction works, request the contractor, in writing, to suspend the project.

TABLE 14. Planning permissions and enforcement

Country	Planning permissions	Government enforcement
United Kingdom (England)	Small- and large-scale planning applications Planning Permission in Principle under Housing and Planning Act (2016) Time limits under the Housing and Planning Act (2016) Town and Country Planning Act 1990 governs applications	Local planning authority investigations and power to take corrective action

Netherlands	All-in-one Permit for Physical Aspects (omgevingsvergunning)	Administrative enforcement order (bestuursdwang) Penalty payment (dwangsom) Criminal law action
Republic of Korea	Article 56 of the 2002 National Land Planning and Utilization Act Article 11 of the Building Act of South Korea	Land matters: restriction of permission for development activities Building matters: corrective measure, reconstruction, project suspension
Morocco	Building permit Housing permit Certificate of conformity	Title IV of the Urban Planning Law establishes sanctions
South Africa	Environmental impact assessments Environmental authorizations Regulation, Construction, application for construction work permit under Occupational Health and Safety Act	Court order application Municipal officer or inspector to enforce

Source: UN-Habitat

3.4. Recommendations:

1. Community engagement principles and mandatory requirements for public participation should be provided in planning legislation to provide binding obligations to be followed during the entire spatial planning process.

2. Planning legislation should also outline the mechanisms for community engagement and clearly define the stages and timeframes of the engagement process to avoid discretionary decision-making. For the participation to be meaningful, adequate time for public scrutiny should be allocated.

3. Discretion may be left to planning authorities on the specific implementation modalities, that should be adapted to the specific context they operate in and needs of the specific community affected. These may include the opportunity to (i) submit written or oral recommendations; (ii) submit complaints to municipal councils; and/or (iii) participate in a community-based groups that actively work with governance institutions in the spatial planning process.

4. State actors should ensure access to actionable and transparent information on spatial planning projects for the public.
5. The planning legislation should specify the process for planning permissions for specific development projects such as land-use zoning and environmental impact assessments, with specified timelines governed by law; where possible, set a unified and simplified process for all planning permits required for a planning project.
6. The planning legislation should create mechanisms for institutions to address any citizen complaints on a development project.
7. The regulatory framework should empower municipalities to enforce planning permissions, with varied corrective measures depending on the nature of the violation.

4. LAND MANAGEMENT

This section analyses how each nation allocates their land, acquires private land for public use as well as compensates the landowners, organizes their land information systems, and generates revenue from public land.

Netherlands © Mika Korhonen/unsplash

4.1. Land allocation, acquisition and regulation

UNITED KINGDOM

In the United Kingdom (England), land is allocated and zoned based on specific classes. These include agricultural land, woodland, recreation, transport, residential, community buildings and commercial.

These categories are then subdivided into even smaller and more specific classes, such as a narrower type of commercial property or business. To change a given land zone class, parties are required to provide the local authority with a good reason and to explain how the changes will have a positive economic and environmental impact on the area.

Regarding acquiring land for public purposes, expropriation or compulsory purchase is possible for both public and private developments, including infrastructure projects, public facilities and commercial projects such as retail and residential developments.

Under compulsory purchase powers, local authorities must demonstrate that there is a "compelling case in the public interest" for the compulsory acquisition of land and there are strong legal compensation rights for those affected. The overriding principle of compulsory purchase compensation is "equivalence": neither more nor less than the value of their loss. As well as compensation for the market value of any land taken, additional compensation may be payable; for example, occupiers of residential properties may also be entitled to a statutory home loss payment. Moreover, compensation varies according to the type of property (business, agricultural, residential).

His Majesty's Land Registry in the United Kingdom requires that a party fills out an application for registration and pays a registration fee depending on the value of the property. There is also a separate Rural Land Register for agricultural land.

THE NETHERLANDS

As a part of the 2008 Spatial Planning Law, the Netherlands has structures in place for designating a zoning plan. This includes, (a) an explanation of the plan, with a discussion on the purpose, the relevant policy, description of the area/plan development, the environmental aspects and the feasibility; (b) an imagination (planning map), which is a digital map consisting of land-use designations (organized by colour); with the relevant land-use designation; and (c) lines that must comply with National Standard Comparable Zoning Plans, which defines a standard structure for zoning plans and rules.

The Netherlands outlines several types of zoning plans depending on the class of land. These include (1) a detailed zoning plan for existing residential areas and industrial estates; (2) a global zoning plan for areas to be developed, or (3) a combination plan, which is more of a hybrid system. When it is not exactly clear what a development will look like, municipalities require elaboration obligations along with detailed rules of what the plan with look like.

The elaboration option gives the municipal executive the obligation to draw up an elaboration plan within the framework of the elaboration rules for the duration of the zoning plan. Through this, the municipal council has influence on the development.

Even with robust zoning planning structures in place, a zoning plan may include a possibility to deviate to a limited extent from the plan through "in-plan deviation rights". While these deviations cannot change the land-use designations, the mayor and alderman (municipal executive) have the power to derogate from such land-use plans.

Regarding the registry of all real estate and associated property rights, the Land Registry (*kadaster*) includes all the relevant information on a digitized platform and thus may be accessed by everyone.

On land acquisition for public purposes, article 1.1 of the Expropriation Act (*Onteigeningswet*) provides that "expropriation for the common good may take place in the public interest of the State, of one or more provinces of one or more municipalities, and of one or more water boards". The granting of adequate or just compensation is guarded by the national courts, especially the Dutch Supreme Court, which plays a very important role in determining the compensation given in cases of expropriation. This is because the rules pertaining to the determination of compensation have been primarily developed by the Dutch Supreme Court and can therefore in their entirety only be found in Dutch case law.

Adequate or full compensation for public interest expropriation according to Dutch law entails the compensation for damages that are a direct and necessary consequence of the expropriation.

Thus, the principle of full compensation is therefore not only the reimbursement or compensation of the actual, concrete value of the expropriated item, possibly increased by the deprecation of the remaining property, but it also contains compensation of additional damages that are a direct consequence of the expropriation.[3]

3 Jacques Sluysmans (2019). The principle of full compensation under Dutch expropriation law. www.degruyter.com/document/doi/10.1515/eplj-2019-0010/html?lang=en.

THE REPUBLIC OF KOREA

The zoning system in the Republic of Korea consists of three pillars: (1) land-use areas; (2) land-use districts; and (3) land-use zones. Land-use areas are designated by their primary uses and they are divided into four categories of (1) urban areas (residential areas, commercial areas, industrial areas and green areas); (2) management areas ("conservation and management", "agricultural and management" and "development and control areas"); and (3) agricultural areas and natural environment conservation areas. Land-use districts are designated within five categories (scenic districts, disaster prevention districts, conservation districts, community districts and development promotion districts), each of which is divided into subgroups and managed appropriately.

Land-use zones are designated to intensify or lift restrictions on areas or districts, depending on the use or forms of land and architectural structures. These zones are divided into four groups, including development restriction green zones, controlled urbanization zones, protected fishery resources zones and urban natural park zones.

Expropriation of land is permitted for both public and private use, if the private use is in the public interest. Expropriation for private use, however, is generally rare. Reasons for expropriation include the construction of infrastructure, housing, commercial and industrial developments, mining activities and the establishment of nature reserves.

In all cases and as prescribed by 2017 Land Compensation Act, fair compensation based on the assessed land price system and certified public appraiser system for the secure objectivity of the compensation evaluation must be paid to the landowner in money, bonds or in-kind compensation with another parcel of land.

Cadastral information in the Republic of Korea has been managed for over 100 years. Initially established by the Land Survey Law enacted in 1910 (South Korea's 7th law), the Ministry of Land, Infrastructure and Transport is responsible for such information, and the Korea Land Information System manages over 37.5 million parcels. Cadastral surveying is conducted by the Korea Cadastral Survey Corporation in cooperation with private sector companies.

MOROCCO

The general purpose of the land is established by Law 25-90, Title II, Art. 4, by determining the location of the following: agricultural and forestry areas; housing zones with their density; industrial zones; commercial zones; touristic zones; areas subject to building and height restrictions, as well as water resource protection constraints; natural, historical or archaeological sites to be protected and

enhanced; the main green spaces to be created, protected and enhanced; major facilities, such as the main road network, airports, ports and railway installations, the main health, sports and educational facilities; areas where development is subject to a special legal regime.

Regarding expropriation in Morocco, the State and local authorities have the right to expropriate land where there is a designated public utility cause. Public utility is declared by an administrative act that specifies the area likely to be expropriated. Expropriation procedures are operated by a judicial authority, where an administrative court decides on the final transfer of property rights to the public authority and defines the relevant compensation to be given.

The amount of the compensation must be for a current grievance, fixed at the updated value of the property.

Morocco designates a specific agency, the Agence Nationale de la Conservation Foncière, du Cadastre et de la Cartographie (National Agency for Land Registration, Cadastre and Cartography) to carry out the functions of land registration and cartography. The agency has a vast amount of information, including 6,750,000 land titles and cadastral plans, digital cadastral maps, 2,058 topographic maps, 72 million hectares in ortho-images and ortho-photos, and 225 million digitized documents.

SOUTH AFRICA

The laws in South Africa that govern zoning divide buildings into sections and common property, and regulate the transfer of ownership between these sections. Such laws also account for the transfer of tribal land in full ownership to a community. Unlike Morocco, the Netherlands, the Republic of Korea and the United Kingdom, South Africa has constitutional protections in place with respect to expropriation. Section 25 of the Constitution establishes that property may only be expropriated where the property is for a public purpose or a public interest, or subject to fair and equitable compensation.

There is current legislation pending which attempts to reform expropriation by specifying powers, procedures, timeframes and the determination of compensation. If passed, municipalities would govern the power to expropriate, including by the municipal council, executive committee, or executive mayor.

The land information system in South Africa lies with a "deeds office", which is responsible for the registration, management and maintenance of the property registry of the country.

The law requires that documents be prepared and lodged in a deeds registry by a conveyancer or notary public. These deeds and documents are subjected to three levels of examination by legally qualified personnel who scrutinize the contents for accuracy and compliance with common law, case law and statutory law.

TABLE 15. Land allocation and acquisition

Country	Land allocation	Land acquisition for public purposes	Land information system
United Kingdom (England)	Categories include: Agricultural land Woodland Recreation Transport Residential Community buildings Commercial	Compulsory purchase powers if there is a compelling case in the public interest and only with fair compensation (market value; additional compensation in some cases)	His Majesty's Land Registry Rural Land Register
Netherlands	Categories include: Detailed zoning plan Global zoning plan Hybrid system Elaboration obligations In-plan deviation rights	Expropriation of the common good in the public interest. Full compensation: not only the reimbursement of the actual, concrete value of the expropriated land, but also compensation of additional damages that are a direct consequence of the expropriation.	Land registry (kadaster)
Republic of Korea	Categories include: Land-use areas Land-use districts Land-use zones	Expropriation for public uses Fair compensation to landowner based on the assessed land price system and certified public appraiser system for the secure objectivity of the compensation evaluation	Ministry of Land, Infrastructure and Transport Korea Land Information System Korea Cadastral Survey Corporation

Morocco	Categories include: Agricultural and forestry areas Housing zones with their density Industrial zones Commercial zones Touristic zones Areas subject to building and height restrictions Natural, historical or archaeological sites	Expropriation for public utility. Compensation fixed at the updated value of the property	National Agency for Land Registration, Cadastre and Cartography
South Africa	Division of buildings into sections and common property under Sectional Titles Act.	Expropriation for public purpose and equitable compensation (under Constitution)	Deeds office

Source: UN-Habitat

4.2. Land tenure and land-based financing

Tenure types recognized under land administration system

In each of the countries studied, there are various types of tenure, including freehold, leasehold or customary tenure. In the United Kingdom (England), there are essentially two main types of tenure: freehold (a legal right to own a piece of property without any limitations on its use) and leasehold (the holding of a property under a lease or legal agreement). There is also a third type of tenure called commonhold, where you own your own property as a part of a communal space (this is extremely rare, with less than 200 commonhold properties in the United Kingdom).

In Morocco, two types of land tenure regimes are recognized: traditional and modern land tenure registration. Traditional land tenure is based on sharia law and local customs, while modern tenure is based on definitive property titles. Land recognition in Morocco, under the administrative jurisdiction of different national ministries, covers a diverse set of legal regimes, including collective lands and tribal areas.

South Africa, like the United Kingdom, recognizes both freehold and leasehold forms of tenure. South Africa has also approved a series of acts to convert certain occupational rights into leasehold or freehold. In addition, the country recognizes sectional title, where owners individually own "sections" of a building or group of buildings (for example townhouse units in a complex or apartments in a block of flats).

The Republic of Korea, like the United Kingdom and South Africa, recognizes both freehold and leasehold tenure. Leasehold tenures are divided in "imchakwon" (non-registered) and "cheonsekwon" (registered). Additionally, the country recognizes surface rights and easements; titles to land and titles to buildings are separated. Other than sole ownership, co-ownership and condominiums are also recognized.

The Netherlands recognizes four types of land tenure: absolute ownership (freehold), rights of superficies, condominiums and rights of leasehold.

Land-based financing

There are several mechanisms in place used to raise revenue for public interests, including developers' fees, property tax, exactions and planning agreements.

The United Kingdom particularly employs several mechanisms depending on the land development project. For example, in the context of a community garden, an appropriate portion of the enhanced land

value arising from the development is made available to fund the delivery of infrastructure facilities and other measures needed to support development of a sustainable garden community. Public land acquisitions can also be used to capture the contributions required from developers to mitigate the impact of the development. Another mechanism to better affordable housing is delivering a proportion of the planned units for a given developer as affordable housing. Lastly, a community infrastructure levy is a revenue-generating tool where, rather than have a site-specific tax, this is a developer payment that serves as a wider contribution to a local authority's broader infrastructure needs. The fee can be pooled and used for delivering critical local infrastructure at the discretion of the local authority.

The Netherlands uses both development fees and private contracts to generate revenue. For development fees, municipalities are allowed to ask fees or leges for planning permissions and other services offered by the municipality. Municipalities are also able to recover the cost associated with a land-use plan either through a private contract or through a statutory land exploitation plan (*exploitatieplan*). In practice, most developers will make individual agreements or, if the land is owned by the municipality, the fee will be included with the cost of the land. If the municipality fails to recover the costs with a property owner under private law, it is entitled to an "exploitation plan", which specifies which planning costs will be transferred on to the property rights owner relative to the development rights of the plan area. This involves all the costs associated with preparing the land for development.

In South Africa, a municipal council may finance the affairs of the municipality by charging fees for services, imposing surcharges on fees or property rates and (when allowed by national legislation) imposing surcharges on other taxes, levies and duties.

In Morocco, municipalities are enabled to collect local land-based taxes on housing, municipal services, undeveloped urban land, construction operations and subdivision operations. Additionally, national legislation establishes an infrastructure levy mechanism according to which beneficiaries of a land value increase over 20 per cent are subject to an indemnity equal to half of the value increase. Other instruments used are land readjustment; these are mainly for road construction projects and strategic land management to enable the construction of public utilities and amenities and to foster national development programmes. Factors such as a lack of political will and lack of administrative or technical capacity of local governments hinder the implementation of these mechanisms.

The Republic of Korea has a highly centralized revenue collection system so national transfers to local governments account for a substantial share of local government revenues.

Subnational government revenues consist of taxes, grants and subsidies, tariffs and fees, property income and social contributions. Basically, regional and local governments are responsible for securing and raising funds to implement their land-use plans based on their urban master plans and urban management plans. In part, however, national grants and subsidies can be provided to regional and local governments to financially support land-use planning implementation. There is a national budget account especially for regional development – the Special Account for Regional Development – and some regional and local governments take advantage of the account's budget to fulfil planned development projects.

TABLE 16. Land tenure and land-based financing

Country	Land tenure types	Land-based financing
United Kingdom	Freehold Leasehold Commonhold	Capturing land value Public land acquisition Delivering a proportion of the planned units as affordable housing Community infrastructure levy
Netherlands	Absolute ownership (freehold) Rights of superficies Condominium Rights of leasehold.	Development fees Private contracts
Republic of Korea	Freehold Leasehold – "imchakwon" (non-registered) and "cheonsekwon" (registered). Surface rights and easements, Co-ownership Condominium	Taxes Grants Subsidies Tariffs and fees Property income Social contributions
Morocco	Traditional and modern land tenure	Municipal (land/property based) taxes Property tax Municipal services tax Tax on undeveloped urban land Tax on construction operations Tax on subdivision operations Infrastructure levy Land readjustment Strategic land management

South Africa	Freehold Leasehold Occupational rights into freehold or leasehold Sectional title	Fees for services, imposing surcharges on fees or property rates under the Local Government Municipal System Act 2000)

Source: UN-Habitat

4.3. Recommendations

1. The zoning plan should allocate land into different areas, districts or zones based on land use, terrain, economic factors and underlying cultural influences, which may include agricultural, residential and commercial uses.
2. The relevant planning institution should organize land information into a public registry that includes all relevant land allocation material, easily accessible to the public.
3. The planning legislation should promote varied types of land ownership and the continuum of land rights, considering cultural customs, including freehold, leasehold or customary ownership to promote greater security of tenure which will minimize the threat of forced evictions.
4. The expropriation of private land should be guided by clear legal standards regarding public interest and fair compensation for parties impacted.
5. The planning legislation should encourage the diversification of ways to raise revenue and land value capture mechanisms, including developers' fees, property tax, exactions and planning agreements.


South Africa © Jolame Chirwa/unsplash

5. DISPUTE RESOLUTION

Morocco, the Netherlands and the Republic of Korea handle land-use dispute resolution through their general court system, though two of these three countries make other options available prior to litigation. The Netherlands allows offended parties to make objections directly to municipal governments before taking cases to the courts. The Land Registrar of the Moroccan system has conciliation powers that can be exercised to avoid litigation. Unlike the others, the Republic of Korea managed disputes directly via its standard, three-instance trial system, with no prescribed alternatives or de-escalation strategies. The United Kingdom (England) can be considered as using a mixed approach, with the prominent role of the Planning Inspectorate in the first instance and the general court system to appeal decisions of the Planning Inspectorate. The country also encourages alternative dispute resolution, including mediation and binding or non-binding evaluations by an expert.

Remarkably, England provides for different procedures to appeal a planning decision (written representations, hearing and inquiry) and, while promoting and supporting online appeals through the Appeals Casework Portal, also provides for the possibility for potential appellants without access to the Internet to contact the Planning Inspectorate and ask to receive the appeal form(s) in another format.

South Africa is the outlier of the group and uses a more specialized and complex system. The country's model uses a two-tier planning dispute-resolution system, which allows internal appeals before public authorities and then secondary appeals before external judicial authorities. South Africa also has an ad hoc Land Claims Court, which specializes in dealing with land-use disputes that arise across the country. South Africa also allows mediation or arbitration at the request of the parties and the direction of the Director General of the Department of Land Affairs.

TABLE 17. Dispute-resolution systems

Country	Governing court/body	Offered alternative dispute methods
Morocco	General Court System	Land Registrar Conciliation
Netherlands	General court system	Objections made directly to municipalities
South Africa	Two-tier planning dispute-resolution system Land Claims Court	Mediation Arbitration
Republic of Korea	General court system	Conciliation Mediation Arbitration
United Kingdom	Mixed approach: Planning Inspectorate and general court system	Mediation Arbitration Binding evaluation by an expert Non-binding evaluation by an expert Pre-litigation protocol

Source: UN-Habitat

5.1. Recommendations

1. The planning legislation could encourage an administrative appeal process for planning decisions before going to court and establish specialized courts for land or planning-related matters to ease the pressure on the judicial system and reduce the case load of the civil courts, to allow faster and more efficient resolution of disputes.

2. The planning legislation should provide different ways to appeal a planning decision, including online appeals, but also the possibility to send the appeal form in another format (such as hand delivery to the appropriate body office or via post office).

3. The possibility to challenge planning decisions both through the appeal and through the judicial review jurisdiction should be provided.

4. The planning legislation should define systems that allow for dispute-resolution outcomes that are predictable, timely, cost-effective and responsive to individual circumstances.

5. Provide access to fair alternative dispute-resolution systems that allow individuals to avoid the burdens associated with traditional judicial systems, where possible.

CASE STUDIES

Rep. of Korea© Rawkkim/unsplash

THE CASE OF MOROCCO

MOROCCO COUNTRY PROFILE
QUICK FACTS

Country name	Kingdom of Morocco
Type of government	Parliamentary constitutional monarchy
Form of State	Unitary State
Surface area	446.55 km2
Gross domestic product	$132.73 billion (2021)
GDP per capita	$3,496.80 (2021)
Population	36.3 million (2020)
Urban population (percentage out of the total population)	64 per cent (2021)
Urban population growth (annual percent)	2.0 (2021)
Population density	83 inhabitants per km²

Jemaa-el-Fna Square, Marrakech, Morocco
Source: (Image Credit, Lipke, T.) – Unsplash.

COUNTRY BACKGROUND

Morocco is a constitutional monarchy located in western North Africa. In 2011, a new constitution was adopted to modernize the country's political system. Powers are shared between the monarch, a bicameral parliament and the prime minister who heads the executive branch. However, the King continues to hold important political authority over all branches of government.[4]

Territorially, the country is divided into multiple levels of government under the Ministry of the Interior. There are 16 regions ruled by governors appointed by the King, which are subsequently divided into provinces or urban prefectures, rural districts or municipalities.[5]

Morocco is the ninth largest economy in the Middle East and North Africa region with a gross domestic product (GDP) of $132.73 billion (2021) and a GDP per capita of $3,496.80 (2021).[6] The economy is heavily dependent on the export of raw materials, with the tourism and communications sectors having growing importance. Due to its geographical and climatic conditions, Morocco is one of the few countries in the Middle East and North Africa region to have sufficient arable land with the potential to achieve self-sufficiency in food production.[7]

The demographic shift in Morocco has been characterized by dynamics of rural exodus and urbanization in rural areas. The total population is 36.3 million,[8] of which 64 per cent live in urban areas. By 2050, this share of urban population is projected to be 73.5 per cent.[9] The largest cities are Casablanca (3.84 million), Rabat (1.93 million), Fes (1.26 million), Tangier (1.23 million) and Marrakech (1.27 million).[10]

1. Urban planning

1.1. Planning objectives, content and hierarchy of plans

The guiding principles of territorial planning in Morocco are established in the National Charter for Land-Use Planning and Sustainable Development. The dispositions contained in legislation and planning documents at the national, regional and local levels must aim for:

1. National unity.
2. Human-centred development.
3. Economic efficiency and social cohesion.
4. Harmony between people and their environment.

4 Britannica. See: www.britannica.com/place/Morocco

5 Britannica, ibid.

6 World Bank. See: https://data.worldbank.org/country/morocco

7 Britannica, ibid.

8 Ministère de l'Europe et des Affaires Étrangères. Présentation du Maroc: www.diplomatie.gouv.fr/fr/dossiers-pays/maroc/presentation-du-maroc/.

9 Y. Elmdari, A. Namir and M. Hakdaoui (2020). "The Impact of Rapid Urbanization and Population Growth on the City Shape of Casablanca Morocco Using Remote Sensing". 2020 IEEE International conference of Moroccan Geomatics (Morgeo), pp.1–6, doi: 10.1109/Morgeo49228.2020.9121881.

10 Central Intelligence Agency. The World Factbook. Morocco: www.cia.gov/the-world-factbook/countries/morocco/.

5. Solidarity between the components of the national territory.
6. Democracy and participation.

The territorial planning system in Morocco comprises of instruments at different scales, prepared in different years and reporting to different institutions.

At the national level, the National Land-Use Planning Scheme, which was completed in 2004, describes the long-term vision and general **orientations for land-use planning at the national** level. It is composed of two documents: a nationwide territorial assessment and a proposal of specific projects concerning national development, their locations and guidelines.

At the regional level, the Regional Land-Use Planning Scheme, is defined by the Regions Organic Law (Article 89), as the agreement between the State and the region on measures on spatial planning and it contains the general guidelines and choices for regional development. It sets out priorities regarding major public services and infrastructure and determines the areas for regional projects. These contents must be incorporated into sectoral programmes of the public administration, public enterprises and local authorities.[11]

The most relevant and binding planning documents are those at the local level defined by national legislation in Law 12-90 (1992) on urban planning.[12] These include: Land use Planning Director Scheme and the Land-use Plan. The Land use Planning Director Scheme is a guide facilitating the aim to organize urban development at the scale of one or more municipalities. It defines the planning options, new urbanization zones and general orientations for land use. This document is orientated by national policies and strategies but not legally bound to a higher scale planning document (Law 12-90). The Land-use Plan determines land uses and land regulations. It defines the possibilities and restrictions of development at the scale of a municipality and below. This plan must be compliant with the provisions of the Land use Planning Director Scheme (Law 12-90).[13]

1.2. Planning institutional framework

The institutional set up for land-use planning in Morocco can be characterized as a top-down model. The Ministry of National Territory Planning, Land Planning, Housing and City Policy is responsible for the preparation and execution of government policy in the areas of land management, urban planning, architecture, housing and

11 Portail National des Collectivités Territoriales. Guide relatif à la procédure d'élaboration du schéma régional d'aménagement du territoire, de son actualisation et de son évaluation: www.collectivites-territoriales.gov.ma/fr/publications/guide-relatif-la-procedure-delaboration-du-schema-regional-damenagement-du-territoire.

12 World Bank Group. (2018). Pour une nouvelle stratégie de mise en oeuvre et de gouvernance de l'urbanisme et de l'aménagement urbain: https://documents1.worldbank.org/curated/en/673611540331013534/pdf/AUS0000240-REVISED-180607-MUR-Planning-Thematic-Note-final-clean.pdf.

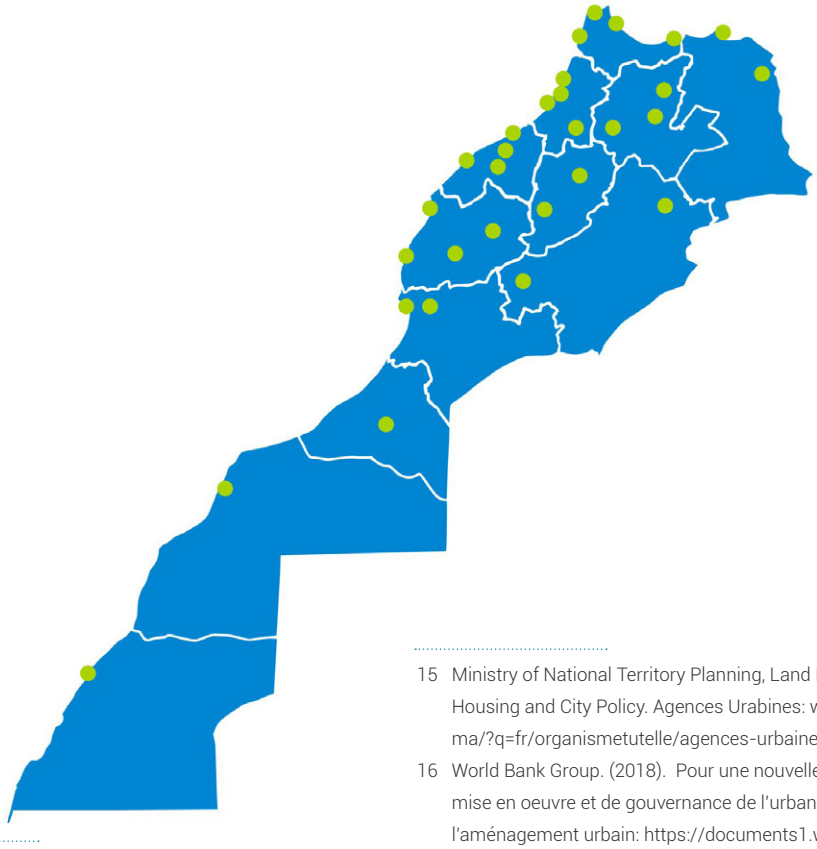
13 Law 12-90 on urban planning.

urban policy. It is mandated to develop government policy in the areas of spatial planning at the national and regional levels as well as the harmonization of policies through sectoral coordination and to ensure the coverage of the national territory by planning documents, among others.[14]

In the institutional framework of territorial planning, urban agencies are a key actor. They are public entities with legal personality and financial autonomy. They are created by decree and have jurisdiction over a territory composed of one or more prefectures, or even a region.[15] These agencies are mandated to prepare the territorial planning documents, specifically the Land use Planning Director Scheme and Land-use Plan within their jurisdiction. They conduct the necessary studies, prepare the regulatory and guiding urban planning documents, and are mandated to provide technical assistance to municipalities for the implementation of planning documents.[16]

Figure 3. Distribution of urban agencies in the national territory

Source: Féderation des Agences Urbaines. Couverture territoriale: www.federation-majal.ma/fr/reseau-aum.



14 Ministry of National Territory Planning, Land Planning, Housing and City Policy. Missions et attributions. See : www.muat.gov.ma/?q=fr/article/missions-et-attributions.

15 Ministry of National Territory Planning, Land Planning, Housing and City Policy. Agences Urabines: www.muat.gov.ma/?q=fr/organismetutelle/agences-urbaines.

16 World Bank Group. (2018). Pour une nouvelle stratégie de mise en oeuvre et de gouvernance de l'urbanisme et de l'aménagement urbain: https://documents1.worldbank.org/curated/en/673611540331013534/pdf/AUS0000240-REVISED-180607-MUR-Planning-Thematic-Note-final-clean.pdf

The role of municipalities in the preparation of planning documents is consultative. For instance, the Land use Planning Director Scheme proposal is submitted for review by the municipal councils and they can issue their proposals within three months of being consulted. The Land-use Plan is subject to a one-month public hearing to be held concurrently with the review of the draft by the municipal council(s) concerned. Any interested stakeholder can formulate observations to the municipal council that are later examined together with the urban agency prior to final approval.[17] However, municipalities are fully responsible for the implementation of both documents.[18]

Although the formulation of land-use planning strategies and policies for the regions is the responsibility of the ministry, the guiding document for land-use planning at this level, the Regional Land-Use Planning Scheme, is developed by regional authorities.[19] The document is elaborated by the regional council under the supervision of the president of the regional council, local administrations are consulted, while the regional council approves, including a sign-off from the Ministry of the Interior.

The implementation is done by the President of the Regional Council assisted by the Wali (Governor) of the region. Each regional council has a Permanent Commission for Spatial Planning that oversees the process of implementation.[20]

1.3. Non-state actors or private sector involvement

The main law regulating land use planning in Morocco dates from 1992 (Law 15-90) and does not contain specific provisions to involve actors outside the governmental sphere. However, recent legal texts advocate for a paradigm shift. For instance, the National Charter for Land-Use Planning and Sustainable Development[21] contains a call for a redefinition of the role of stakeholders in land-use planning. In the charter is the recognition of the necessity of an increased involvement of the public sector, defined as "individuals, private companies and professional organizations".

This document also highlights the importance of consolidating the institutionalization of civil society. Another example can be found in the Regional Land-Use Planning Scheme that is required to be implemented in consultation with private sector representatives (Law 111-14, Article 88).[22]

17 Agence Urbaine de Tétouan. Documents d'urbanisme: www.autetouan.ma/fr/rubrique/documents-d-urbanisme.

18 Ibid 16

19 Ministère de l'Intérieur. Loi organique relative aux régions: www.regions-maroc.ma/wp-content/uploads/2020/10/Loi-organique-region.pdf.

20 Portail National des Collectivités Territoriales. Idem.

21 Charter for Land Use Planning and Sustainable Development.

22 Regions organic law.

1.4. Planning standards

Specific planning standards are defined by Land-use Plans. These documents comprise graphic documents, regulations defining the rules of land-use, construction rules and obligations aiming for coherent development.

According to Law 12-90 on urban planning, the Land-use Plans define regulations for each territory on:

1. Allocation of main land uses.
2. Building restrictions.
3. Limits of roads, parking, squares, greenspaces, sports facilities, leisure centres, malls.
4. Areas for public facilities (railways, administrative buildings, cultural, sanitary, education, religious).
5. Land development regulations on minimum and maximum building height, orientation, enclosure, parking lots, distance from one another and ratio of total buildable surface.

1.5. Planning permissions and enforcement of violations

Law 12-90 on urban planning, in its Title III, regulates building permits, modifications, housing permits, certificates of compliance and building rules. It sets the rules of procedures and standards for local administrative authorities in charge of enforcing these regulations.

Title IV establishes sanctions for non-compliance with these dispositions; the president of the municipal council can order the immediate suspension of a construction, and even, under certain circumstances and under the request of the governor, the demolition of irregular constructions. In addition, the president of the communal council can file a complaint with a public prosecutor to initiate proceedings against the offenders of urban planning regulations. There are also monetary fines for violating various provisions ranging from 1,000 to 100,000 dirhams.

1.6. Climate-friendly urban planning

The National Charter For Land-Use Planning And Sustainable Development establishes guidelines on the principles and orientations of territorial planning so that it is in line with sustainable development.

The main orientations of the regional planning policy are the following: the upgrading of the national economic fabric; the training of human resources; urban management and urban policy; the protection of natural resources; the valorization of territories; the development of national cities and regional poles; regionalization and integrated local development; the reinforcement of decentralization and the widening of deconcentration; democracy,

partnerships and participation.[23]

The charter establishes that national urban policy should, inter alia, develop the economic base of cities, including the artisanal and informal sectors. It highlights the importance of social development as an objective and tool for urban development, and calls for addressing the problem of substandard housing in a comprehensive manner and improving living standards in terms of housing, sanitation, recreational and social services. This translates to an urban planning system capable of upgrading the urban space based on solutions to the existing shortcomings in terms of housing, basic facilities, public services, transport and the environment.[24]

2. Land management

2.1. Land uses and allocation

Land use is determined in the Land use Planning Director Scheme within its territorial jurisdiction. It establishes the general purpose of the land by determining the location of (Law 25-90, Title II, Article 4):

1. Agricultural and forestry areas.
2. Housing zones with their density.
3. Industrial zones.
4. Commercial zones.
5. Touristic zones.
6. Areas subject to constraints such as non aedificandi, non altius tollendi (building and height restrictions) water resource protection constraints.
7. Natural, historical or archaeological sites to be protected and enhanced.
8. The main green spaces to be created, protected and enhanced.
9. Major facilities such as the main road network, airport, port and railway installations, the main health, sports and educational facilities.
10. Areas where development is subject to a special legal regime.

These general orientations are further detailed by the Land-use Plan (Law 25-90, Title II, Article 19). Moreover, Law n° 25 - 90 on Land Parcelling, Groups of Dwellings And Subdivisions (1992) regulates the relationship between land-use legislation, land-use plans and individuals in the case of land subdivision. These authorizations are granted by the president of the municipal council once the proposal complies with legislation and regulations in force, in particular the provisions of zoning and land-use plans.

23 Ministère de l'Aménagement du Territoire, de l'Urbanisme, de l'Habitat et de l'Environnement (2017). Charte Nationale D'Amenagement Du Territoire Et Du Developpement Durable: www.abhatoo.net.ma/maalama-textuelle/developpement-economique-et-social/developpement-economique/reperes-du-developpement-economique/reperes-du-developpement-economique-generalites/charte-nationale-d-amenagement-du-territoire-et-du-developpement-durable

24 Ministère de l'Aménagement du Territoire, de l'Urbanisme, de l'Habitat et de l'Environnement (2017). Ibid.

2.2. Land acquisition for public purposes and compensation schemes

Law No. 7-81 on Expropriation for Public Utility and Temporary Occupation (1982) recognizes expropriation as a right of the State and local authorities under public utility cause. Public utility is declared by an administrative act that specifies the area likely to be expropriated. It is restricted to declare public utility on religious buildings, cemeteries, buildings forming part of the public domain and military installations.

Expropriation procedures are operated by a judicial authority. Administrative court decides on the final transfer of property rights to the public authority and it defines the compensation to be given. The amount of the compensation must be for a current grievance, fixed at the updated value of the property as it cannot be higher.

2.3. Security of tenure: land tenure types and land registry

The legal system in Morocco recognizes two types of land tenure regimes: traditional and modern land tenure matriculation. The former is based on sharia law and local customs, where the right of ownership is based on evidentiary public possession for at least 10 to 40 years.

The latter is based on definitive property titles that are widely public, individual, definitive, indisputable and a probative force of right.[25]

There is diverse legal status for land recognition such as collective lands, melks, Guich land, habou land, that are under administrative jurisdiction of different national ministries.[26]

The National Agency for Land Registration, Cadastre and Cartography is the institution in charge of the registry of land property, the conservation of archives and land documents, the establishment of cadastral plans, establishment and conservation of the national cadastre, the centralization and conservation of topographic and photogrammetric documents, among others[27]. In 2021, the agency's information assets consisted of 6.75 million land titles and cadastral plans, digital cadastral maps covering the entire national territory, 2,058 topographic maps, 2 million hectares in ortho-images and ortho-photos and 225 million digitized documents.[28]

25 FIG. Le système foncier au Maroc Une sécurité et un facteur de développement durable: www.fig.net/resources/Proceedings//fig_proceedings/morocco/proceedings/TS1/TS1_5_hassni_et_al_ppt.pdf.

26 FIG. Idem.

27 Agence Nationale de la Conservation Foncière, du Cadastre et de la Cartographie. Missions et attributions: www.ancfcc.gov.ma/pr%C3%A9sentation/missions-et-attributions/.

28 Agence Nationale de la Conservation Foncière, du Cadastre et de la Cartographie. Chiffres clés: https://www.ancfcc.gov.ma/pr%C3%A9sentation/chiffres-cl%C3%A9s/.

2.4. Land-based financing

According to the Organisation for Economic Cooperation and Development Global Compendium of Land Value Capture Policies, Morocco is a country that makes moderate use of these land value capture instruments. Two mechanisms are contemplated in the national legislation: the infrastructure levy and the developer obligations. However, factors such as a lack of political will and lack of administrative or technical capacity in local governments result in these mechanisms rarely being employed. Local governments and public agencies are authorized to implement these compensations and receive their benefits.[29]

Article 59 of Law 7-81 relating to expropriation establishes the infrastructure levy mechanism: "When the execution of public works or operations confers to private properties an increase in value exceeding 20 per cent, the beneficiaries of this increase are indebted with an indemnity equal to half of the total increase in value thus created."

Law 47-06 relating to the taxation of municipalities establishes developer obligations through direct taxes, including taxes on construction operations and land subdivision.

The obligations are calculated using a formula that considers size, type of development and land value. The fee is paid in two instalments, 75 per cent to obtain approval and 25 per cent on completion of the project. Projects with social benefit are exempt from these obligations.

Another instrument used is land readjustment, mainly for road construction projects and strategic land management to enable the construction of public utilities and amenities and to foster national development programmes.

3. Dispute-resolution mechanisms

Land registry has become a fully-fledged subject of land litigation. In the case of disputes over land property, the law in Morocco recognizes the right of any citizen to appeal the registrar's decisions on claimed property within two months of the publication of the registration in the official gazette.

According to Law 14-07 on land registration, the registrar has conciliation powers before transferring a case to a court of first instance. The decision of a first instance judge can be appealed in a court of appeal. In case of disputes concerning land expropriation, a case can be lodged with an administrative judge.

29 Organisation for Economic Cooperation and Development (OECD)/Lincoln Land Institute (2022). Global Compendium of Land Value Capture Policies. OECD Regional Development Studies: https://read.oecd-ilibrary.org/urban-rural-and-regional-development/global-compendium-of-land-value-capture-policies_4f9559ee-en#page1.

4. Key takeaways and lessons

Morocco is an example of a country making significant efforts to consolidate the effectiveness of its territorial planning system. It has several areas of opportunity in the coordination and harmonization among the different planning regulatory and guiding documents. Despite this, Morocco has aspects specific to its institutional context that are worth highlighting:

1. **Autonomy and technical nature of planning institutions:** The institutional framework of the Urban Agencies provides a good example of a technical institution with autonomy to produce urban planning documents. These agencies have special territorial jurisdictions that allow planning on a scale larger beyond the administrative boundaries of cities. This has the potential to plan the development of peri-urban and rural areas linked to the urban core in a consolidated manner.

2. **Incentives for land tenure security:** Morocco has provided significant incentives through property titles as an instrument of legal tenure security.

3. **Institutional capacity building for land registration:** The individual, definitive and indisputable character of registered land has led to the development of capacities for land registration. Presently, Morocco has an agency that centralizes cadastral, registry and mapping information with important assets and nationwide coverage.

4. **Alternative dispute settlement:** The mediation mechanism is an aspect to highlight which is a mandate of the land registrars. Land disputes under this scheme can be solved in a more expeditious and accessible way, which lessens the burden on judicial authorities.

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THE CASE OF THE NETHERLANDS

NETHERLANDS COUNTRY PROFILE
QUICK FACTS

	Country name Kingdom of the Netherlands
	Type of government Constitutional monarchy
	Form of State Unitary State
	Surface area 41,864 km²
	Gross domestic product $912.20 billion (2020)
	GDP per capita $52,304.06 (2020)
	Population 17 million (2020)
	Urban population (percentage out of the total population) 92.57 per cent (2021)
	Urban population growth (annual percent) 0.9 (2021)
	Population density 500 inhabitants per km²

Cover image shows Almere, the newest city in the Netherlands, where water once lay Source: Pavlo Glazkov/Alamy. See www.bbc.com/future/article/20220404-the-dutch-city-experimenting-with-the-future-of-urban-life.

COUNTRY BACKGROUND

The Netherlands is situated in north-west Europe and has a constitutional monarchy form of government. This means that the Head of State is a King or Queen whose powers are laid down in the Constitution.[30] However, the powers of the monarch are extremely limited. Under the Constitution, the elected ministers, and not the monarch, are responsible for government acts.[31]

The Netherlands is one of the most developed economies in the world, with a gross domestic product (GDP) of $912.2 billion in 2020 and a GDP per capita of $52,304.06 in the same year.[32] Partly due to its human and physical geography, the Netherlands has one of the most comprehensive[33] and highly regarded planning systems in the world.[34] Almost a quarter of the land is below sea level, protected from the sea and large rivers only by dikes and pumps, making it one of the most climatically vulnerable countries. Land has been reclaimed from the sea for centuries and the resulting polder landscape required a high degree of collective organization and thus planning.[35]

Demographically, the Netherlands has a population of 17 million (2021).[36] It is highly urbanized as 92.57 per cent of the total population lived in cities in 2021.[37] With a population density of 500 inhabitants per km², it is one of the most densely populated countries in the world.[38] The largest cities are in the Randstad, the polycentric metropolitan area in the western part of the Netherlands. The Randstad constitutes the economic engine of the Netherlands including the cities of Amsterdam, Rotterdam, The Hague and Utrecht, which form a ring around a relatively open area.

1. Urban planning

1.1. Planning objectives, content and hierarchy of plans

According to the 2008 Spatial Planning Act, the purpose of spatial planning is to result in "well-ordered space", an open norm providing substantial discretion to governments at all levels.[39] The specific objectives of spatial planning can be summarized as:

1. the regulation of land uses to provide a legal framework for development; and
2. the active facilitation of development.[40]

30 www.government.nl/government/about-the-government.
31 Ibid.
32 https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=NL.
33 Ibid.
34 H. Van der Cammen and L. De Klerk (2012). The Selfmade Land: Culture and Evolution of Urban and Regional Planning in the Netherlands. Houten: Spectrum.
35 J. Woltjer and N. Al (2007). "Integrating Water Management and Spatial Planning", Journal of the American Planning Association 73, No. 2, pp.211-222.
36 www.worldometers.info/world-population/netherlands-population/.
37 www.statista.com/statistics/276724/urbanization-in-the-netherlands/.
38 CBS (2016). Bevolking; kerncijfers. https://opendata.cbs.nl/statline/#/CBS/nl/dataset/37296ned/table.
39 Dembski, S. (ed. UN-Habitat). "Planning in the Netherlands" in Learning from International Experience: Systems Case Studies (Future Saudi Cities Project, 2014-2019), p. 33.
40 Dembski, S. Ibid.

Reflecting these objectives, the Dutch planning system primarily relies on two planning instruments: structure vision plans and land-use plans. The former is formulated at every level of governance – national, provincial and municipal – and contains the main features of new developments in that area, such as how and where they will take place, and addresses the main issues of spatial policy to be pursued by the competent authority.[41]

These plans are only binding on the authority responsible for their drafting. In contrast, local land-use (zoning) plans are absolutely binding. However, national and regional planning authorities can issue their own land-use plans, called "integration plans", as needed to preserve national or provincial interests, which are mandatorily integrated into local land-use plans.

Additionally, with a view to ensuring sustainable development, the habitability of the land and to protecting and enhancing this environment, the Environment and Planning Act (2021) aims to achieve the following interrelated objectives:

1. maintaining a safe and healthy physical environment and good environmental quality, given the intrinsic value of the natural world; and
2. to effectively manage, use and develop the physical environment to fulfil societal needs.

In relation to the hierarchy of plans, the Netherlands has three tiers of spatial plans (national, provincial, and municipal). At the national level, the National Structure Vision contains the main features of the proposed development of the country.[42] In cases where national interests are at stake, the Minister for Infrastructure and Water Management, having heard the municipal council and the provincial council, may adopt an imposed land-use plan called an integration plan for the land concerned,[43] thereby excluding the powers of the municipal council and the provincial council to adopt a land-use plan or an integration plan respectively for this land.[44] The integration plan is deemed to form part of the land-use plan or plans to which it relates.[45] The central Government can also exercise influence over lower tier planning instruments through general rules and regulations, which set general or specific requirements for spatial decisions of lower authorities.[46] In most cases, these requirements relate to the content of zoning plans, management regulations or environmental permit for space.[47]

41 Ministry of Infrastructure and Water Management Knowledge Centre (InfoMil), "Explanation of the Structural Vision" www.infomil.nl/onderwerpen/ruimte/ruimtelijke/wet-ruimtelijke/structuurvisie/uitleg/.

42 Spatial Planning Act of 2008, Section 2.3(1).

43 Spatial Planning Act of 2008, Section 3.28(1).

44 Spatial Planning Act of 2008, Section 3.28(5).

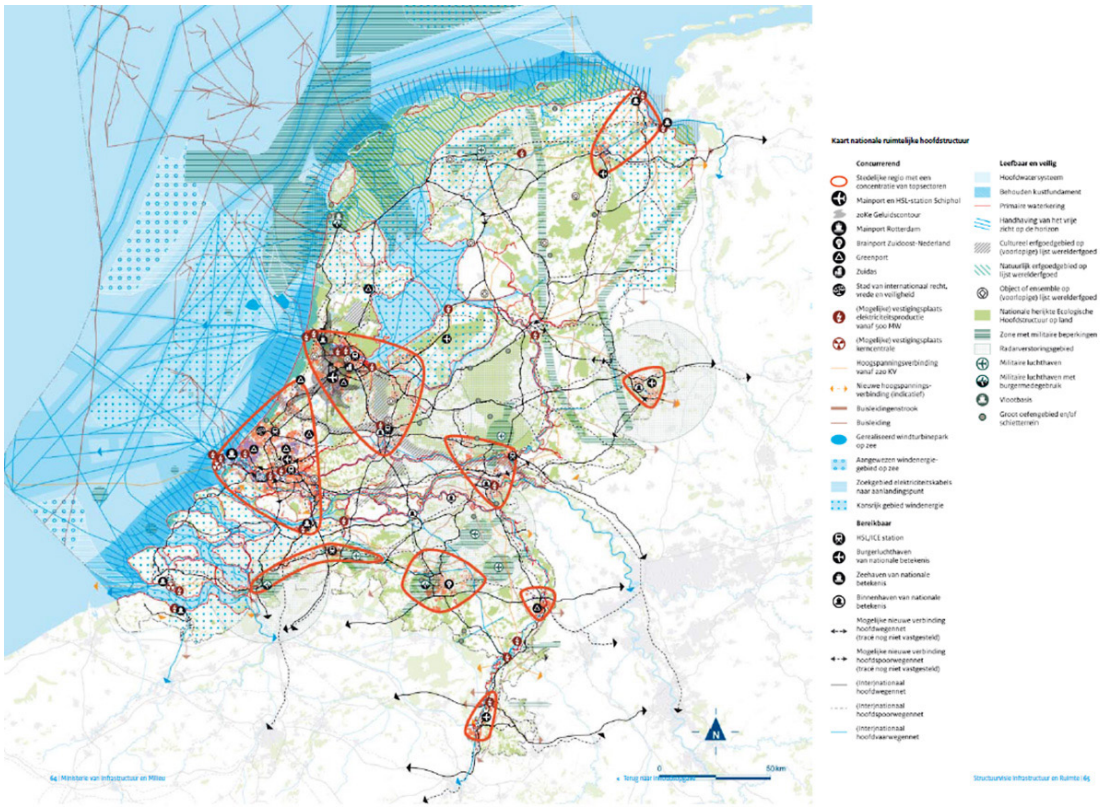
45 Spatial Planning Act of 2008, Article 3.28(3).

46 Spatial Planning Act of 2008, Article 4.3(1).

47 Ministry of Infrastructure and Water Management Knowledge Centre (InfoMil), "Explanation of the Land-Use Plan". See: www.infomil.nl/onderwerpen/ruimte/ruimtelijke/wet-ruimtelijke/algemene-regels/.

Figure 4. Partial extract of the National Spatial Structure – economy, infrastructure, urbanization

Source: Minister of Infrastructure and Water Management www.mlit.go.jp/kokudokeikaku/international/spw/general/netherlands/index_e.html.



At the provincial level, the Provincial Structure Vision contains the main features of the proposed development of the province and the main aspects of spatial policy to be pursued by the province.[48] As with the national Government, provincial authorities may issue integration plans which are binding on the relevant municipalities and the respective land-use plans within their jurisdiction.[49]

Additionally, rules may be laid down pursuant to a provincial ordinance regarding the content of land-use plans, including project decisions preceding them, the accompanying explanatory memorandum or supporting documentation, as well as the content of administrative ordinances.[50] Both integration plans and provincial ordinances are means by which provincial councils can control the content of municipal land-use (zoning) plans.

48 Spatial Planning Act of 2008, Article 2.2(1).

49 Spatial Planning Act of 2008, Article 3.26(1).

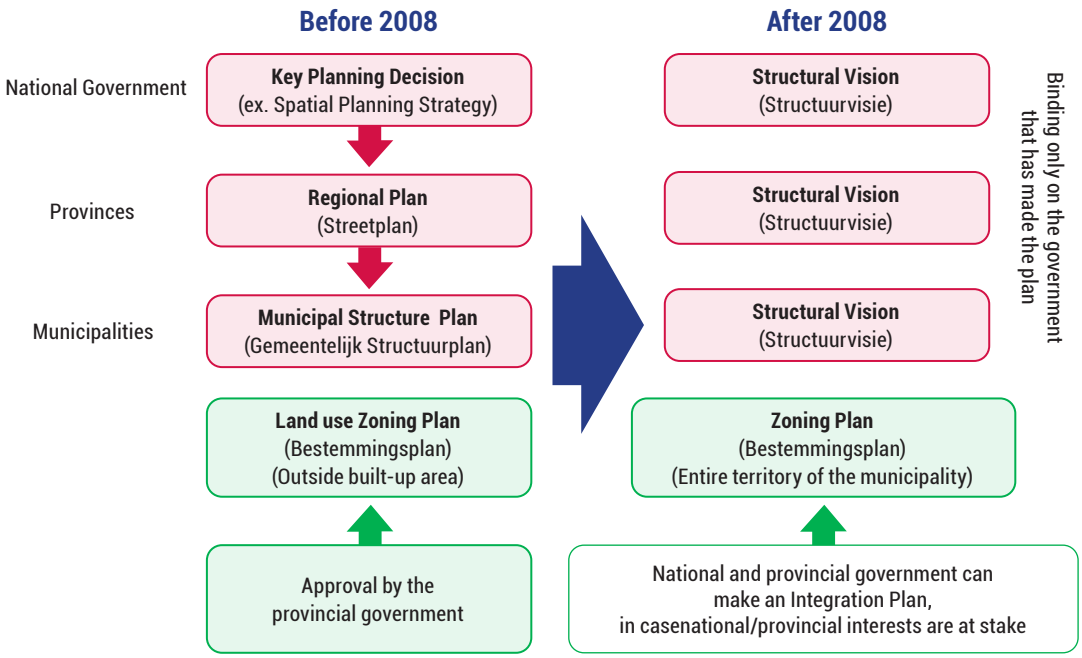
50 Spatial Planning Act of 2008, Article 4.1(1).

At the local level, the municipal structure vision contains the main features of the proposed development of the municipal area, and the main elements of the spatial policy to be pursued by the municipality.[51] It should also describe how the municipal council intends to provide for the realization of the proposed development.[52] The land-use (zoning) plan designates the intended uses of the land included in the plan and issues rules regarding the use of land and the structures on it in the interests of effective spatial planning.[53]

The land-use zoning plan may contain rules regarding social rental housing, social purchase housing or private commissioning, and branches of retail trade and catering. This zoning plan may also contain rules to prevent imminent and interrupted deterioration of the living or working conditions in and appearance of the area included in the plan.[54] In any case, a zoning plan should, in addition to the uses and rules prescribed by or pursuant to law, contain a description of those uses, indicating the purpose(s) for each use.[55]

Figure 5. The spatial planning system in the Netherlands

Source: www.mlit.go.jp/kokudokeikaku/international/spw/general/netherlands/index_e.html.



51 Spatial Planning Act of 2008, Article 2.1(1).

52 Spatial Planning Act, Article 2.1(3).

53 Spatial Planning Act of 2008, Article 3.1(1).

54 Decree No. 145 of 2008 implementing the Spatial Planning Act, Article 3.1.2

55 Decree No. 145 of 2008 implementing the Spatial Planning Act, Article 3.1(3).

1.2. Planning institutional framework

At the national level, the Ministry of Infrastructure and Water Management is responsible for adopting one or more national structure schemes, integration plans and general planning regulations.[56] These structure schemes are referred to the House of Representatives of the State's General to be subject to public debate. At the provincial level, the provincial executive and council are responsible for respectively drafting and adopting provincial structure schemes, integration plans, and provincial planning ordinances.[57] The Provincial Planning Commission serves a coordinating function in provincial planning.[58] At the local level, the municipal council is responsible for adopting municipal structure schemes and municipal land-use (zoning) schemes.[59] The mayor or alderman (municipal executive) is responsible for preparing these schemes,[60] though in practice, most municipalities outsource the drafting of their structure and land-use plans to private consultants due to constraints in human resource expertise.[61]

In the Netherlands, planning has been and continues to be a predominantly public sector activity. However, since the 1990s, the influence of the private sector has increased substantially.[62] While the preparation of plans is still under the leadership of the public sector, the actual implementation of plans has largely become the domain of the private sector as private developers have become the main actors in the land market. However, in many cases, municipalities have continued to assemble and service land with the voluntary cooperation of the private sector. Moreover, the public sector continues to take a leading role in the implementation of large projects related to public space.[63] The preparation of plans at the local level remains under the formal mandate of the municipal executive or alderman, but in practice private planning consultants carry out the main work. Only a few municipalities, such as that of Amsterdam, have the capacity and personnel skills and training to prepare their own plans, but even those municipalities rely on specialist legal advisors. Besides the actual preparation of land-use plans, which requires a high degree of legal expertise, consultants are increasingly hired for project management and urban design.[64]

With regard to institutional coordination, spatial planning is vertically coordinated between national, provincial and municipal levels of governance through the planning instrument described, namely integration plans, general rules and provincial ordinances.

56 Spatial Planning Act of 2008, Articles 2.3, 3.28, and 4.3.
57 Spatial Planning Act of 2008, Articles 2.2, 3.26, and 4.1.
58 Spatial Planning Act of 2008, Article 9.1
59 Spatial Planning Act of 2008, Articles 2.1 and 3.1.
60 Ministry of Infrastructure and Water Management Knowledge Center ("InfoMil"), "Explanation of the Land-Use Plan" [Uitleg bestemmingsplan], https://www.infomil.nl/onderwerpen/ruimte/ruimtelijke/wet-ruimtelijke/algemene-regels/.
61 Dembski, S., "Planning in the Netherlands", p. 49.
62 Ibid, p. 48.
63 Ibid, 49.
64 Ibid.

Spatial plans do not require approval from the next higher tier of government, however, the provincial or national Government can issue ordinances that request a change in lower-level plans to conform to higher level plans or direct municipalities to draft a land-use plan fulfilling specified criteria.[65] If the lower level does not comply, it can be forced to do so through directives. Further, national and provincial governments can directly impose land-use plans on municipalities through integration plans.[66] The adoption of integration plans requires prior consultation with the relevant municipal council and, in the case of a national integration plan, the relevant provincial council.[67]

The Spatial Planning Act of 2008 also includes provisions facilitating horizontal coordination across all three levels of government. Section 3.6 of the Act establishes the legal requirement to coordinate spatially relevant decisions between the responsible public authorities at the respective level of government. This occurs through "coordination arrangements" at the national, provincial and municipal levels to harmonize the various permitting decisions with decisions to adopt the land-use plan.

Through these arrangements, permitting, including environmental permitting, and other land-use implementation decisions are jointly submitted for public inspection with a single body, the Administrative Law Division of the Council of State. At the provincial level, each province must have a provincial planning committee for the purpose of consultation and coordination of matters concerning provincial spatial policy.[68] At the local level, the municipal council may adopt a structure vision plan in cooperation with the councils of adjoining municipalities for an area lying within the municipalities concerned.[69] When a municipal land-use plan is prepared, Article 3.8 of the Spatial Planning Act requires that a notice of the plan "is sent electronically to the central Government and provincial departments charged with promoting the interests affected by the plan" as well as "to the executive committees of the water boards and to the municipalities affected by the plan". In addition to fostering vertical coordination, this provision ensures that inter-institutional coordination takes place between the spatial planning authorities and the water authorities, which represent one of the Netherlands oldest democratic institutions.[70]

65 Dembski, S., "Planning in the Netherlands", p 45.

66 OECD, The governance of land use in the Netherlands: the case of Amsterdam (Partis: OECD Publishing, 2017).

67 Spatial Planning Act of 2008, Article 3.26(1) and 3.28(1). See also, Dembski, S., "Planning in the Netherlands", p. 45.

68 Spatial Planning Act of 2008, Article 9.1.

69 Spatial Planning Act of 2008, Article 2.1 (4).

70 Dembski, S., "Planning in the Netherlands", p. 37.

The Environment and Planning Act, which is expected to go into effect on 1 January 2024[71], represents the cumulation of the Government's efforts to integrate spatial planning and environmental policy since the 1990s. The Act consolidates provisions from 26 existing acts dealing with the built environment, housing, infrastructure, environment, nature and water with a view to simplifying the regulations surrounding spatial projects.

To support the objective of achieving a coherent approach to the physical environment in policy, decision-making and regulations,[72] the Act states that "in the performance of its duties and powers under this Act, an administrative body shall consider the duties and powers of other administrative bodies and, if necessary, coordinate with these other administrative bodies.

Administrative bodies may perform their duties and exercise their powers jointly. This does not provide for a transfer of duties or power. When performing its duties and exercising its powers by virtue of this Act, an administrative body shall take account of the duties and powers of other administrative bodies."[73]

1.4. Planning standards and planning processes

Presently in the Netherlands, planning standards are established in several distinct pieces of legislation. The Spatial Planning Act (2008) does not itself include planning standards, but instead states that rules regarding the design and layout of visions, plans, decisions and ordinances which may be laid down by ministerial regulation.[74] The Environment and Planning Permits Act of 2010 (Wabo)[75] regulates the procedures for permits for any land use and building activities using the "All-in-one Permit for Physical Aspects".

Furthermore, all buildings must comply with the Building Decree of 2012, local by-laws and the Gas Act amendment. The Building Decree of 2012 contains the technical regulations that represent the minimum requirements for all structures in the Netherlands. These requirements relate to safety, health, usability, energy efficiency and the environment.[76]

71 https://business.gov.nl/amendment/introduction-environmental-and-planning-act-omgevingswet/

72 Ministry of Infrastructure and Water Management, "Unofficial Translation of the Environmental Planning Act Explanatory Memorandum" (2017).

73 Environment and Spatial Planning Act (2021), Article 2.2.

74 Spatial Planning Act of 2008, Article 1.2.6.

75 This Act is also translated as the "The Act on general provisions for environmental law" or the "Living Environment Law (General Provisions)". Originally in Dutch: Wet algemene bepalingen omgevingsrecht.

76 Netherlands Enterprise Agency (RVO), "Building Regulations", https://business.gov.nl/regulation/building-regulations/.

However, the technical requirements of the Building Decree will be transferred to the Decree on Construction Works in the Living Environment with the Environment and Planning Act entering into force as anticipated in January 2024.[77]

All major building activities or changes to land use require one or more permits. The All-in-one Permit for Physical Aspects issued by the municipality can fulfil the various permitting requirements which are applicable to the relevant spatial projects or activities.

This all-in-one permit can be obtained under an integrated procedure specified in the Environment and Planning Permits Act (Wabo) instead of applying for several individual permits. Only the following are not included in the all-in-one permit: environmental management notification (describing the activity's environmental impact); notification of occupancy (for fire safety); and water permit.[78] The Environment and Planning Permits Act does not prescribe a specific delay in which the municipality must take a decision on an all-in-one permit application.

77 Netherlands Enterprise Agency (RVO), "Introduction of the Environment and Planning Act (Omgevingswet)", https://business.gov.nl/amendment/introduction-environmental-and-planning-act-omgevingswet/.

78 Netherland Enterprise Agency (RVO), "All-in-one permit for physical aspects: specific permits", https://business.gov.nl/regulation/scope-permit-physical-aspects/.

However, the municipality typically decides on all-in-one permits within eight weeks, though complex applications may take up to six months.[79]

1.5. Climate-friendly urban planning

Netherlands planning laws have also gone through a process of codification to ensure that environmental and other socioeconomic considerations are factored in during spatial planning. In relation to climate-friendly urban planning, the Building Decree of 2012 stipulates building requirements relating to the environment and energy efficiency.[80] Businesses in the Netherlands are required to take energy saving measures to reduce their energy demand by applying sustainable technologies and using renewable energy sources.[81] All new buildings must also meet the Almost Energy Neutral Building Requirement (2021).[82]

Environmental considerations are also taken into account when preparing municipal land-use plans.

79 Netherlands Enterprise Agency (RVO), "Applying for an all-in-one permit for physical aspects (omgevingsvergunning), https://business.gov.nl/regulation/applying-for-all-in-one-permit-physical-aspects/.

80 Building Decree of 2012, Article 5.1-5.15.

81 Netherlands Enterprise Agency (RVO), "Taking measures to save energy", https://business.gov.nl/regulation/taking-measures-to-save-energy/.

82 For more information, please read www.gtlaw.com/en/insights/2021/1/every-new-building-in-the-netherlands-must-be-almost-energy-neutral-starting-jan-1-2021#:~:text=The%20near%20energy%20neutrality%20of,demand%20from%20the%20use%20of.

The Spatial Planning Decree requires that land-use plans are accompanied by an explanatory note which includes, inter alia, a description of how the environmental quality requirements, established by the Environmental Management Act, are involved in the plan.[83] Furthermore, the preparation of a land-use plan may require the formulation of an environmental impact statement in accordance with the Environmental Management Act of 2004.[84] The new Environment and Planning Act and its subsidiary legislation, such as the Building Works Environment Decree, will replace the Building Decree and sections of 2008 Spatial Planning Law which deal with the environment in order to better coordinate spatial and environmental planning and regulation in the Netherlands. The new Act can be regarded as a drastic extension of the scope of the planning system as it regulates everything that concerns the protection and use of the physical environment.[85]

1.6. Public participation

Regarding the participation of citizens and civil society organizations in spatial planning processes, the Spatial Planning Law of 2008 stipulates public notification obligations which apply to the preparation of land-use plans and development project decisions.[86]

These obligations conform to the Section 3.4 of General Administrative Law Act of 1994 (Awb) which requires the competent public authority to deposit the plan preparation decision together with the documents relating thereto for a public inspection period of at least four weeks.[87] Documents relating to preparation decisions include explanatory notes which describe, inter alia, how citizens and civil society organizations are to be involved in the preparation of the land-use plan.[88] Notice of the draft decision and commencement of the public inspection period is required to be communicated in one or more newspapers prior to the draft decision being deposited.[89] "Interested parties" (those parties affected by the plan) and any other person identified by the administrative authority are given the opportunity to state their view on the draft decision either orally or in writing, at their discretion.[90]

The time limit to submit a view cannot end prior to the last day of the four-week inspection period,[91] and in practice with respect to land-use plans the entire public consultation period lasts for six weeks.[92]

83 Spatial Planning Decree Article 3.1.6(2)(c).
84 Environmental Management Act of 2004, chapter 7.
85 Dembski, S., "Planning in the Netherlands", p.34.
86 Spatial Planning Act of 2008, Article 3.7(7) and 3.8(d).
87 General Administrative Law Act of 1994, Article 3.11(1).
88 Spatial Planning Decree, Article 3.1.6(1)(e).
89 General Administrative Law Act of 1994, Article 3.12(1).
90 General Administrative Law Act of 1994, Article 3.13(1) and (2).
91 General Administrative Law Act of 1994, Article 3.13(3).
92 Ministry of Infrastructure and Water Management Knowledge Centre ("InfoMil"), "Overview: land-use plan procedure", www.infomil.nl/onderwerpen/ruimte/ruimtelijke/wet-ruimtelijke/bestemmingsplan/procedure/bestemmingsplan/overzicht-procedure/.

After studying the responses submitted, the municipal executive draws up a land-use plan, which includes any amendments that have been made. This plan must be approved by the municipal council within 12 weeks and, once the plan is adopted, a second notification is issued making the land-use plan decision available for public inspection. Those who had previously submitted a viewpoint on the draft decision can lodge an appeal with the Administrative Jurisdiction Division of the Council within six weeks, otherwise, the plan is definitive.

1.7. Enforcement of planning laws

The control of development is primarily the responsibility of the municipalities.[93] The Spatial Planning Act of 2008 requires the municipal executive to "designate by decision officials who are charged with monitoring compliance with the provisions laid down by or pursuant to this Act".[94] The law empowers these designated officials to enter a dwelling, bearing the necessary equipment, without the consent of its occupant.[95] Moreover, the Act includes provision for the Minister for Infrastructure and Water Management to designate officials who are charged with monitoring the implementation and enforcement of the planning law. As such, municipal compliance officers may be required to provide any requested data to these monitoring officials pursuant to a ministerial order.

Intentionally failing to comply with an order issued or a formal request made by one or either of these officers is considered a criminal offence under Article 184 of the Criminal Code.

Municipal officers can rely on administrative or criminal law when enforcing compliance with planning decisions and building regulations. In terms of administrative law, they can impose penalty payments to ensure that the offence is rectified and to prevent repetition or any further violations of regulations.[96] The municipal enforcement officers may also use an administrative enforcement order to require the offender to undo the damage, or may act on illegal building activities directly and recover the costs from the offender.[97]

The municipal executive can also withdraw a planning permission or demolition permit, either at his or her own volition or at the request of the minister or provincial executive.[98] In terms of criminal law, the Spatial Planning Act explicitly states that the act of using or causing to be used land or buildings in a manner inconsistent with a land-use plan is a criminal offence, as is "any behaviour which contravenes a condition attached to a permit, permission or dispensation granted".[99]

93 Spatial Planning Act, Article 7.1.

94 Spatial Planning Act of 2008, Article 7.2(1).

95 Spatial Planning Act of 2008, Article 7.2(2).

96 General Administrative Law Act of 1994, Section 5.4.

97 General Administrative Law Act of 1994, Section 5.3. See also, Dembski, S., "Planning in the Netherlands", p. 47.

98 Spatial Planning Act of 2008, Articles 7.6 and 7.7.

99 Spatial Planning Act of 2008, Article 7.10.

However, resorting to enforcement under criminal law is usually used only as ultima ratio, either if the administrative route fails to enforce the law or if the nature and consequences of the violation are substantial (e.g., economic advantage, irreversibility of intervention).[100] Additionally, in some cases, the municipality may use private law to indirectly enforce land-use plans, if it concerns land owned by the State or existing private contracts between the municipality and private persons.[101]

2. Land management

2.1. Land allocation and zoning

The Spatial Planning Act of 2008 does not specifically define the structure and content of the land-use plan. Instead, the Act simply defines a land-use plan as a plan "in which the intended uses of the land included in the plan are designated in the interests of 'good spatial planning' and rules are laid down regarding those intended uses".[102] Though according to the Spatial Planning Decree, default rules in land-use plans may be laid down by ministerial regulation, municipalities are left considerable discretion in drafting land-use plans. Nonetheless, the land-use plan usually contains the following three parts:[103]

1. **Explanation**: discusses the purpose of the land-use plan, the relevant policy, description of the area under development, the relevant environmental aspects and the feasibility of the land-use plan as well as the zoning rules.
2. **Imagination (planning map)**: Digital map consisting of land-use designations organized by colour; the entire area must be given a land-use designation, such as agriculture, business, housing or sports; areas can be given double/dual designations with an applicable hierarchy between them; certain areas must be designated in accordance with the relevant legislations, e.g., protected natural areas or climate/disaster risk vulnerable areas; minimum buffers in accordance with the Noise Nuisance or External Safety Act.
3. **Lines**: Must comply with the National Standard Comparable Zoning Plans which defines a standard structure for land-use plans and rules:
4. **Chapter 1:** Introductory rules: definitions and methods of measurement.
5. **Chapter 2**: Destination (land-use designation) rules: explains the land-use plan map; defines which functions (purposes) are permitted, such as housing, business, greenery, etc.; indicates whether construction

100 Dembski, S., "Planning in the Netherlands", p. 47.
101 Ibid 100
102 Spatial Planning Act of 2008, Article 3.1(1).
103 Ministry of Infrastructure and Water Management Knowledge Centre ("InfoMil"), "Explanation of the land-use plan", www.infomil.nl/onderwerpen/ruimte/ruimtelijke/wet-ruimtelijke/bestemmingsplan/uitleg/#h56729961-627b-4af9-8cb5-99374c7b807c.

is allowed and permissible building height and surfaces areas or building percentages.

6. **Chapter 3**: General rules: rules that apply to all land-use designations; usually allows for 10 per cent deviation form dimensions and percentages stipulated in zoning plan.
7. **Chapter 4:** Transitional and closing rules.

The land-use plans themselves will take one of the following forms:

1. **Detailed land-use plan**: For existing residential areas, industrial estates, etc.
2. **Global land-use plan**: for areas to be developed; lays out the most important "starting points" for development; usually requires an elaboration obligation (explained below).
3. **Combination**: hybrid system of the first two.

Elaboration obligations are used when the municipal council adopts a land-use plan without it being clear exactly what the development will look like when making a new development possible. By including an elaboration obligation along with detailed rules, the municipal executive is given the obligation to draw up an "elaboration plan" within the framework of the elaboration rules given during the period the land-use plan is in force.

This enables the municipal council to have influence over the further elaboration of a development. The elaboration plan must be elaborated within the planning period (10 years) of the parent plan. Additionally, a zoning plan may include in-plan deviation rights (a possibility to deviate to a limited extent from the plan; these deviations, however, cannot lead to a change of land-use designations).

Bestemmingsplan

The possibility to derogate from the land-use plan is a competence of the mayor and alderman (municipal executive).[104]

2.2. Land acquisition for public purposes and compensation schemes

Public land acquisition in the Netherlands is governed by the Expropriation Act. The law provides that "[e]xpropriation for the common good may take place in the public interest of the State, of one or more provinces, of one or more municipalities, and of one or more water boards".[105] The law provides that when expropriation has not been obtained by amicable agreement, then the expropriating party issues a summon by royal decree for the landowner to appear before the court in whose jurisdiction the immovable property to be expropriated is located, in order to hear the expropriation pronounced and to determine the amount of compensation.[106]

The Spatial Planning Act of 2008 affirms that a municipality can resort to expropriation if needed to compulsorily acquire land on adopting the land-use plan, including any integration plans or project decisions.

The Act clarifies that the land-use plan must be adopted and definitively finalized for an expropriation's summons to be issued.[107]

The granting of adequate or just compensation is guarded by the national courts, especially the Dutch Supreme Court, which plays a very important role in determining the compensation given in cases of expropriation. This is because the rules pertaining to the determination of compensation have been primarily developed by the Dutch Supreme Court and can therefore in their entirety only be found in Dutch case law. Adequate or full compensation for public interest expropriation entails the compensation for damages that are a direct and necessary consequence of the expropriation. Thus, the principle of full compensation is therefore not only the reimbursement or compensation of the actual, concrete value of the expropriated, possibly increased by the depreciation of the remaining property, but also contains compensation of additional damages that are a direct consequence of the expropriation.[108]

Furthermore, the Expropriation Act also states that it is possible to expropriate in the name of private sector entities who are responsible for the execution of a public work.[109]

104 Ministry of Infrastructure and Water Management Knowledge Centre ("InfoMil"), "Explanation of the land-use plan", www.infomil.nl/onderwerpen/ruimte/ruimtelijke/wet-ruimtelijke/bestemmingsplan/uitleg/#h56729961-627b-4af9-8cb5-99374c7b807c.

105 Expropriation Act of 2021, Article 1(1).

106 Expropriation Act of 2021, Article 18.

107 Spatial Planning Act of 2008, Article 3.36b.

108 See, https://www.degruyter.com/document/doi/10.1515/eplj-2019-0010/html?lang=en#:~:text=According%20to%20article%2041%20of,to%20twice%20the%20yearly%20rent.

109 Expropriation Act of 2021, Article 1(2).

To regulate this type of expropriation, the Public Works (Removal of Impediments in Private Law) Act was enacted to offer businesses of public works, such as a private energy company, a legal instrument that enables the construction, maintenance or modification of those public works on other people's immovable property. The Act authorizes the Minister for Infrastructure and Water Management to impose an "obligation to tolerate", in effect a type of easement right, on a private owner (or other entitled party) such that they are compelled to allow for the access to their property for the installation of public works.[110] The Spatial Planning Act of 2008 explicitly refers to the application of the Public Works Act in the context of adopting and implementing structure vision plans, land-use plans and project decisions.[111]

The Spatial Planning Act also includes provisions regarding the compensation of persons who suffers loss in the form of a loss of income or a reduction in the value of the property due to the adoption of a land-use plan (or integration plan), a dispensation granted pursuant to an administrative ordinance, or the deferment of a decision on granting a planning permission.

Claims for compensation must be justified with an explanation of the basis for the claimant and how the amount claimed was arrived at; additionally, an application for compensation must be submitted within five years from the time when the cause of the loss suffered became conclusive.[112]

2.3. Security of tenure: land tenure types and land registry

In the Netherlands, according to the Dutch Civil Code, there are four main types of property rights, which are as follows:[113]

1. **Absolute ownership**: full ownership of land, which includes ownership of all its constituent parts (everything above and beneath the surface), by way of accession. This includes all building and underground structures, except for underground cables and pipelines.
2. **Rights of superficies**: the right to have, hold and maintain buildings, works or plants in, on or above land owned by another party. As such, the right of superficies prevents buildings, works or plants on land owned by another party passing into the ownership of that party.
3. **Apartment rights (condominium)**: ownership of part of a property, including the exclusive right to an apartment plus shared rights and obligations in relation to common areas (for example walls, roof, external spaces).

110 Ministry of Infrastructure and Water Management, "Public Works (Removal of Impediments in Private Law) Act [Belemmeringenwet Privaatrecht]" www.rijkswaterstaat.nl/wegen/wetten-regels-en-vergunningen/wetten-aanleg-en-beheer/belemmeringenwet-privaatrecht.

111 Spatial Planning Act of 2008, Article 3.36a.

112 Spatial Planning Law Section 6.1.

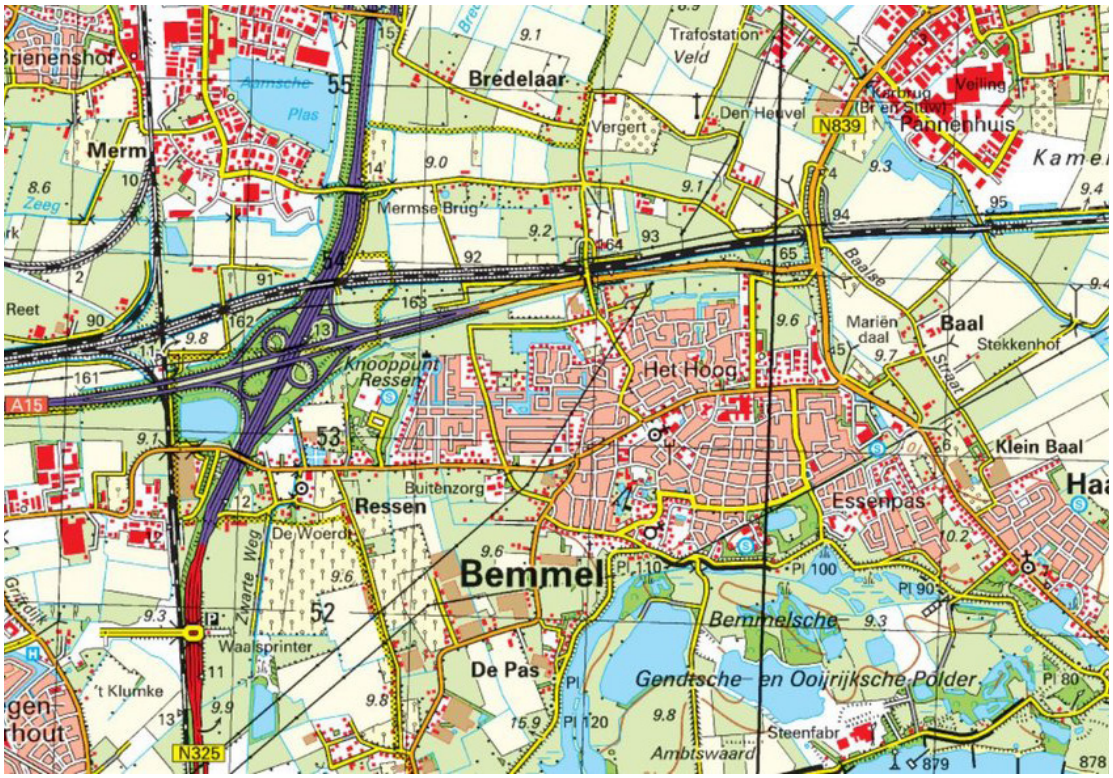
113 www.dlapiperrealworld.com/law/index.html?c=NL&t=sale-and-purchase

4. **Rights of leasehold**: long leases (usually around 50 or 100 years, but they can also be perpetual) are a very common way of holding property owned by the municipalities of Amsterdam, Rotterdam and The Hague. Leasehold rights may be transferred or mortgaged.

As for land registrations, the Land Registry is responsible for the registry of all real estate and the associated property rights. The operations of the land registry are regulated by the Cadaster Act of 1989. Because all data in the land registry is digitized, the registry can be accessed by anyone and illegal building activities are relatively easy to uncover.[114]

Figure 6. Kadaster Netherlands 1:50,000 map extract: dense urban blocks are represented by coloured areas

Source: www.researchgate.net/figure/Kadaster-Netherlands-150k-map-extract-dense-urban-blocks-are-represented-by-colored_fig1_318463713.



114 Ibid 100.

2.4. Land-based financing

Municipalities in Netherlands can generate revenue through land and property in various ways. The most common is land revenue income via fees, cost recovery and development gains. Municipalities are allowed to request fees for planning permissions and other services offered by the municipality. Each municipality is able to establish its own tariffs, with larger cities like Amsterdam and Rotterdam imposing higher rates.[115]

Additionally, municipalities can recover the cost associated with a land-use plan either via a private contract between the property rights owner and the municipality or via a statutory land exploitation plan.[116] In practice, most developers will make individual agreements or, if the land is owned by the municipality, this will be included in the land price. If the municipality fails to recover the costs from a property owner under private law, it is obliged to make an exploitation plan, which specifies which planning costs will be transferred onto the property rights owner.[117] This involves all the costs involved in preparing the land for development, such as technical studies, soil rehabilitation and statutory plan making costs, as well as costs outside the plan area that can be linked to the plan area (e.g., a new park, school or bridge). The contribution is only due when an environmental permit is issued, i.e., the property rights owner decides to develop.[118] Municipalities can also recover their costs via a request for indemnification when, for example, a municipality takes a spatial decision at the request of another government body such as the national Government.[119]

3. Dispute-resolution mechanisms

The Spatial Planning Act stipulates that a planning permission can only be refused if the work or activity is inconsistent with a land-use plan, a project decision included in such plans, the requirement laid down in accordance with such plans, an administrative ordinance or a preparation decision.[120] Pursuant to the General Administrative Law Act of 1994, any objection to the planning permitting decision is lodged directly to the municipality.

An appeal can then be made to the Administrative Jurisdiction Division of the Council of State within six weeks of the municipality's decision on the objection; these appeals must be decided upon within a year of the closure of the appeal period. This decision can be appealed again either by the applicant or the municipality.

115 Dembski, S., "Planning in the Netherlands", p. 50.

116 Spatial Planning Act of 2008, Section 6.4.

117 Ministry of Infrastructure and Water Management Knowledge Centre ("InfoMil"), "The Wro in short", www.infomil.nl/onderwerpen/ruimte/ruimtelijke/wet-ruimtelijke/wro-kort/#Afdeling61Tegemoetkominginschade.

118 Dembski, S. Ibid, p.50.

119 Spatial Planning Act of 2008, Section 6.2.

120 Spatial Planning Act of 2008, Article 3.16.

Other planning decisions, such as the adoption of land-use plans can be appealed to the Administrative Jurisdiction Division of the Council of State by interested parties and must be decided on within 12 months.[121] If a request for provisional relief is submitted in the appeal period, the application of the contested plan is suspended until the decision for provisional relief is made.[122]

The law also provides for the Ministry of Infrastructure and Water Management to set up a foundation, the Advisory Board on Administrative Jurisdiction for the Environment and Spatial Planning (StAB),[123] which is responsible for drafting expert reports at the request of the courts relating to appeals lodged.[124]

4. Key takeaways and lessons

The Netherlands case study has demonstrated that planning systems can offer stability despite various reforms to keep up with environmental and other socioeconomic factors. Indeed, the Dutch planning system has undergone substantial change over the past decade or so to cope with the societal and spatial changes that demand higher degrees of flexibility while not losing the strength of legal certainty. The Netherlands planning law has undergone reforms to harmonize a whole set of sector legislations into a uniform system controlling the physical environment. However, at the same time, there is great stability of some of the key institutions of Dutch planning. The pragmatic plan-led planning system can have different names, but the proactive attitude of the Dutch State to influencing physical development will not change. These are key lessons for the Sultanate of Oman and other countries aiming to reform their planning laws.

The following key strengths from the Dutch spatial planning system and its supporting legal framework have been noted:

1. **Decentralization of spatial planning**: Local land-use plans are the primary legally binding planning instrument defined by the Spatial Planning Law of 2008. Municipalities can independently formulate and adopt their own land-use plans, however, national and provincial planning authorities can issue "integration plans" as needed to preserve national or provincial interests, which are mandatorily integrated into local land-use plans.

121 Spatial Planning Act of 2008, Article 8.2(3).

122 Spatial Planning Act of 2008, Article 8.4.

123 Ministry of Infrastructure and Water Management Knowledge Centre ("InfoMil"), "The Wro in short", www.infomil.nl/onderwerpen/ruimte/ruimtelijke/wet-ruimtelijke/wro-kort/#Afdeling61Tegemoetkominginschade.

124 Spatial Planning Act of 2008, Article 8.5.

In addition to the power for central or provincial government to adopt zoning (integration) plans, the law provides the power for the provinces and the central Government to set general or specific requirements for spatial decisions of lower authorities by means of a planning regulation or provincial ordinance in national or provincial council, respectively.

2. **Established coordination mechanisms:** The Spatial Planning Law makes it possible to coordinate the various permitting decisions with the adoption decision of the zoning plan or land-use plan. To do this, the law creates a municipal, provincial and a state "coordination arrangement". Through this scheme, permitting and other land-use implementation decisions are jointly submitted for public inspection with a single body, the Administrative Law Division of the Council of State. The law also includes requirements for municipalities to coordinate in the preparation of overlapping land-use plans, as well as for spatial planning authorities to consult the competent water boards.
3. **Integration of spatial planning and environmental regulations:** The Environment and Planning Act represents an ambitious approach to streamlining environmental and planning considerations and promoting a coherent approach to the physical environment in policy, decision-making and regulations.
4. **Comprehensive compensation mechanisms for land acquisition:** The law includes provisions regarding compensation of individuals adversely affected by planning decisions, reimbursement of costs borne by the municipality for taking a spatial decision at the request of another government body; granting subsidies from the Ministry of Infrastructure and Water Management for provinces or municipalities to implement spatial plans; and instruments to recover the costs of plan development from landowners ("exploitation plans").
5. **Meaningful public participation:** A public inspection period takes place once the decision to prepare a land-use plan has been issued; all persons who have land in the affected area(s) are identified through the land register and notified; any person is able to state their views on the preparation of a land-use plan to the municipal councils; the municipal council approves and adopts the final plan, which includes any amendments that have been made, within 12-weeks of the end of the inspection period.

6. **Harmonized intersectoral planning permissions:** Planning permissions stipulated in the Spatial Planning Law consider permits related to historic building and archaeological sites as well as environmental permits, which are prescribed in other sector-specific legislation and overseen by other ministerial departments. The All-in-one Permit for Physical Aspects was created to fulfil the various permitting requirements which are applicable to the relevant spatial projects or activities. This permit can be obtained under an integrated procedure instead of applying for several individual permits, increasing the efficiency of the planning system.
7. **Varied tools to control development:** Municipalities can use administrative law, private law (contractual obligations) and criminal law to enforce planning and building regulations. Under this model, criminal charges are used as a last resort to enforce compliance.
8. **Effective appeals procedure (dispute resolution):** An "interested party" can lodge an appeal with the Administrative Jurisdiction Division of the Council of State against several decisions, including the decision to adopt a land-use or integration plan; the appeal must be decided on within 12 months of the expiry of the appeal period. If a request for provisional relief is submitted in the appeal period, the application of the contested plan is suspended until the decision for provisional relief is made. The law also provides for the Ministry of Infrastructure and Water Management to set up a foundation which is responsible for drafting expert reports at the request of the courts relating to appeals lodged.

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THE CASE OF SOUTH AFRICA

SOUTH AFRICA COUNTRY PROFILE
QUICK FACTS

Country name	Republic of South Africa
Type of government	Constitutional republic and presidential democracy
Form of State	Unitary State
Surface area	1,219,090 km²
Gross domestic product	$419.95 billion (2021)
GDP per capita	$6,994.20 (2021)
Population	60 million (2021)
Urban population (percentage out of the total population)	68 per cent
Urban population growth (annual percent)	2.0
Population density	49 inhabitants per km²

View of Johannesburg
Source: https://theculturetrip.com/africa/south-africa/articles/the-top-10-things-to-do-and-see-in-johannesburg/

COUNTRY BACKGROUND

The Republic of South Africa is a constitutional presidential and multiparty democracy with three main spheres of government – national, provincial and local.[125] The president is the Head of State and the head of the national executive, the Cabinet, which consist of the president, the deputy president, and the elected ministers form the rest of the executive. The legislative authority is vested in Parliament at the national level, in the provincial legislatures at the regional level, and in the municipal councils at the local level. Parliament is composed of the National Assembly and the National Council of Provinces.

South Africa has nine provinces and three main cities: Pretoria (administrative capital), Cape Town (legislative capital) and Bloemfontein (judicial capital). For spatial planning purposes, the Minister for Rural Development and Land Reform, after consultation with the premier and the municipal council responsible for a geographical area, may declare any circumscribed geographical area of the republic to be a region; therefore, adding a fourth subregional level responsible for spatial planning.

Currently South Africa is developing land reform[126] led by the National Development Plan containing the vision for 2030 and the soon to be approved National Spatial Development Framework.

The land reform aims, inter alia, to transform the rural and urban economy, redistribute land and reform the land tenure system.

Overall, South Africa is currently one of the most developed economies in the sub-Saharan region, having a gross domestic product (GDP) of $419.95 billion (exceeded only by Nigeria), with an annual percentage growth rate of the GDP of 4.9, and a GDP per capita of $6,994.20 that has also experienced a sharp increase since 2020.[127]

Demographically, South Africa has a steadily growing population of more than 60 million and a total surface of 1,219,090 km² and therefore, a density of 49 inhabitants per km².[128] Sixty-eight per cent of the population live in urban areas, meaning that South Africa has a considerably higher urban population than the rest of the sub-Saharan region, comparable to the average of the North African and Middle East countries (66 per cent).[129] The largest city is Johannesburg with a population of 4.4 million, followed by Cape Town with 3.7 million.[130]

125 South African Government overview: www.gov.za/about-sa.

126 Land reform, www.gov.za/issues/land-reform#rural.

127 World Bank: https://data.worldbank.org/country/south-africa.

128 Ibid.

129 World Bank – Urban population: https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS?locations=ZG-ZA-ZQ&most_recent_value_desc=true.

130 World Atlas: www.worldatlas.com/articles/biggest-cities-in-south-africa.html.

Figure 7. Spatial representation of population settlement and growth dynamics

Source: Draft National Spatial Development Framework 2020

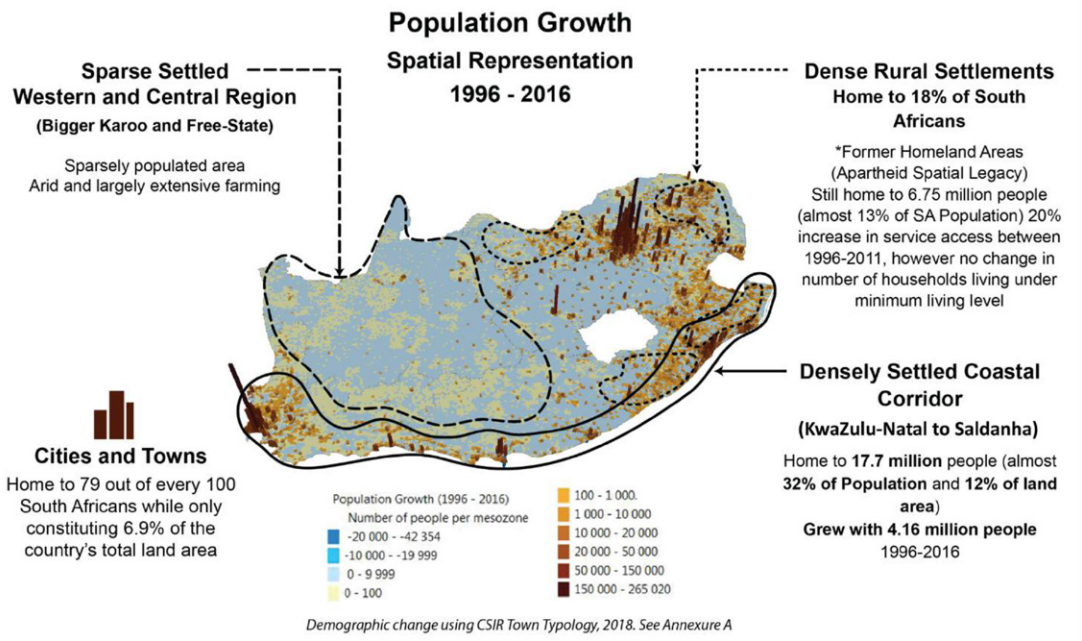
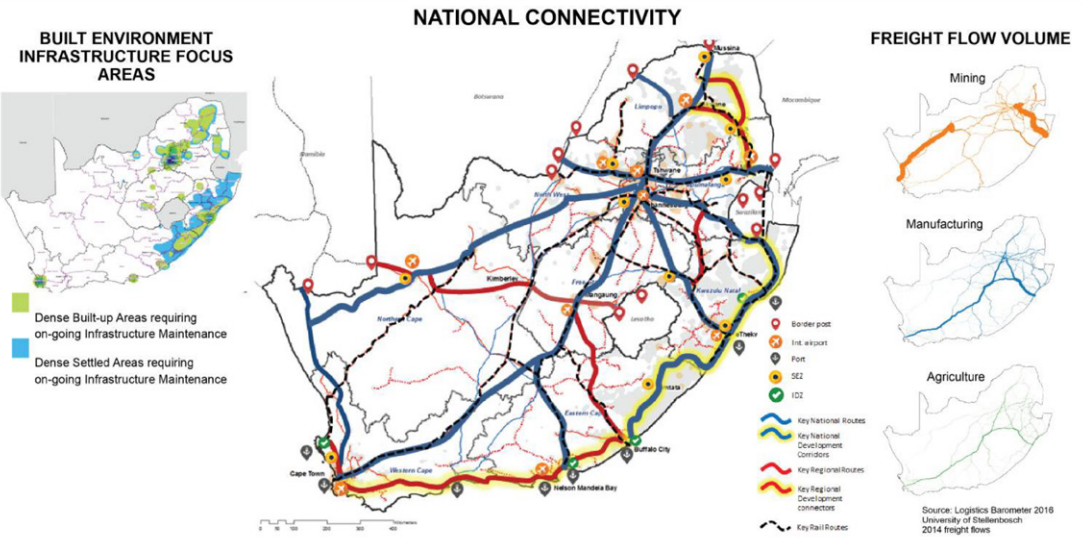


Figure 8. Overview of the national connectivity: movement, connection and flows

Source: Draft National Spatial Development Framework 2020.



1. Urban planning

1.1. Planning objectives, content and hierarchy of plans

The Spatial Planning and Land Use Management Act 16 of 2013 is the main legislative reference for spatial planning. The Act[131] sets, inter alia, the development principles, norms and standards for land use and management which constitute a single point of reference, and an overarching coherent set of policy guides to direct and steer land development, planning and decision-making in all spheres of government, including other public agencies involved in land use, so that outcomes are consistent with the national objectives.

The overall aim of the principles and norms is to achieve planning outcomes that:

1. Restructure spatially inefficient settlements.
2. Promote the sustainable use of the land resources in the country.
3. Channel resources to areas of greatest need and development potential, thereby redressing the inequitable historical treatment of marginalized areas.
4. Consider the fiscal, institutional and administrative capacities of role players, the needs of communities and the environment.
5. Stimulate economic development opportunities in rural and urban areas.
6. Support an equitable protection of rights to and in land.

In addition, the development principles promote:

1. Accountable spatial planning, land-use management and land development decision-making by organs of the State.
2. Cooperative governance and wider information sharing in plan-making and implementation.
3. Maximum openness and transparency in decision-making.

131 Spatial Planning and Land Use Management Act 16 of 2013, chapter 2, sections 6 and 7.

Moreover, the Spatial Planning and Land-Use Management Act establishes three tiers of spatial planning (national, provincial and local), to which a fourth level, regional, may be added when required.

At the national level, spatial development plans (such as the National Development Plan for 2030), including the national spatial development framework are adopted. The framework is a national spatial planning instrument with a long-term horizon that must be aligned with the national development plan. Overall, the national spatial development framework provides an overarching spatial development framework for all the spheres and sectors of government , that includes a set of principle-driven spatial investment and development directives and a set of strategic spatial areas of national importance from an ecological, social, economic or infrastructure perspective.

At the provincial level, the provincial spatial development framework, defines and expresses provincial development policy as well as integrates and implements policies and plans emanating from the national sphere of government to the geographic scale of the province. Overall, as per the spatial development frameworks prepared by the other spheres of government for their competences, the provincial spatial development framework:[132]

1. Represents the long-term spatial development vision of the province.
2. Guides planning and development decisions.
3. Contributes to a coherent, planned approach to spatial development in its sphere of competence.
4. Guides the subsequent level, which in the case of the provincial spatial development framework is the municipality, in taking any decision or exercising any discretion relating to spatial planning and land use management.
5. Provides clear and accessible information to the public and private sectors, including for investment purposes.
6. Includes disadvantaged areas, rural areas, informal settlements etc. To address their inclusion and integration into the spatial, economic, social and environmental objectives of its relevant sphere.

132 Spatial Planning and Land Use Management Act 16 of 2013, section 12, paragraphs 1 and 4. Section 12 sets the general objectives of spatial development frameworks in all spheres of government.

7. Identifies the long-term risks of spatial patterns of growth and the policies and strategies necessary to mitigate those risks.

8. Provides direction for strategic developments, infrastructure investment and indicates priority areas for investment in land development.

9. Takes cognizance of any environmental management instrument adopted by the relevant environmental management authority.

10. Gives effect to national legislation and policies on mineral resources and sustainable use and protection of agricultural resources.

11. Considers and, where necessary, incorporates the outcomes of substantial public engagement, including direct participation in the process through public meetings, public exhibitions, public debates and discourses in the media and any other forum or mechanisms that promote such direct involvement.

Consequently, the provincial spatial development framework must:[133]

1. Provide a spatial representation of the land development policies, strategies and objectives of the province, which must include the province's growth and development strategy where applicable.

2. Indicate the desired and intended pattern of land-use development in the province, including the delineation of areas in which development in general or development of a particular type would not be appropriate.

3. Coordinate and integrate the spatial expression of the sectoral plans of provincial departments.

4. Provide a framework for coordinating municipal spatial development frameworks with each other where they are contiguous.

5. Coordinate municipal spatial development frameworks with the provincial spatial development framework and any regional spatial development frameworks as they apply in the relevant province.

6. Incorporate any spatial aspects of relevant national development strategies and programmes as they apply in the relevant province.

133 Spatial Planning and Land Use Management Act 16 of 2013, section 14 – content of Provincial Spatial Development Framework.

The provincial spatial development framework must be consistent with the national spatial development framework, and it must coordinate, integrate and align:[134]

1. Provincial plans and development strategies with policies of the national Government.
2. The plans, policies and development strategies of provincial departments.
3. The plans, policies and development strategies of municipalities.

The provincial government monitors the compliance of municipalities with this framework.

The Local Government Municipal Systems Act 2000 regulates the process of assigning powers and functions to local government and generally plays a crucial role in defining spatial planning at a local level. At the local level, there is the integrated development plan, which includes a municipal spatial development framework and a land-use scheme. The integrated development plan is aimed at achieving a sustainable, long-term development for the entire municipality and its citizens by providing an overall framework for spatial development that coordinates the work of local and other spheres of government in a coherent plan.

The municipal spatial development framework is a strategic and flexible policy instrument that guides and informs all decisions of the municipality relating to the use, development and planning of land. The framework has four components:

1. Policy for land use and development.
2. Guidelines for land-use management.
3. A capital expenditure framework, showing where the municipality intends to spend its capital budget.
4. A strategic environmental assessment.

Each component must guide and inform the following:

1. Directions of growth.
2. Major movement routes.
3. Special development areas for targeted management.
4. Conservation of both the built and natural environment.
5. Areas in which types of land use should be encouraged or discouraged and the intensity of land development could be increased or reduced.
6. Prioritizing public sector development and investment.

134 Ibid., section 15.

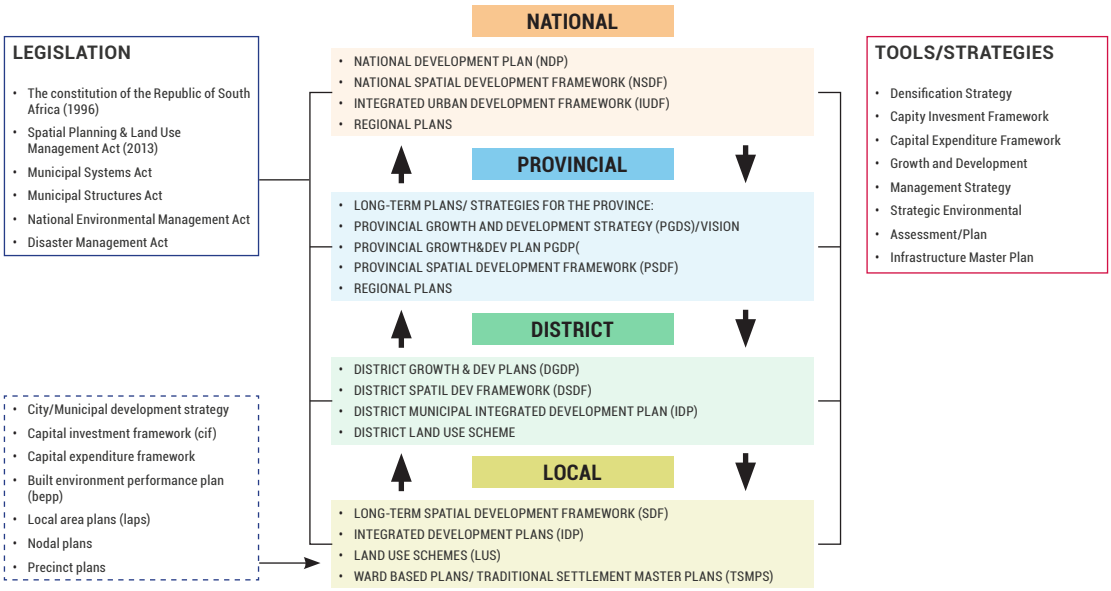
7. Identification of spatial priorities and places where public-private partnerships are possible.

It also determines the purpose, desired impact and structure of the land-use scheme. The land-use scheme is a binding legal instrument, implemented through by-laws, that allows or restricts certain types of land use and it records the rights and restrictions applicable to erven,[135] maps and sets regulations according to the vision, strategies and policies of the integrated development plan and the spatial development framework.

A land-use scheme can be either a very complex and detailed document accommodating a wide range of different land uses and the relatively strong institutional capacity of a metropolitan municipality, or a much simpler document suited to the needs and capacity of smaller local or district municipalities in primarily rural areas.

Finally, if a region is constituted for spatial planning reasons, it must also adopt a regional spatial development framework.

Figure 9. Spatial planning hierarchy



Source: Department of Cooperative Governance and Traditional Affairs – Province of KwaZulu-Natal.[136]

135 An erf, plural "erven", is a piece of land registered in the Deeds registry.

136 The same image is also used in the Municipality of Sol Plaatje Draft Spatial Development Framework 2018-2023, no. C/48/02/2020. This image refers to the three mandatory planning levels (national, provincial and local) plus the fourth one (district level– region) that can be added for spatial planning purposes by the Minister for Rural Development and Land Reform after consultation with the premier and the municipal council responsible for a geographical area (region).

1.2. Planning institutional framework

At a national level, the authority responsible for preparing and publishing in the National Gazette, the National Spatial Development Framework is the Minister for Rural Development and Land Reform. After consultation with other organs of the State and the public, the minister must review the framework at least once every five years. The Cabinet is responsible for the approval and adoption of the National Spatial Development Framework and any proposed amendments. The minister and the Directorate of Spatial Development oversee the implementation of the framework, while premiers of the province,[137] mayors and their offices serve as catalytic agencies to drive the implementation at provincial and municipal levels, as those levels must comply with the National Spatial Development Framework and the development principles, norms and standards set at a national level. The minister is also the responsible authority for monitoring and overseeing the compliance with the development principles, norms and standards, and the quality and effectiveness of spatial planning at all levels, including the adoption of land-use schemes.

At a regional level, the premier of each province must compile, determine and publish a provincial spatial development framework for the province.

The plan is adopted and approved by the executive council, which is also in charge of amending and reviewing the framework at least once every five years. The provincial spatial development framework must be published in the Provincial Gazette.

At a local level, each municipal council must adopt:

1. A single, inclusive and strategic plan for the development of the municipality.
2. A written process to guide the planning, drafting, adoption and review of its integrated development plan.

Each district municipality, after following a consultative process with the local municipalities within its area, must prepare a framework for integrated development planning in the area. The framework, approved by the municipal council, binds both the district municipality and the local municipality in the district.

The authority responsible for the implementation and monitoring of the municipality's integrated development plan, which includes the municipal spatial development framework and the land-use scheme, is the municipal manager, as head of the local administration. The implementation of land-use schemes is also overseen by the premier of the province. To enforce land-use schemes, municipalities pass by-laws.

137 The premier of a province is the head of the provincial executive authority. Premiers exercise the executive authority together with the other members of the Executive Council of the province. See Section 125 of the South African Constitution.

Finally, the minister, after consultation with the premier and the municipal council responsible for a geographic area, may publish a regional spatial development framework to guide spatial planning, land development and land-use management in any region of the country that is instituted by the same authorities for spatial planning purposes. To provide consistency within the spatial planning framework and throughout the country, South Africa introduced a series of coordination mechanisms. According to the Spatial Planning and Land Use Management Act 16 of 2013, processes and institutions must facilitate and promote principles of cooperative government and intergovernmental relations amongst the three spheres of government in respect of spatial development planning and land-use management systems.

Therefore, the Spatial Planning and Land Use Management Act establishes that the national spatial development framework must:

1. Consider any matter relevant to the coordination of policies, plans and programmes that impact on spatial planning, land development and land-use management.
2. Coordinate and integrate provincial and municipal spatial development frameworks.

At the provincial level, the provincial spatial development framework coordinates, integrates and aligns, *inter alia*, with the plans, policies and development strategies of municipalities.

Finally, the municipal spatial development framework must:

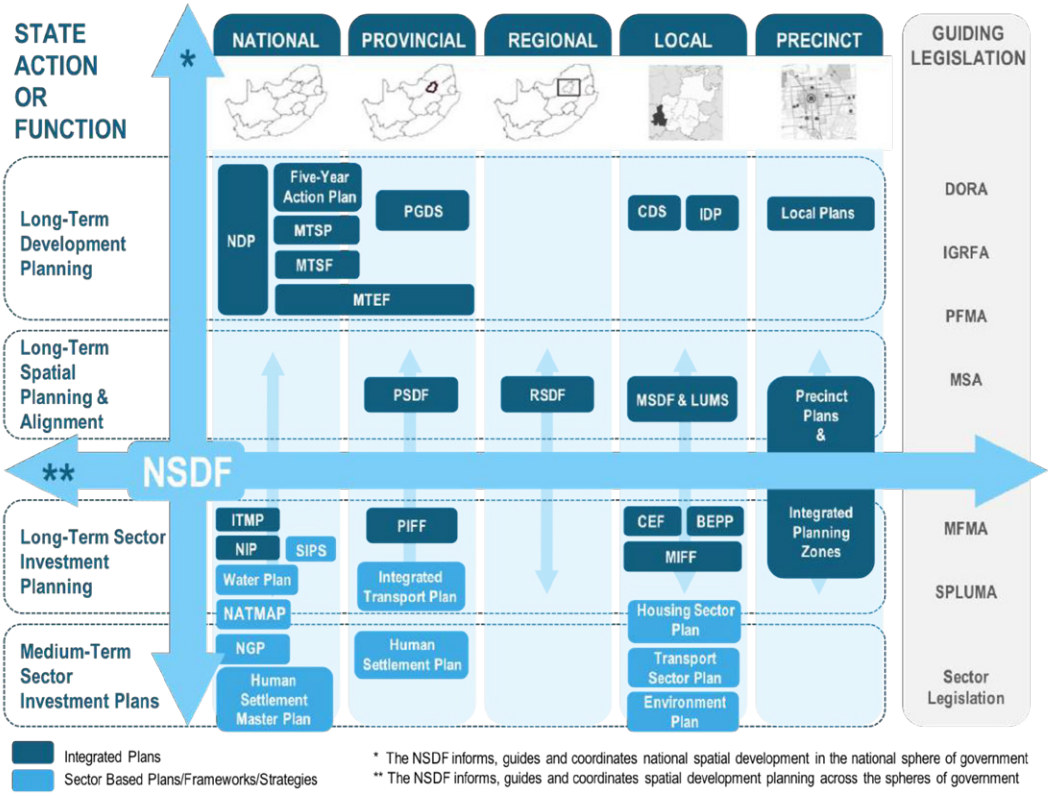
1. assist in integrating, coordinating, aligning and expressing development policies and plans emanating from the various sectors of the spheres of government as they apply within the municipal area;
2. provide spatial expressions of the coordination, alignment and integration of sectoral policies of all municipal departments.

To coordinate and avoid duplication, a municipality must consult any organ of the State responsible for administering legislation relating to any aspects of an activity related to spatial planning that requires approval and reach a written agreement with the given authority. Other coordination mechanisms include the alignment of authorizations for a given activity.

In addition, the council of two or more municipalities may reach a written agreement to establish a joint municipal planning tribunal to exercise powers and perform the functions of a municipal planning tribunal.

Figure 10. The role of the national spatial development framework within the "family" of strategic plans of Government

Source: Draft National Spatial Development Framework 2020



1.3. Planning standards and planning process

As previously mentioned, the Spatial Planning and Land Use Management Act provides for development principles, norms and standards that must shape land development, planning and decision-making in all spheres of government. The national spatial development framework must give effect to those standards.

The minister must, after consultation with provincial and local spheres of government, prescribe standards for land-use management and land development consistent with both the Spatial Planning and Land Use Management Act and the Intergovernmental Relations Framework Act, No. 13 of 2005.

The minister can also prescribe standards to guide the related sectoral land development or land use. Furthermore, the minister is responsible for providing guidance to provinces and municipalities to achieve standards relating to land-use changes. As an example, building standards, and related matters are set by the National Building Regulations and Building Standards Act, No. 103 of 1977 to promote uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities. Planning standards are also regulated through national guidelines on public space through, for instance:

1. The planning of the layout of neighbourhood streets and the delineation of plots contained in Section F, Neighbourhood layout and structure, The Neighbourhood Planning and Design Guide, part II, Human Settlement Department, Republic of South Africa; or

2. The planning of the provision of public open space, including streets, water management and green areas contained in Section G, Public open space, The Neighbourhood Planning and Design Guide, part II, Human Settlement Department, Republic of South Africa.

All the sub-national spheres of government must give effect to standards set out in chapter 2 of the Spatial Planning and Land Use Management Act through their respective spatial development frameworks.

1.4. Planning permission/process

Article 33 of the Spatial Planning and Land Use Management Act establishes that all land development applications must be submitted to a municipality as the authority of first instance for approval. In some cases, building or environmental permits might be requested.

Land-use and development permission are decided by the municipal planning tribunals. The establishment, composition, processes, and powers of these tribunals are set by the Spatial Planning and Land Use Management Act (chapter 6, parts B, C and D).

Section 35 states that a municipality must establish a municipal planning tribunal to determine land-use and development applications within its municipal area.

However, a municipality may also authorize an official in the employ of the municipality to consider and determine certain land use and land development applications.

Municipal planning tribunals are composed of five members or more, as the municipal council deems necessary, chosen from both of the following categories:[138]

1. Officials in the full-time service of the municipality;
2. Persons appointed by the municipal council who are not municipal officials and who have knowledge and experience of spatial planning, land-use management and land development or the law related thereto.

Municipal councillors may not be appointed as members of a tribunal. A municipal planning tribunal must designate at least three members of the tribunal to hear, consider and decide a matter which comes before it. The designated group must include at least one member who is not a municipal official, and the chairperson must designate one of the members to act as the presiding officer (S. 40).

A municipal planning tribunal must consider and determine all land-use and development permission applications lawfully referred to or submitted to it, without undue delay and within a prescribed period, and provide reasons for any decision made (S. 40). In considering and deciding an application a municipal planning tribunal must:

- be guided by the development principles provided for in Sections 6 and 7 of the Spatial Planning and Land Use Management Act;
- make a decision which is consistent with norms, standards and measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework;
- consider:
  - the public interest;
  - the constitutional transformation imperatives and the related duties of the State;
  - the facts and circumstances relevant to the application;
  - the respective rights and obligations of all those affected;
  - the state and impact of engineering services, social infrastructure and open space requirements;

138 The term of office of members of a municipal planning tribunal is five years or such shorter period as the municipal council may determine, provided that a member may not serve as a member for a continuous period of ten years (S. 37). Section 38 provides for cases of incompatibility, ineligibility (e.g., someone convicted of an offence involving dishonesty) and conflict of interest.

- any factors that may be prescribed, including timeframes for making decisions (S. 42).

Finally, when considering an application for a development or land-use that may adversely affect the environment, a municipal planning tribunal must ensure compliance with the environmental legislation in force (S. 42). Conditional approval of a decision is also possible under Section 43 of the Act.

The Minister for Rural Development and Land Reform must, after first undertaking public consultations on the matter, prescribe timeframes for the consideration and determination of an application before a municipal planning tribunal. Regulation relating to the timeframe may be differentiated according to the types of land development applications (S. 44).

A land development application may only be submitted by (i) an owner, including the State, of the land concerned; (ii) a person acting as the duly authorized agent of the owner; (iii) a person to whom the land is concerned has been made available for development in writing by an organ of the State or such person's duly authorized agent; or (iv) a service provider responsible for the provision of infrastructure, utilities or other related services (S. 45). However, any interested person can petition to intervene in an existing application and if granted intervener status, the interested person may be allowed to participate in such proceeding (S.45.2). If a land-use decision affecting the use of land is not in accordance with a condition in a title deed, the municipal planning tribunal must notify both the Registrar of Deeds (in whose office the deed or document is filed of such approval) and the office of the Surveyor-General (where such approval affects a diagram or general plan filed in that office) so that they can endorse the affected records to give effect to such decision (S. 46).

A person whose rights are affected by a decision taken by a municipal planning tribunal may appeal against it by giving written notice and supporting reasons to the city manager within 21 days of the date of notification of the tribunal decision. Within the period prescribed under the relevant local regulation,139 the city manager then places the appeal before the executive authority of the municipality, who acts as the appellate authority (S. 51).

As per environmental permits, under the National Environmental Management Act, No. 107 of 1998, environmental impact assessments are conducted when a new development or activity is proposed.

Such an assessment is required to evaluate the potential impact of activities, requiring authorization or permission by law and which may significantly affect the following:

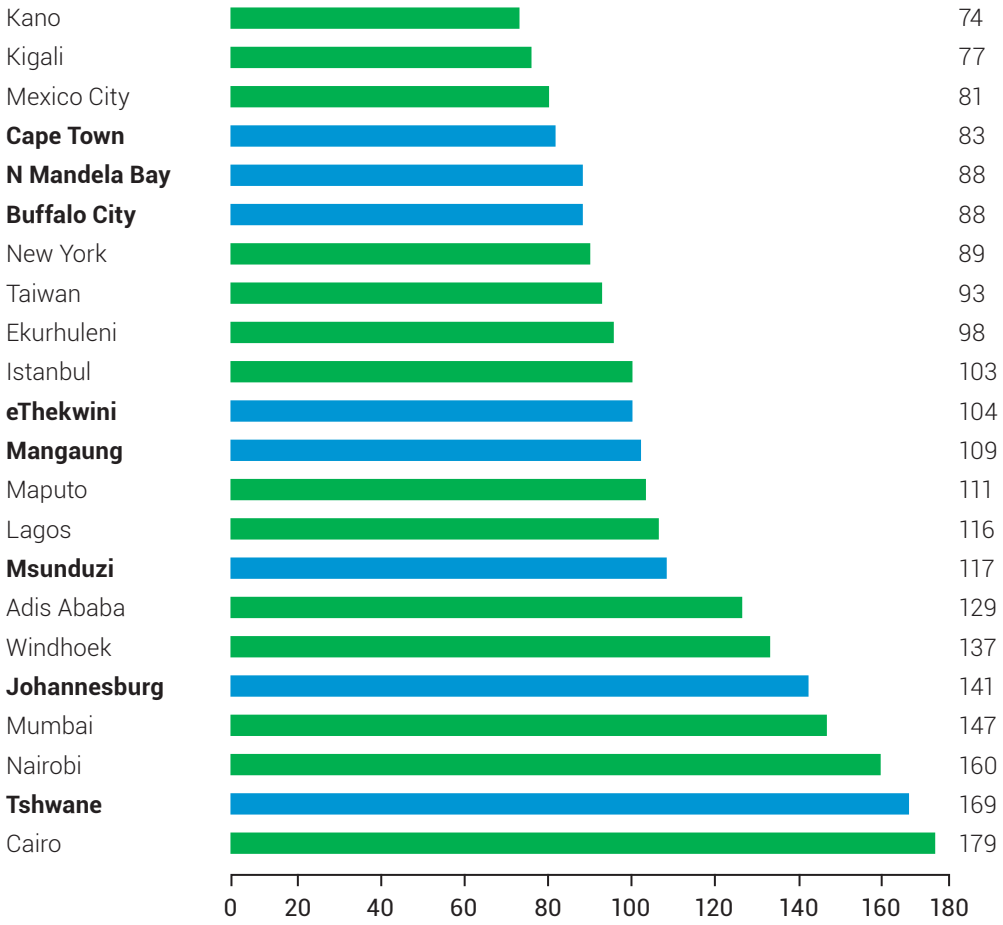
139 Under the Johannesburg municipal Municipal Planning By-law, 2016, Section 49, within 7 days after the expiry of the prehearing process.

1. the environment
2. socioeconomic conditions
3. the cultural heritage

The assessment must be reported to the organ of the State charged by law with authorizing, permitting or otherwise allowing the implementation of an activity.

Figure 11. Time taken to deal with construction permits to build a warehouse (days)

Source: National Treasury Department, South Africa, City Support Programme. The best-performing South African metros (Cape Town, Nelson Mandela Bay and Buffalo City), rank highly within this comparator group.



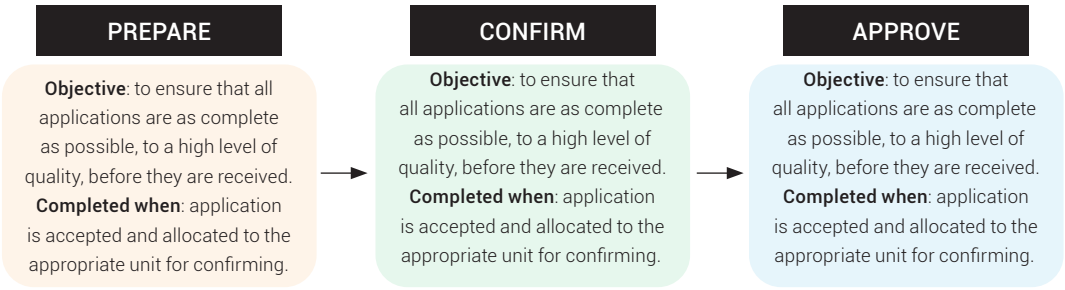
Regarding building permits, the Occupational Health and Safety Act, No. 85 of 1993, issued by the Department of Labour, states that whoever intends to have construction work carried out, must, at least 30 days before that work is to be carried out, apply to the provincial director in writing for a construction work permit to perform construction work if the intended construction work will:

1. Exceed 365 days and involves more than 3,600 people
2. The tender value limit is grade 7, 8 or 9 of the Construction Industry Development Board grade.[140]

Timeframes and procedures vary from one municipality to another. The number of procedures that applicants must go through ranges from 15 in Nelson Mandela Bay to 22 in Mangaung. An efficient construction permitting system should deal with a three-phase process: prepare, confirm and approve. See Figure 12.

Figure 12. The three-phase permitting process

Source: National Treasury, Department, South Africa, City Support Programme.



In the metropolitan city of Cape Town, the process is highly automated. The Development Applications Management System is fully integrated with the city's other systems and features electronic submission of applications, electronic workflow and decision-making management, electronic document management and online management and performance information.

The process involves:

1. A pre-consultation phase
2. Submission, scrutiny and circulation phases
3. An amendment phase, in which the applicant is provided with feedback on any deficiencies and makes any amendments necessary
4. A decision phase

140 The Construction Industry Development Regulations of 2004, as amended, give the Minister for the Department of Public Works and Infrastructure power to determine limits for different grades. A grade determines the maximum value a contractor is considered capable of undertaking. For instance, grade 7 corresponds to a limit value of R60 million. Sources: Adjustments to the tender value ranges in terms of the construction industry development regulations, 2004 – clarification communique, Connection Industry Development Board. See: www.gardenroute.gov.za/wp-content/uploads/2019/11/Adjustments-to-the-Tender-Value-Ranges-in-terms-of-the-Construction-Industry-Development-Regulations-2004-as-amended-%E2%80%93-CLARIFICATION-COMMUNIQUE.pdf.

Overall time standards are pre-set (e.g., five days to provide comments on building plans). To process high volumes of building permit applications an automated system is essential.

Furthermore, it improves transparency, strengthens management control of process efficiency and reduces the scope for inappropriate considerations during the decision-making process.

1.5. Climate-friendly urban planning

According to the preamble of the Spatial Planning and Land Use Management Act, "The State must respect, protect, promote and fulfil environmental rights" and "sustainable development of land requires the integration of environmental considerations in both forward planning and ongoing land use management". Therefore, planning processes are required to include environmental change considerations. Spatial planning and land-use management systems must uphold consistency of land use measures in accordance with environmental management instruments (development principle of spatial sustainability), decision-making procedures must minimize negative environmental impacts (principle of efficiency) and policies and land-use management systems should ensure sustainable livelihoods in communities likely to suffer the impacts of environmental shocks (principle of spatial resilience).

To be consistent with the mentioned guiding principles, the national spatial development framework must take cognisance of any environmental management instrument adopted by the relevant environmental management authority.

At a national level, the specific environmental aspects are regulated by the National Environmental Management Act (Act No. 107 of 1998). All the three spheres of government must prepare spatial development frameworks that include and integrate certain areas into the special and environmental objectives and take cognisance of any environmental management instrument adopted by the relevant environmental management authority. If adopted, the regional spatial development framework must comply with the environmental legislation too.

As per the municipal spatial development framework, it must include a strategic assessment of the environmental pressures and opportunities within the municipal area, including the spatial location of environmental sensitivities, high potential agricultural land and coastal access strips, where applicable. The land-use scheme must consider any environmental management instrument, comply with environmental legislation and promote minimal impact on environmental and natural resources.

1.6. Public participation

Public participation is a constitutional imperative and legislative mandate of all spheres of government.

Under the Spatial Planning and Land Use Management Act, policies, plans and programmes of private bodies that impact on spatial planning, land development and land use management must be considered by the national spatial development framework.

At the local level, the administration of a municipality must establish clear relationships and facilitate cooperation and communication between it and the local community. The Municipal System Act of 2000 defines "local community" or "community" as including any civic organizations and non-governmental private sector or labour organizations or bodies which are involved in local affairs within the municipality. The Act further establishes that the minister should issue regulations or guidelines concerning the participation of the local community in the affairs of the municipality.

Overall, the council of a municipality has the duty to encourage the involvement of the local community and consult them about:

1. The level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider.
2. The available options for service delivery.

Local communities have the right to:

1. Contribute to the decision-making processes of the municipality.
2. Submit written or oral recommendations, representations and complaints to the municipal council or to another political structure or a political office bearer or the administration of the municipality.

A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose:

1. Encourage, and create conditions for, the local community to participate in the affairs of the municipality, including in:

- the preparation. implementation and review of its integrated development plan;
- the establishment, implementation and review of its performance management system;
- the monitoring and review of its performance, including the outcomes and impact of such performance;
- the preparation of its budget;
- strategic decisions regarding the provision of municipal services.

2. Contribute to building the capacity of the local community or enabling it to participate in the affairs of the municipality.

At a local level, under the Municipal Systems Act municipalities must consult, engage and ensure participation by local communities in governance, including spatial planning. The same Act regulates mechanisms, processes and procedures for community participation.

The minister, the premier of a province, the municipal council and district municipalities are required to consult the public before the preparation and amendment of a spatial plan, at all levels, as well as during monitoring and evaluation. For instance, the public is invited to submit written representation in respect of proposed spatial development frameworks at all levels within 60 days of the publication on the official Gazette of the proposed spatial plan, and the competent authority must take into consideration all the received representations. The Minister for Rural Development and Land Reform regulates, after public consultation, the process for public participation in the preparation, adoption or amendment of land-use schemes.

The municipal council must consult the local community through appropriate mechanisms, processes and procedures before adopting a process to guide the planning, drafting, adoption and review of its integrated development plan.

1.7. Enforcement of planning laws

Under the Spatial Planning and Land Use Management Act,[141] a municipality may apply to a court for an order:

1. Interdicting any person from using land in contravention of its land-use scheme.
2. Authorizing the demolition of any structures erected on land in contravention of its land-use scheme, without any obligation to the municipality or the person carrying out the demolition to pay compensation.
3. Directing any appropriate preventive or remedial measure.

Municipalities can designate a municipal officer or appoint any other person as an inspector to investigate any non-compliance with its land-use scheme.

141 Spatial Planning and Land Use Management Act, section 32.

2. Land management

2.1. Land allocation and zoning

In South Africa, zoning is indicated on a map contained in the local land-use scheme and can refer to:

1. The desirable future development of an area.
2. The existing land-use rights assigned to the property.

Property rights are managed through "zoning"; a zone is applied to a property (identified in the Deeds Register through parcels of land that have cadastral boundaries) and sets the property aside for a particular purpose/land use, or land uses usually used to separate different, incompatible land uses.

These property rights are assigned, managed and amended though the controls and mechanisms of a land-use scheme. It is possible for one property to have a split zoning and a zone may allow several different lands uses. Building contrary to the uses and standards outlined in the scheme is prohibited.

Zones are depicted on the scheme map using different standard colours to facilitate common understanding (e.g., yellow to brown for residential land use, blue for commercial and purple for industrial). See figure 13.

Figure 13. Example of zoning for surveyed land parcel

Source: Department of Rural Development and Land Reform, Guidelines for the Development of Municipal Land Use Schemes (2017).

Land development applications can amend the scheme by changing the rights applicable to properties (e.g., a rezoning from residential rights to business rights). These amendments are decided by a municipal planning tribunal or a land development officer and they must be consistent with the municipal spatial development framework.

Most land-use schemes in South Africa can be categorized as single-use zoning schemes. This type of zoning scheme is typically based on a list of uses associated with each zoning and certain standards that deal with the dimensions of allowed development. Typically:

1. Each zoning specifies a category of uses (e.g., residential 1, residential 2, commercial, industrial, etc.) and are applied geographically on the municipal zoning map.
2. Allowed uses indicate the range of residential, non-residential, public or other uses permitted within each zoning.
3. Other uses are permitted as "ancillary" to the permitted one or as "consent" uses, requiring a consent from the municipality or adjoining property owners to agree that the use is appropriate.
4. Dimensional standards include criteria that outline the parameters for the creation of erven and the placement of structures and buildings on an erf. These standards generally include, inter alia, minimum erf size, building lines and maximum height.

Single use zoning in South Africa has been linked with urban sprawl and negative economic and environmental impacts.[142] The aim is to transition the country to more dynamic forms of zoning such as mixed-use development, performance zoning, incentive zoning, inclusionary zoning, form-based zoning, or modified conventional zoning.

Over time, several other development standards have become accepted additions to the basic dimensional standards, including density and floor-area ratios, to attempt to better control the impacts of development. The municipal planner should determine which zones as well as the number of zones that should be included in the scheme clauses.

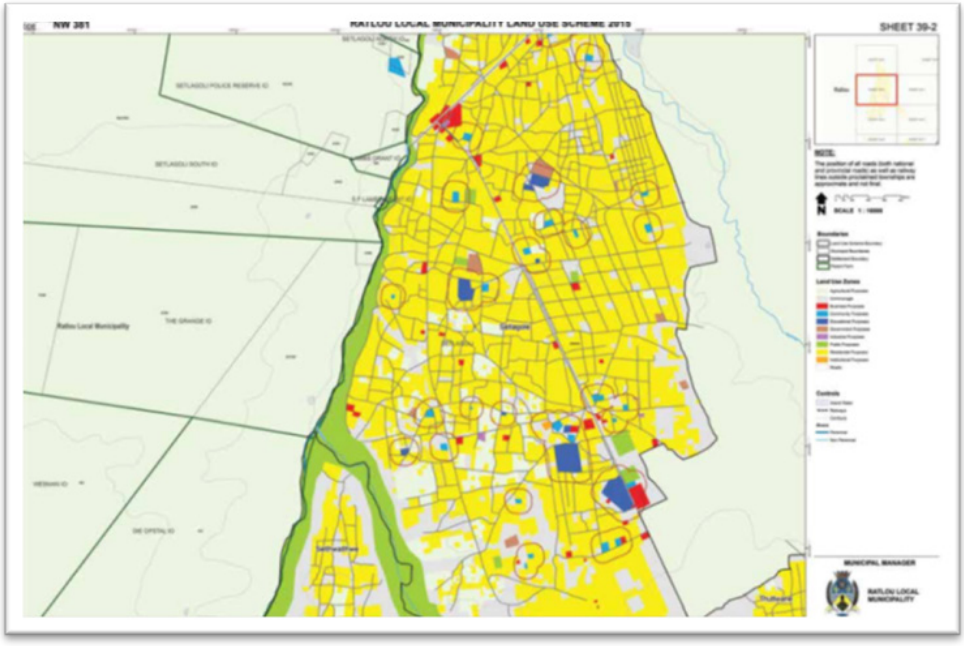
142 Department of Rural Development and Land Reform, Guidelines for the Development of Municipal Land-Use Schemes, (2017).

The development parameters and additional controls that should apply to each zone include:

1. Minimum or maximum erf[143] sizes.
2. Height restrictions.
3. Floor area ratio or the ratio of the total floor area of the building to the total area of the subdivision on which the building is or is to be erected.
4. Coverage – the percentage of the plot that may be covered by a building.
5. Parking and vehicle loading requirements.
6. Setbacks – building lines.
7. Space around the buildings – side and rear spaces.
8. External appearance of buildings.
9. Urban design criteria.
10. Signage and advertising.
11. Environmental controls.
12. Additional/special controls.

Figure 14. Example of a land-use scheme map for a traditional village

Source: Department of Rural Development and Land Reform, Guidelines for the Development of Municipal Land Use Schemes (2017).



143 Erf (plural erfs or erven) South African English for a plot of land.

2.2. Land acquisition for public purposes and compensation schemes

The Constitution of South Africa, Article 25, states that "no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property", and further states that property may be expropriated only in terms of law of general application:

1. For a public purpose or in the public interest.
2. Subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

Public interest includes the nation's commitment to land reform and to reforms to bring about equitable access to all of the country's natural resources. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:

1. The current use of the property.
2. The history of the acquisition and use of the property.
3. The market value of the property.
4. The extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property.
5. The purpose of the expropriation.

Lastly, to redress the results of past racial discrimination, the State can adopt legislative and other measures to achieve land, water and related reform, even through expropriation.

Expropriation or compulsory purchase is possible for both public and private developments, including infrastructure projects, public facilities and commercial projects such as retail and residential developments. Under compulsory purchase powers, local authorities must demonstrate that there is a "compelling case in the public interest" for the compulsory acquisition of land and that there are strong legal compensation rights for those affected.

The overriding principle of compulsory purchase compensation is 'equivalence': neither more nor less than the value of their loss. As well as compensation for the market value of any land taken, additional compensation may be payable, for example, occupiers of residential properties may also be entitled to a statutory home loss payment.

2.3. Security of tenure: land tenure types and land registry

The deeds office is responsible for the registration, management and maintenance of the property registry of South Africa. It also keeps copies of antenuptial contracts. The Deeds Register Act, No. 47 of 1937, as lastly amended in 2013, makes provision for the administration of the land registration system and the registration of rights in land. It requires that a conveyancer or public notary prepare and lodge deeds and documents to the deeds registry. These deeds and documents are subjected to three levels of examination by legally qualified personnel who scrutinize the contents for accuracy and compliance with common law, case law and statutory law.

Anyone can get information from the deed registry on the following:

1. The registered owner of a property.
2. The conditions affecting such property.
3. Interdicts[144] and contracts in respect of the property.
4. Purchase price of the property.
5. Rules of a sectional title scheme.
6. A copy of an antenuptial contract, deeds of servitude, mortgage bonds, etc.
7. A copy of a sectional title plan or the rules of a sectional title.

To obtain information from the registry, it is necessary to have the full names or an identity number of the owner of property, or at least his or her date of birth or, in case of a juridic person, the name and registration number, if available, and the erf number and township or farm name and number or, in case of a sectional title scheme, the section and the scheme name.

To obtain a copy of a deed or document from a deed's registry, the interested person must:

1. Physically go to any deed's office.
2. Complete a prescribed form.
3. Request a search on the property.
4. Pay the required fee at the cashier's office.

Information can also be accessed electronically through the deeds webpage. To be entered into the deeds register, property or property rights must be officially recognized under the land administration system.

144 An interdict is an absolute order issued by an authority to enforce a party's rights that have been violated by another party. There are three types of interdicts: Prohibitory interdict – sought to prevent or stop a party from acting or acting in a certain way; Mandating interdict – sought to compel a party to act; Restitutionary interdict – sought to have a party's property returned. Interdicts are enforceable by a court

Besides the ordinary freehold tenure type (legal right to own a piece of property without any limitations on its use), leasehold is also recognized. A series of reforms to convert certain occupational rights into leasehold or freehold have also been approved.

Lastly, another recognized land tenure type is sectional title, whereby people individually own "sections" of a building or group of buildings (for example townhouse units in a complex or apartments in a block of flats).

2.4. Land-based financing

According to the Municipal System Act of 2000, a municipal council may finance the affairs of the municipality by charging fees for services, imposing surcharges on fees or property rates and, when allowed by national legislation, imposing surcharges on other taxes, levies and duties.

Members of the local community have a duty to pay service fees, rates and taxes imposed by the municipality. A municipality exercises its legislative or executive authority by imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariffs, rates and tax and debt collection policies.

3. Dispute-resolution mechanisms

South Africa has a two-tier land-use planning dispute resolution system, one internal and the other external.

Under Section 62 of the Municipal Systems Act, any person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality (including a land field application or an order of eviction) must firstly appeal to the municipal manager, within 21 days of the notification of the sentence of the municipal planning tribunal, or from the day the notification of the decision of a public authority. The municipal manager then places the appeal before the executive authority of the municipality as the appeal authority.

Only if not satisfied with the decision of the municipal manager, the appellant can bring the case to the court.

Section 6 of the Promotion of Administrative Justice Act, 2000[145] establishes that any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action, meaning any decision taken, or any failure to take a decision (e.g., request of a permit) by an organ of the State or a natural or juristic person, when exercising a public power or performing a public function.

145 See: www.justice.gov.za/legislation/acts/2000-003.pdf.

Any proceedings for a judicial review must be instituted without unreasonable delay and not later than 180[146] days after the date on which any proceedings instituted in terms of internal remedies have been concluded, or in case no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it, or might reasonably have been expected to have become aware of the action and the reasons.

No court or tribunal shall review an administrative action unless any internal remedy provided for in any other law has first been exhausted (S. 7.2.a, Promotion of Administrative Justice Act). However, a court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice (S. 7.2.c, Promotion of Administrative Justice Act).

The Land Claims Court[147] is the court specialized in dealing with disputes that arise out of laws that underpin South Africa's land reform initiative.

These includes the Restitution of Land Rights Act, No. 22 of 1994,[148] the Land Reform Act, No. 3 of 1996[149] and the Extension of Security of Tenure Act, No. 72 of 1997.[150]

The Land Claims Court has the same status as a High Court. Therefore, any appeal against a decision of the Land Claims Court lies with the Supreme Court of Appeal and, if appropriate, to the Constitutional Court. The Land Claims Court has jurisdiction throughout the country.

Under Section 5 of the Restitution of Land Rights Act, the initiation of a case in the court is subject to the payment of court fees in the form of revenue stamps in accordance with the tariff contained in Schedule 2. Overall, the cost of the revenue stamp is R80 ($4.64) for each original document, including power of attorney and notice of appeal which requires a stamp; while every

146 Under article 9 of the Promotion of Administrative Justice Act, the period of 180 days may be extended for a fixed period by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned. The court or tribunal may grant the adjusting of the timeframe where the interests of justice so require.

147 The land claims court of South Africa www.justice.gov.za/lcc/about.html.

148 The Restitution of Land Rights Act provides for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law. www.justice.gov.za/legislation/rules/lcc-rules.pdf.

149 The Land Reform Act intends (a) to provide for the security of tenure of labour-tenants and those persons occupying or using land as a result of their association with labour tenants; and (b) to provide for the acquisition of land and rights in land by labour tenants. www.justice.gov.za/lcc/docs/1996-003.pdf.

150 The Extension of Security of Tenure Act aims to provide for measures to facilitate long-term security of land tenure and regulate (a) the conditions of residence on certain land; (b) the conditions on and circumstances under which the right of persons to reside on land may be terminated; and (c) the conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land. www.justice.gov.za/lcc/docs/1997-062.pdf.

bill of costs to be taxed which is not related to an action or application already registered in the court requires a revenue stamp of R50 ($2.90). Additionally, every registrar's certificate on certified copies of documents, and each copy of any document costs R1 ($0.06). However, no court fees are payable (a) in respect of proceedings initiated by the commission or by the Director-General (S. 5.3.a); or (b) if a party is assisted or represented by a legal aid board or proves to be indigent, court costs are not due (S. 5.3.b). A party is indigent if they do not own property to the value of R30,000 ($1,740.23) or more (except for household goods, wearing apparel and tools of trade), or if the party will not be able to provide that amount from his or her income within a reasonable time (S. 5.4).

The state or any person whose rights may be affected by the relief claimed in a case and who is not a party in the case may, within a reasonable time after he or she becomes aware of the case, apply to the Court for leave to intervene in the case (S. 13 Restitution of Land Rights Act).

Applicants might refer to the Land Claims Court also to bring under review any decision or action of (a) an inferior court; (b) an arbitrator; (c) the commission; (d) the minister; (e) any tribunal or board; or (f) any functionary (S. 35 Restitution of Land Rights Act).

Under the Extension of Security of Tenure Act, a party willing to appeal against a decision regarding one of the matters disciplined in the mentioned Act, can institute proceedings in the district Magistrate's Court within whose area of jurisdiction the land in question is situated, or the Land Claims Court (S. 17.1), and if all the parties to proceedings consent thereto, proceedings may be instituted in any division of the High Court within whose area of jurisdiction the land in question is situated (S. 17.2).

The District Magistrate's Court shall have jurisdiction in respect of proceedings for evictions or reinstatement and criminal proceedings in terms of the Extension of Security of Tenure Act (S. 19.1). Civil appeals from Magistrates' Courts in terms of this Act shall lie with the Land Claims Court (S. 19.2).

Finally, if the parties are not satisfied with the decision of the Land Claims Court, they can appeal to the Supreme Court of Appeal and Constitutional Court.[151] The functioning of the Supreme Court of Appeal and Constitutional Court is further regulated by the Superior Courts Act, No. 10 of 2013.[152] Under article 69 of the Restitution of Land Rights Act and article 16 of the Superior Courts Act a party that wishes to appeal

151 See also articles 16.1.c of the Superior Courts Act, No.10 of 2013, which states that an appeal against any decision of a court of a status similar to High Court, as the Land Claims Court is, lies to the Supreme Court of Appeal upon leave having been granted by that court or the Supreme Court of Appeal.

152 Superior Courts Act. https://www.gov.za/sites/default/files/gcis_document/201409/36743act10of2013a.pdf

against an order of the court must apply to the court for leave to appeal the decision. Article 17 of the Superior Courts Act, further clarifies that if the leave to appeal is refused by the court against whose decision an appeal is to be made, it may be granted by the Supreme Court of Appeal if an application is filled with the registrar within one month of such refusal.

The operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal (S. 18, Superior Courts Act).

Moreover, a party may request the Director-General of the Department of Land Affairs to appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute (art. 21.1). Article 22 of the Extension of Security of Tenure Act states that parties can also refer the dispute to arbitration in terms of the Arbitration Act, No. 42 of 1965.[153] The Land Reform Act provides for the possibility to refer the dispute to an arbitrator too (Sections 19 et seq.).

The arbitration tribunal shall, unless the arbitration agreement otherwise provides, make its award (i) within four months in case of an award by one or more arbitrators; or (ii) within three months in case of an award made by an umpire.

Time starts running from the day the arbitrator or the umpire were called on to act by notice in writing from any party, or by the day on which they entered on the reference. The time limit for issuing the award may be extended by the court or by agreement of the parties. (S. 23 Arbitration Act)

Under the Arbitration Act, Section 35, unless the arbitration agreement provides otherwise, the award of costs in connection with the reference and award shall be at the discretion of the arbitration tribunal. If the arbitration tribunal recognizes costs, it provides guidance on the scale for allocating the costs and may determine to whom and how such costs or part thereof are to be paid.

Alternative dispute-resolution mechanisms can also be used in case of dispute relating to environmental matters. The National Environmental Management Act states that any minister, member of the executive council or municipal council, where a difference or disagreement arises concerning the exercise of any of its functions which may significantly affect the environment or before whom an appeal arising from a difference or disagreement regarding the protection of the environment is brought under any law, may before reaching a decision, consider the desirability of first referring the matter to conciliation.

153 Arbitration Act. https://www.wipo.int/edocs/lexdocs/laws/en/za/za062en.pdf

If the conciliator considers the conciliation appropriate, the authority must either:

1. Refer the matter to the director-general for conciliation under the Act.
2. Appoint a conciliator on the conditions, including time-limits, that the conciliator may determine.
3. Where a conciliation or mediation process is provided for under any other relevant law administered by such minister, member of the executive council or municipal council, refer the matter for mediation or conciliation under such other law.

If the conciliator considers conciliation inappropriate or the conciliation has failed, the mentioned authority must decide.

Anyone may request the minister, a member of the executive council or municipal council or appoint a facilitator to call and conduct meetings of interested and affected parties with the purpose of reaching agreement to refer a difference or disagreement to conciliation in terms of the National Environmental Management Act; they appoint a facilitator and determine the way the facilitator must carry out his or her tasks, including time limits.

A court or tribunal hearing a dispute regarding the protection of the environment may order the parties to submit the dispute to a conciliator appointed by the director-general and suspend the proceedings pending the outcome of the conciliation.

4. Key takeaways and lessons

Overall, South Africa, while struggling with planning issues such as land property rights in the last 20 years, has taken some important strides that offer the Sultanate of Oman a pathway to reform. Among the key strengths of the South African planning are the following:

1. Jurisdictional and fiscal decentralization of planning functions to municipalities has enabled a more efficient and less burdensome planning system.
2. A clear definition, at a national level, of the principles, norms, standard and framework to set the objectives and guide the contents of local spatial planning, therefore achieving a homogeneous and coherent spatial planification in all spheres of government while leaving room for some flexibility to the local level.
3. Flexibility in defining land-use schemes that may vary from one area to another one according to its peculiarity and specific needs.
4. Clear definitions of the institutions responsible for preparing, approving and implementing each level of spatial planning, although sometimes it might be less clear who is the competent authority to oversee the implementation at the national and provincial levels.
5. Efficient judicial review and dispute resolution of spatial planning disputes.
6. High level of participation of both citizens and non-governmental agencies in all the phases of spatial planning, including in the redaction of the spatial development frameworks.
7. Great environmental and climate change considerations in spatial planning.

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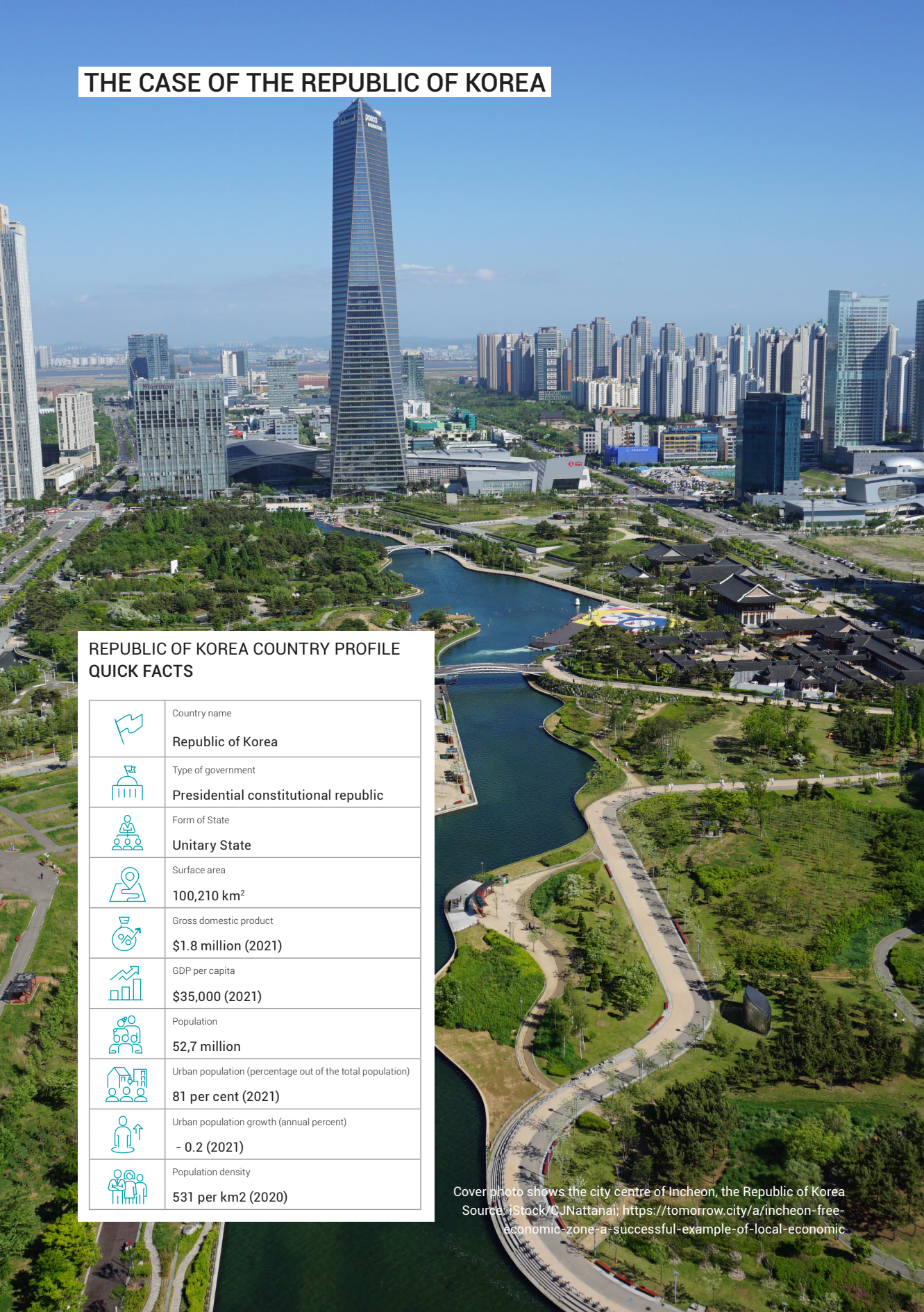
THE CASE OF THE REPUBLIC OF KOREA



REPUBLIC OF KOREA COUNTRY PROFILE
QUICK FACTS

Country name	Republic of Korea
Type of government	Presidential constitutional republic
Form of State	Unitary State
Surface area	100,210 km^2
Gross domestic product	$1.8 million (2021)
GDP per capita	$35,000 (2021)
Population	52,7 million
Urban population (percentage out of the total population)	81 per cent (2021)
Urban population growth (annual percent)	- 0.2 (2021)
Population density	531 per km2 (2020)

Cover photo shows the city centre of Incheon, the Republic of Korea
Source: iStock/CJNattanai; https://tomorrow.city/a/incheon-free-economic-zone-a-successful-example-of-local-economic

COUNTRY BACKGROUND

The Republic of Korea constitutes the southern part of the Korean Peninsula which is approximately 1,100 km long from north to south and 300 km wide from east to west. The country is in East Asia and shares a land border to the north with the People's Democratic Republic of Korea. It lies in the north temperate zone with a predominantly mountainous terrain.[154]

The Republic of Korea is a very densely populated country with 50 million residents distributed over roughly 100,000 km (in 2020, the population density was 531 inhabitants per km2).[155] It is also a highly urbanized country – 81 per cent of its population live in cities.[156] The capital and largest city is Seoul, with a population of almost 10 million.[157]

The country is a republic with a presidential system. The Government is divided into three branches: legislative, judicial and executive. The president represents the nation and heads the executive branch. The executive branch has 17 ministries whose ministers are appointed by the president and report to the prime minister. The State Council is the highest body for policy deliberation and resolution in the executive branch.

The government system has three hierarchical divisions: the central, provincial and municipal governments. The provincial division has five types: provinces ("Do"), a special autonomous province, the Special City of Seoul, metropolitan cities and a special autonomous city. Hereinafter, province refers to both province and special autonomous province, while metropolitan city refers to the Special City of Seoul, a metropolitan city and the special autonomous city.

Local governments are organized into a two tier system. The upper level has 1 special city: Seoul; 6 metropolitan cities: Busan, Daegu, Incheon, Gwangju, Daejeon and Ulsan; 1 special autonomous city: Sejong; 8 provinces: Gyeonggi, Gangwon, Chungbuk, Chungnam, Jeonbuk, Jeonnam, Gyeongbuk and Gyeongnam; and 1 autonomous province: Jeju. The lower level has 75 cities, 82 counties and 69 autonomous districts. See figure 15.[158]

154 Lim, S. H. (2014, May). Planning Practice in South Korea.

155 Population density (people per sq. km of land area), https://data.worldbank.org/indicator/EN.POP.DNST?locations=KR

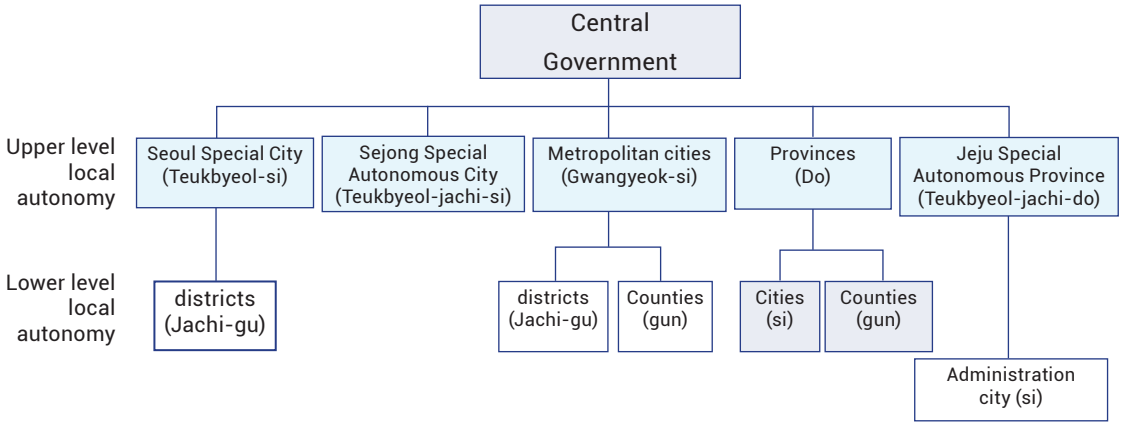
156 Urban population (% of total population), 2021, https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS?locations=KR.

157 Lim, S. H. Ibid.

158 Kim, Y. and Jeong Y.A. The role of local governments in South Korea's COVID-19 response. Public Adm Dev. 2022 Jun 27:10.1002/pad.1986. doi: 10.1002/pad.1986. E-pub ahead of print. PMID: 35942436; PMCID: PMC9349588.

Figure 15. Administrative structure of the Republic of Korea. Blue colour indicates rights to territorial planning

Source: Lim, S. H. (2014). Planning Practice in the Republic of Korea.



1. Urban planning

1.1. Planning objectives, content and hierarchy of plans

In the Republic of Korea, the significance of spatial planning is so notable that it is supported by the 1987 Constitution.[159] Paragraph 2 of Article 120 describes spatial planning as follows: "the national territory and natural resources shall be protected by the State, and the State shall establish a plan necessary for their balanced development and utilization".[160] The basic framework of the country's spatial plan comes from two documents: the 2009 Framework Act on the National Land that focuses on the inclusion of the fundamental concept and philosophy of land management, and the 2002 National Land Planning and Utilization Act, which ensures all lands and territories are managed based on planning concepts. These two Acts were made to be linked at the city and county level to integrate the spatial development plan and the land-use plan. See figure 16.[161]

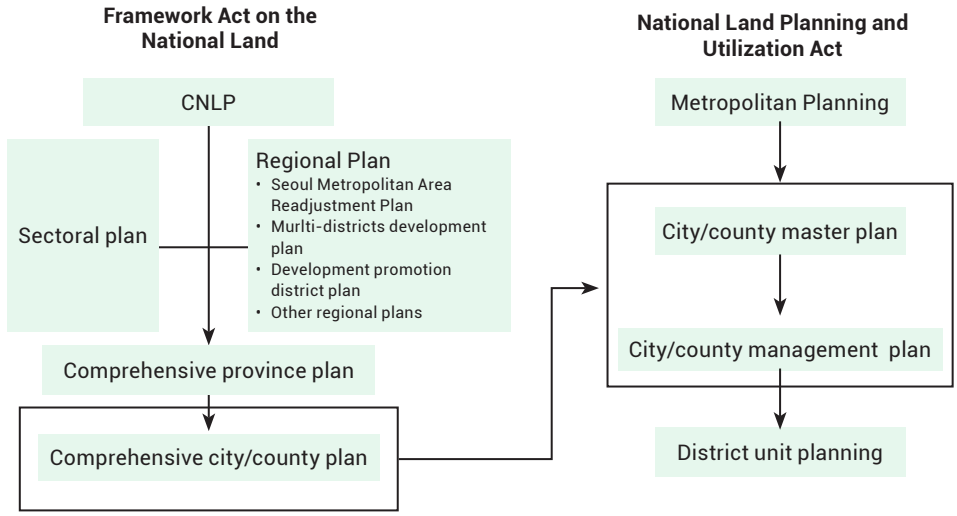
159 Korea Research Institute for Human Settlements and Global Development Partnership Centre (2013). A Primer on Korean Planning and Policy. Spatial Planning System.

160 Constitution of South Korea. (1987, October 29).

161 Korea Research Institute for Human Settlements and Global Development Partnership Centre. (2013). Ibid.

Figure 16. Spatial planning system in the Republic of Korea

Source: Korea Research Institute for Human Settlements and Global Development Partnership Centre. (2013). Ibid.



The 2009 Framework Act on the National Land stipulates the fundamental ideology and philosophy of the land management. Its basic goals are to seek balanced land development, enhance the competitiveness of the land and pursue the environmentally friendly management of the land. To achieve these goals, the Act proposes the establishment and implementation of the spatial plan.

According to Article 6, national land plans are classified as:

1. Comprehensive national land plans, which set basic and long-term policy direction on land development, such as spatial structure of national land, use of national land resources, housing, environmental protection, socioeconomic development, etc. It is legally binding.

2. Do (province) comprehensive plans, which set the long-term direction for development of the jurisdictional area of a special self-governing province, covering the entire area of the relevant region.

3. Si (cities) / gun (counties) comprehensive plans which form basic spatial structure and long-term direction for development of the jurisdictional area of a special metropolitan city, a metropolitan city, a si, or a gun. It is formulated for land use, traffic, environment, safety, industry, information and communications, health, welfare, culture, etc. as a part of an urban plan under the National Land Planning and Utilization Act.

4. Regional plan aims to achieve the objectives of special policies in a specific region, covering the entire area thereof.

5. Sector plans aim at development of a specific sector, covering the entire area of the national land.[162]

The second document, 2002 National Land Planning and Utilization Act, is the supreme law that governs the land-use planning system. It proposes the planning tools to realize the principle of "plan first, develop later" stating that the use, development and maintenance of the land territory should be based on established plans.[163] The plans stipulated by this Act are as follows:

1. **Area-wide plan** which aims at long-term development of the areas made up of two or more special/metropolitan cities and/or provinces.

2. **City/county master plan** which presents the basic spatial structure and the sustainable long-term (20 years) development direction. It incorporates spatial structure, land use, infrastructure, park green space, landscape, etc. and needs to conform to higher tier plans.

3. **City/county management plan** which is a detailed, local zoning, long-term (10 years) plan that presents the specific ways to translate the direction presented by the city/county master plan in the urban space. It incorporates urban development, location of land use, designation of zones and districts, etc. and needs to conform to higher tier plans.

4. **District unit plan** (applicable only in Seoul Special City and in six metropolitan cities) which aims at specific arrangement and management of the part of the land to be used in the target city/county. It needs to conform to higher tier plans.

See figure 17 for a visualization of spatial and land-use planning.[164]

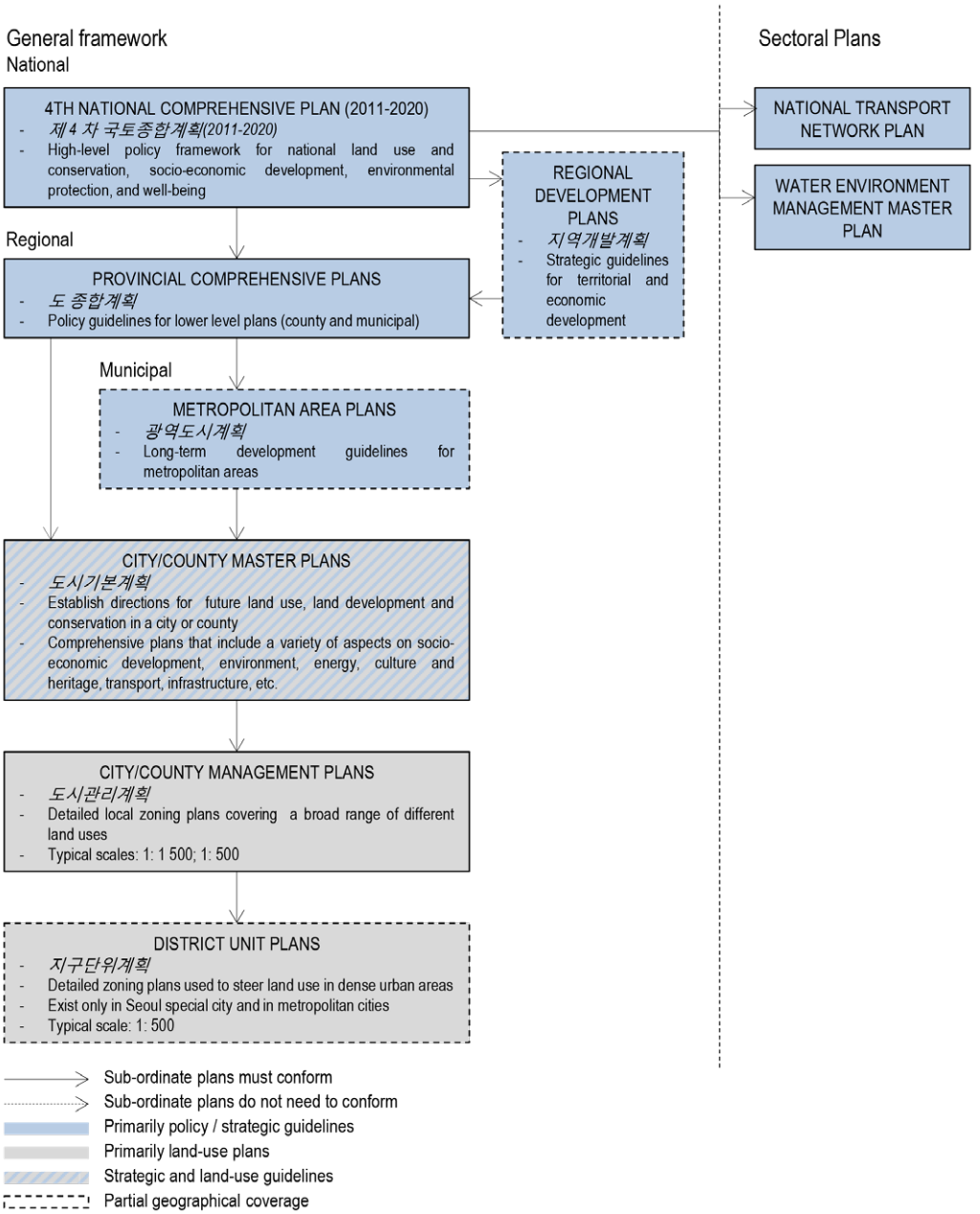
162 Article 6 of the Framework Act of the National Land.

163 Korea Research Institute for Human Settlements and Global Development Partnership Centre (2013). A Primer on Korean Planning and Policy. Spatial Planning System.

164 Organisation for Economic Cooperation and Development (2017). The Governance of Land Use. Country fact sheet Korea. Land-Use Planning Systems in the OECD: Country Fact Sheets.

Figure 17. Organization of spatial and land-use planning in the Republic of Korea

Source: Organisation for Economic Cooperation and Development (2017). The Governance of Land Use. Country fact sheet Korea. Land-Use Planning Systems in the OECD: Country Fact Sheets.



1.2. Planning institutional framework

The national Government has three primary functions related to land-use policies. First, it enacts the framework legislation that structures the planning system. Second, it provides a spatial framework for the country that guides its development. Third, it oversees and approves city master plans and designates the urban planning boundaries in the country.[165] In the framework of national land plan development, the Ministry of Land, Infrastructure and Transportation is responsible for the plan preparation, implementation and overseeing of the comprehensive national land plan, while the president oversees the plan's approval. Furthermore, the national Government is the primary actor when it comes to environmental protection, the designation of nature reserves and the protection of forests. It also designates rural, mountainous and heritage sites for which it can enact special provisions and planning regulations.

The regional level of government represented by provincial governor/metropolitan city mayors prepares strategic metropolitan or provincial plans depending on its status as province or metropolitan city and further implements them. Such policies and plans should, in general, reflect the contents of the comprehensive national territorial plan. Regional governments also oversee and approve land-use plans prepared by local governments.[166] Approval and overseeing processes of regional plans are entrusted to the Ministry of Land, Infrastructure and Transportation.

Local authorities are responsible for strategic planning and creation of zoning regulations for their territory. The city/county mayor bears the responsibility for city/county plan development. Nevertheless, the Ministry of Land, Infrastructure and Transportation may draft the city/county plan either ex officio or on request from the heads of the related central administrative agencies, similarly with the province governor who may draft the city/county plans either ex officio or on request from the city/county mayors when the planning area extends over two or more cities/counties. Furthermore, local authorities provide building permits. Their primary instruments are three different land-use plans that vary in terms of their specificity.

1.3. Territorial planning in Seoul

With rapid industrialization and the economic development of Seoul, the high use of land and the concentration of people in urban areas was accelerated.[167]

165 OECD. (2017). The Governance of Land Use. Country fact sheet Korea. Land-Use Planning Systems in the OECD: Country Fact Sheets.

166 Ministry of Land, Infrastructure and Transport and the Korea Research Institute for Human Settlements (2013). *National Territorial and Regional Development Policy: Focusing on Comprehensive National Territorial Plan.*

167 Park, B. G. (2004). District Unit Plan in Seoul as a New Approach for Urban Form and Density Control. https://global.ctbuh.org/resources/papers/download/1522-district-unit-plan-in-seoul-as-a-new-approach-for-urban-form-and-density-control.pdf.

This necessitated the need to exclude limits to the planning and management for a population of 10 million and 25 autonomous districts established by a two-stage planning system. The urban master plan could not work as a guideline for the urban management plan because the two plans lacked connectivity. Thus, to strengthen the connectivity of the urban master plan and urban management plan and to increase the possibility of realizing the urban master plan, the living area plan was introduced in Seoul as an intermediate stage to make the urban master plan concrete and to suggest guidelines for the urban management plan.[168]

The 2030 Seoul Master Plan (also Seoul Plan), which used to be an urban master plan, was revised substantially to overcome the limitations of the existing urban master plan, such as the lack of public involvement and actionability, and to reflect the changes in values felt by society.

Thus, there was the possibility for both citizens and experts to review and make changes to the plan to ensure that inherent characteristics of Seoul were considered as well and that the abstract concepts of the urban master plan were implemented and applicable, etc.[169]

168 Kim, S.-W. (n.d.). Urban Planning System of Seoul. Seoulsolution.Kr. https://seoulsolution.kr/sites/default/files/policy/1 _Urban%20Planning_Urban%20Planning%20System%20of%20Seoul.pdf .

169 Kim In-hee (the Seoul Institute). (2017). 2030 Seoul Plan. www.seoulsolution.kr/sites/default/files/policy/1 _11_Urban%20Planning_2030%20Seoul%20Plan.pdf.

The 2030 Seoul Master Plan takes the highest status in the planning system of Seoul and ranges to the entire urban planning area matching the Seoul administrative districts with a total area of 605.96 km². Nevertheless, the target areas are expanded to the Seoul metropolitan areas in the vicinity of Seoul when analysing the status and conditions to draw the planning tasks and planning the spatial structure reorganization. According to the Seoul Plan, its metropolitan government manages the city centres, the metropolitan centres and the regional centres strategically in the perspectives of the metropolitan region of Seoul and the five macro living areas. The Seoul Plan is a guide to the directions of the subplans such as the urban management plan, etc. and provides for the consistent and unified establishment of them. Also, the Seoul Plan enshrines the following planning tasks:

1. Personality education and burden of education expenses.
2. Considering the welfare of disadvantaged people such as young people, children, elderly people, etc.
3. Job creation for young and elderly people, and facilitating the growth of creative small companies.
4. Communication with citizens.
5. Conservation of historical cultural resources and landscapes.
6. Responsive to climate change and environment conservation.

7. Realistic and effective redevelopment, reconstruction and reorganization in small units.[170]

Thus, urban space, reorganization and the environment are considered to be elements of the whole master plan, meaning the Seoul Urban Master Plan has a diversified focus. As a part of 2030 Seoul Urban Master Plan (Seoul Plan), the "living area" is set as the necessary range of activities to engage in the day-to-day life and defined as the spatial range for commuting to work or school, shopping, leisure activities and social activities. Though it is not currently of a statutory nature (not legalized under the 2002 National Land Planning and Utilization Act), it is established, among others, to materialize the vision of Seoul and the long-term development directions regarding regional issues, to carry out the guidance role for the consistent and unified establishment of the urban management plan, the sub-plan of the urban master plan.[171]

In comparison to Seoul Urban Master Plan, the living area plan is of a spatial nature that aims to materialize the urban master plan based on the following sections: "centres and industry", "dwelling areas", "transportation", "infrastructure for living" and "regional specialization". The sectors can be added, omitted or integrated according to the characteristics of the living area.[172]

The urban management plan focuses on the development, reorganization and preservation of cities land use, transport, environment, landscape, safety, industry, information and communication, health, welfare, security and culture concepts. Moreover, in addition to the National Land Planning and Utilization Act, there is the 2000 Ordinance on the Urban Planning in Seoul, which aims to prescribe matters delegated by the Act.[173]

Also, each of five plans under the urban management plan are governed by related laws and regulations as follows:

1. plan for the use of regions and districts – 2000 Ordinance on the Urban Planning in Seoul;
2. plan for the urban development facility – 2000 Ordinance on the Urban Planning in Seoul + determination structure and installation standards of urban planning facilities;
3. plan in district unit – 2000 Ordinance on the Urban Planning in Seoul + guideline for the establishment of a plan in a district unit;
4. plan for the urban development projects – 2000 Ordinance on the Urban Planning in Seoul + Urban Development Act;

170 Ibid.

171 Ibid.

172 Ibid.

173 Ordinance on the Urban Planning in Seoul (July 15, 2000).

5. plan for reorganization – 2000 Ordinance on the Urban Planning in Seoul + Urban and Environmental Renewal Development Act.[174]

Though the territorial planning in Seoul is functioning, this does not preclude the city's growth. Thus, the Seoul Metropolitan Government announced a draft of the Seoul 2040 Comprehensive Plan to create a new spatial planning framework for new urban spatial structures suitable for the future and digital transformation.

It is a long-term plan that will serve as a guide for the next 20 years to pursue various models of urban planning that will shape the future of Seoul. The new plan aims to create flexible socio-spatial schemes that reflect social factors in each locality that result in various urban land uses. Moreover, the plan will focus on improving the quality of life of citizens and strengthening Seoul's urban competitiveness.[175]

The plan will focus on six major issues:

1. First-and-last mile locality infrastructure – blurring the spatial division of residences, leisure and work by transforming areas based on first-and-last mile locality infrastructure. It aims to make citizens' first-mile also their last-mile – with residences, leisure and work all interconnected and accessible within a 30-minute walk.
2. Fluvial water-centric infrastructure – 61 streams situated throughout the city will be transformed into waterfront spaces that enrich the daily lives of residents.
3. Urban functions of three municipal regions (downtown Seoul, Yeouido, Gangnam) – these will be promoted to enhance urban competitiveness.
4. Urban planning beyond zoning – rather than defining the city into residential, industrial and green areas, the new approach will lead to greater autonomy in how areas are established with complex functional arrangements.
5. An undergrounding elevated railway – for increased public transport options and to create new urban spaces – not just above ground, but also underground.
6. New transport infrastructure: to accommodate future-oriented modes of transport such as autonomous vehicles.[176]

174 Ibid.

175 Seoul City Hall (2022, March 16). "Seoul 2040 Comprehensive Plan" for new urban spatial structures amidst digital transformation -. Official Website of The. See: https://english.seoul.go.kr/seoul-2040-comprehensive-plan-for-new-urban-spatial-structures-amidst-digital-transformation/.

176 Seoul 2040 Comprehensive Plan Creates New 20-Year Urban Planning Framework – Smart Cities Connect. (n.d.). Retrieved October 10, 2022, from https://smartcitiesconnect.org/seoul-2040-comprehensive-plan-creates-new-20-year-urban-planning-framework/.

1.4. Public participation

All levels of government in the Republic of Korea now use an array of engagement strategies and means in the agenda setting, formulation, implementation and evaluation of policies. The authorities consider that strengthening relations with citizens is a sound investment in better policymaking and a core element of good governance.[177] Thus, in terms of territorial planning, there are several ways in which citizens or stakeholders can express and possibly reflect their opinions. They are public hearings, deliberations by committees, public complaints or petitions and citizen's initiatives or citizen's forums.[178] Such participatory processes usually bring together three main types of actors: residents (including the private sector), the public administration and experts and local activists.

A public hearing is a way of collecting opinions of citizens or experts on policy and planning issues of local government. The 2002 Act of the Planning and Utilization of National Territory requires that public hearings should be held for both territorial planning and development planning to receive feedback from the public. Public hearings are, in practice, mostly an event in which urban experts and representatives of civic organizations discuss the draft plans, meaning a public hearing is usually not held at the very beginning of planning and thus it is difficult to change the original draft of the plan. In terms of the formulation of city/county management plan and development plans that directly affect daily lives of citizens, there is little chance for citizens to participate. Citizens who are directly affected by urban plans often give suggestions or petition local governments and local councils. These complaints often aim at protecting property rights or increasing property values with private interests taking precedence over public interests, and thus may lead to favouritism.[179]

Deliberation by urban planning committees both at the central Government and local government level is also as an opportunity to reflect opinions of various interest groups in the process of planning. The committees are composed of government officials, urban experts (normally university professors) and representatives of civic organizations. The deliberation by an urban planning committee has also limitations in reflecting the opinions of people in a balanced way due to the predominance of pro-government experts or the socially leading upper class, and can thus lack representation for common people. Also, such urban planning deliberation is often under pressure from developers, builders, businessmen, proprietors, communities, civic organizations and politicians.[180]

177 OECD (2019). November 4. Chapter 3. Citizen participation in land-use planning and urban regeneration in Korea. In The Governance of Land Use in Korea: Urban Regeneration. https://doi.org/10.1787/fae634b4-en.

178 Lim, S. H. (2014, May). Planning Practice in South Korea.

179 Ibid.

180 Ibid.

Detailed legal opportunities and procedures for public participation under each type of plan are shown in Figure 18.

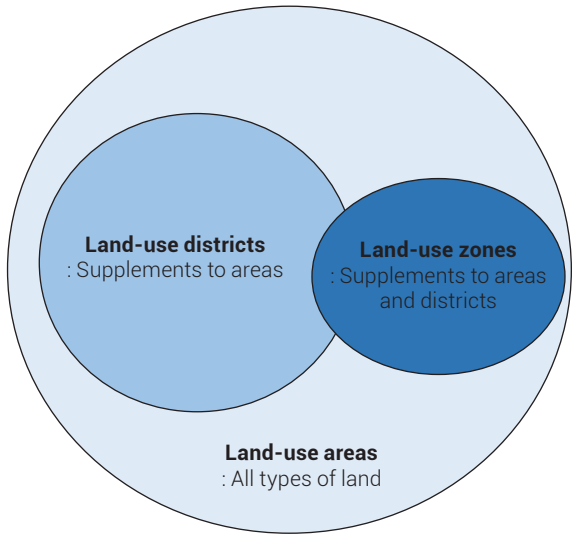
Figure 18. Opportunities for residents and the civil society sector to participate in planning processes

Type of plan	Legal opportunities and procedures for public participation
Comprehensive National Land-Use Plan	Collection of public opinions through public hearings The Minister for Land, Infrastructure and Transport gives 14 or more days' notice on one or more nationwide daily newspapers; citizens and specialists related to the plan can state their opinions in a public hearing or send their opinions online to the Minister for Land, Infrastructure and Transport; the chairperson of the public hearing should submit the opinions and comments of the citizen participants to the minister. Consultation with the heads of central administrative agencies concerned, metropolitan city mayors and provincial governors, who should present their opinions to the minister within 30 days from the date of receiving such proposals. Deliberation by National Land Policy Committee and the State Council. Public notice of the approved plan.
Province comprehensive plan	Collection of public opinions through public hearings. Deliberation by provincial urban planning committee. Consultation with the heads of central administrative agencies concerned. Deliberation by National Land Policy Committee. Public notice of approved plan.
Metropolitan urban plan	Collection of public opinions through public hearings. Deliberation by city/county planning committee. Public notice and exhibition of approved plan.
City/county master plan	Collection of public opinions through public hearings. Hearings of the opinion of local council within 30 days. Deliberation by city/county planning committee. Public notice and exhibition of approved plan.
City/county management plan	Collection of public opinions through public hearings Proposal by citizens of parts of draft city/county management plan Citizens can make a proposal on the development and improvement of public infrastructure, the designation or change of district unit planning zone and district unit plan for the city/county management plan; city/county heads should respond to the proposer within 40 days of the submission. Hearings of the opinion of local council within 30 days. Deliberation by the city/county planning committee and the city/county architectural review committee. Public notice and exhibition of approved plan.

Source: Lim, S. H. (2014, May). Planning Practice in South Korea.

Figure 19. Land-use zoning system in the Republic of Korea

Source: OECD. (2019, November 4). Chapter 1. Land-use governance in Korea. In The Governance of Land Use in Korea: Urban Regeneration. https://doi.org/10.1787/fae634b4-en



Among the examples of public participation, development of territorial planning document in Busan and Seoul can be named. In Busan, if the government seeks feedback from a broad range of citizens on specific policy issues or urban development projects, it uses tools for consultation that allow for a greater level of interaction, such as public hearings, citizens' panels, workshops, etc.[181] Also, during the development of Seoul Master Plan, citizens were involved in several phases, namely:

1. Preparation involved an expert advisory group (33 people meeting 5 times) to identify basic direction and implementation structure of the plan.
2. Vision and functions involved public participation composing of 100-member citizens to realize the vision and key tasks.
3. During the draft phase, the 2030 Seoul Plan Development Committee categorized the plans by issue, spatial structure and land-use plan, regional plans and action plans.
4. Collection of input and administrative procedures in general involved citizens, experts and administration to revise and finalize the plan.[182]

181 OECD (2019). November 4. Chapter 3. Citizen participation in land-use planning and urban regeneration in Korea. In The Governance of Land Use in Korea: Urban Regeneration. https://doi.org/10.1787/fae634b4-en.

182 Kim In-hee (the Seoul Institute) (2017). 2030 Seoul Plan. https://www.seoulsolution.kr/sites/default/files/policy/1 _11_Urban%20Planning_2030%20Seoul%20Plan.pdf

1.5. Planning permission and enforcement

Permission for development activities is enshrined under Article 56 of 2002 National Land Planning and Utilization Act and should be obtained from relevant institutions such as the Special Metropolitan City Mayor, the Metropolitan City Mayor, the Mayor of a Special Self-governing City, the Governor of a Special Self-governing Province, or the head of a Si/Gun. For the following activities, planning permission may be obtained:

1. Construction of buildings or erection of structures.
2. Changes in the form and quality of any land (excluding changes in the form and quality of land prescribed by Presidential Decree as cases for cultivation).
3. Extraction of earth and stone.
4. Partition of land (excluding the partition of a site on which a building is located).
5. Piling up goods within the green area, control area or natural environment conservation area for at least one month.[183]

The Building Act of South Korea, in Article 11 details the aspects of receiving building permits and states that any person who intends to erect a building or commence substantial repair of a building should obtain a permit from a Special Self-Governing Province Governor or the head of a Si/Gun/Gu, provided, that a person who intends to erect a building for a use and in a size prescribed by Presidential Decree. A building with 21 or more floors, within the special metropolitan city or a metropolitan city, should obtain a permit from the special metropolitan city mayor or the competent metropolitan city mayor.[184]

As for land matters, the Minister for Land, Transport and Maritime Affairs, the city mayor/Do Governor, or the head of a Si/Gun may restrict permission for development activities subject to their area of responsibility. This could be done only after the deliberation with the Central Urban Planning Committee or the local urban planning committee respectively (2002 National Land Planning and Utilization Act). As for building matters, the 2008 Building Act establishes the role of the project supervisor position. In case of violations of the Act, failure to follow architectural plans and drawings in executing the project, the project supervisor should notify the project owner of his/her finding and request the contractor to take corrective measures or execute reconstruction, and may, if the contractor fails to comply with the request for corrective measures or reconstruction works, request the contractor, in writing, to suspend the project.

183 Article 56 of the National Land Planning and Utilization Act.

184 Article 11 of the Building Act.

1.6. Climate-friendly urban planning

Spatial planning in the Republic of Korea considers environmental aspect and the Framework Act on the National Land states that any plans and policies for the national land should be formulated based on a harmony between development and environment. Also, it enshrines an "environment friendly management of national land" section obliging those state and local governments dealing with formulation and execution of the plans or projects for the national land to consider any impacts on the natural and living environments and ensure that any adverse impacts on the environments may be minimized.[185]

185 Article 2 and 5 of the Framework Act on the National Land.

2. Land management

2.1 Land allocation and zoning

Three pillars of the country's zoning system are land-use areas, land-use districts and land-use zones (see figure 19).[186] Land-use areas are designated by their primary uses, and they are divided into four categories:

1. urban areas (residential areas, commercial areas, industrial areas and green areas);
2. management areas ("conservation and management", "agricultural and management", and "development and control areas");
3. agricultural areas;
4. natural environment conservation areas.

Land-use districts are designated within five categories (scenic districts, disaster prevention districts, conservation districts, community districts and development promotion districts), each of which is divided into sub-groups and managed appropriately.

Land-use zones are designated to intensify or lift restrictions on areas or districts, depending on the use or forms of land and architectural structures. These zones are divided into four groups, including development restriction green zones, controlled urbanization zones, protected fishery resources zones and urban natural park zones (including changes in land use).

2.2 Land acquisition for public purposes and compensation schemes

The expropriation concept is enshrined in paragraph 3 of Article 23 of the Constitution of South Korea stating that expropriation, use or restriction of private property from public necessity and compensation therefore shall be governed by this Act, provided that in such a case just compensation shall be paid.[187]

186 OECD. (2019, November 4). Chapter 1. Land-use governance in Korea. In The Governance of Land Use in Korea: Urban Regeneration. https://doi.org/10.1787/fae634b4-en.

187 Constitution of South Korea. (1987, October 29).

Thus, expropriation of land is possible for public and private uses if the private use is in the public interest. However, expropriations for private uses are generally rare. Expropriations can occur for a relatively large number of reasons, including the construction of infrastructure, housing, commercial and industrial developments, mining activities and the establishment nature reserves. In all cases, fair compensation must be paid to the landowner.[188]

2.3 Security of tenure: land tenure types and land registry

In the Republic of Korea, there are four types of land tenure, namely: ownership, leasehold, surface right and easements. Ownership is the most common way to hold ownership over land or buildings. Though title to land and title to buildings are separate in principle, they are generally transferred together. If land or a building is owned by a sole owner, the owner may dispose of or use the land or the building however he or she sees fit.

In addition to sole ownership, there are two types of tenure in ownership:

1. Co-ownership: When a co-owner wishes to dispose of, or alter, the whole property, other co-owners must unanimously agree to such a disposal or change. In terms of maintenance of the property, at least 50 per cent of the co-owners must agree to it. However, each owner is entitled to freely dispose of his or her share.
2. Condominium-type ownership: If a building is divided into multiple units which can be used independently, each unit can be separate subjects of ownership and can be registered separately. Unit owners oversee the management of a multi-unit building through an owners' association.

Olympic bridge, South Korea ©Carl Kho/unsplash

188 OECD. (2017). The Governance of Land Use. Country fact sheet Korea. Land-Use Planning Systems in the OECD: Country Fact Sheets.

The law recognizes two types of leasehold interest in respect of both land and buildings. One is called "*Imchakwon*", and the other is called "*Cheonsekwon*". The former is not typically registered in the registry although it is registerable and requires payment of a monthly rent (landlords normally demand a security deposit). The latter must be registered in the registry with the security deposit and the term of the lease. Monthly rent is not required, but the security deposit is relatively high compared to *Imchakwon*.

Surface right refers to the right to occupy and to use the land, to own buildings or trees attached to it. The duration of a certain surface right is fixed under the South Korean Civil Code depending on what is attached to the land. Easements are also recognized under the South Korean Civil Code.[189]

The current cadastral information service was established by the Land Survey Law of 1910. Since then, cadastral information has been managed for over 100 years based on this law and the revised Cadastral Law, 1950. The responsibility for the information system lies with the Ministry of Land, Infrastructure and Transport. Cadastral information is registered and managed by the Korea Land Information System and includes 37.5 million parcels.

It is controlled by 258 competent authorities. Cadastral surveying is conducted by the Korea Cadastral Survey Corporation in cooperation with private sector companies.[190] The corporation has branch offices in provinces, local agencies in cities, counties and districts. It deals with field surveying, examination of land information and changes of registered details.[191]

2.4 Land-based financing

The Republic of Korea has a highly centralized revenue collection system, so national transfers to local governments account for a substantial share of local government revenues. Sub-national government revenues consist of taxes, grants and subsidies, tariffs and fees, property income and social contributions.

Basically, regional and local governments are responsible for securing and raising funds to implement their land-use plans based on their urban master plans and urban management plans. In part, however, national grants and subsidies can be provided to regional and local governments to financially support land-use planning implementation. There is a national budget fund especially for regional development – the Special Account for Regional Development, and

189 Do, G. C., Jeon, E. J., Song, C. Y., Kang, S. M., & Kim, C. (2015). Commercial real estate in South Korea: overview. Uk.Practicallaw.Thomsonreuters.Com. Retrieved October 7, 2022, from https://uk.practicallaw.thomsonreuters.com/7-503-2653?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a582123

190 Bong-Bae Jang & June-Hwan Koh. (2014). Cadastre 2014: A case study from South Korea. oicrf.org. Retrieved October 7, 2022, from https://www.oicrf.org/-/cadastre-2014-a-case-study-from-south-korea

191 Lee, H. S., & Jeon, S. (2013). South Korea Country Report. Retrieved October 7, 2022, from https://cadastraltemplate.org/south%20korea.php.

some regional and local governments take advantage of the account's budget to fulfil planned development projects. [192]

3. Dispute-resolution mechanisms

The country's courts system does not include a specific court to address spatial planning or real estate disputes. Considering that judicial system is based **on a three-instance trial** system, real estate disputes[193] are tried in an ordinary manner. For civil claims over property, the district court at the place where the property is located has jurisdiction to hear such claims.

The parties can also separately agree on the court with jurisdiction to hear cases regarding disputes between them unless another court has exclusive jurisdiction over such matters.[194]

The procedure is as follows. Once a complaint is filed, the court will serve the complaint within one to two weeks. The defendant must file an answer within 30 days of receiving the complaint, in principle.

However, answers are often filed late and courts are generally lenient with reasonable delays. Subsequent written submissions do not have fixed deadlines. Parties may continue to submit preparatory briefs and supporting evidence until the hearing is closed. Once the hearing is closed, supplementary briefs may be submitted until judgment is given.

The court typically schedules oral hearings four to six weeks apart. The number of hearings depends on the complexity of the case. In complex cases, the presiding judge may order preparatory hearings and pleadings to set out the main issues for decision, as well as each party's claims and evidence.

Once the hearing is closed, the court typically announces its decision within four to six weeks. The court thereafter issues a written judgment usually within a week. An appeal to the High Court must be filed within two weeks after receipt of the judgment from the court of first instance. Similarly, an appeal to the Supreme Court must be filed within two weeks after receipt of the judgment from the court of second instance (High Court).[195]

192 OECD. (2019, November 4). Chapter 1. Land-use governance in Korea. In The Governance of Land Use in Korea : Urban Regeneration. https://doi.org/10.1787/fae634b4-en.

193 Under Korean law, real property consists of land and buildings, which are considered separate real property. Ownership interests must be registered under the applicable registries because land and buildings thereon are considered separate real property.

194 Lee, S. B., & Ki, S. H. (2022, July 14). South Korea: Litigation Dispute Resolution Comparative Guide. Mondaq: Connecting Knowledge and People. www.mondaq.com/litigation-mediation-arbitration/1108956/litigation-dispute-resolution-comparative-guide.

195 Kim, G. H., Kim, J., Kosman, M., and Jun, S. Y. (2022, May 20). Q&A: conducting litigation in South Korea. Lexology. Getting the Deal Through. https://webcache.googleusercontent.com/search?q=cache:rDNqFWAhF1YJ:https://www.lexology.com/library/detail.aspx%3Fg%3Dfef7d8c5-fdb6-46e8-918d-604f723eb9ce&cd=2&hl=en&ct=clnk&gl=ke&client=safari.

4. Key takeaways and lessons

The Republic of Korea case study demonstrates the following:

1. two-tier local government system has no hierarchical link,[196] its structure is very diverse and complex;
2. the planning system is extensive at all levels and intertwines with land-use aspect;
3. public participation, especially at the local level, is strong and includes various ways to receive feedback from citizens;
4. urban planning is intervened with environmental aspect;
5. land cadastre system is operational and is updated appropriately;
6. land zoning is complex and consists of three pillars;
7. both land and buildings are considered under the country's legislation as real property, however, they are separate.

Thus, despite the vastness of planning tools, the branching of responsible bodies and their functions, as well as the complexity of issues and the contiguity of spatial planning with land use as well as land use and building, the Republic of Korea is rightfully considered to be applying a sustainable approach in spatial planning.[197]

196 United Cities and Local Governments (UCLG) and OECD. (2016, October). Korea Unitary Country. Asia Pacific. www.oecd.org/regional/regional-policy/profile-Korea.pdf.

197 Sustainable Spatial Planning: The Netherlands and South Korea. (n.d.). See: www.netherlandsandyou.nl/your-country-and-the-netherlands/south-korea/and-the-netherlands/sustainable-urban-planning.

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THE CASE OF THE UNITED KINGDOM (ENGLAND)

UNITED KINGDOM COUNTRY PROFILE
QUICK FACTS

	Country name United Kingdom of Great Britain and Northern Ireland
	Type of government Constitutional monarchy
	Form of State Unitary State
	Surface area 243.610 km²
	Gross domestic product $3.19 trillion (2021)
	GDP per capita $47,334.40 (2021)
	Population 67 million (2020)
	Urban population (percentage out of the total population) 84 per cent (2021)
	Urban population growth (annual percent) 0.7 (2021)
	Population density 270 people per km² (2020)

An aerial view of the City of London, July 2022
Source: Joas Souza, www.joasphotographer.com/architectural-photography-blog/2020/7/28/aerial-photos-of-london

COUNTRY BACKGROUND

The United Kingdom is a constitutional monarchy and parliamentary democracy, where elected ministers govern in the name of the sovereign, who is Head of State and head of the Government. The sovereign appoints the prime minister, who leads the executive together with the Cabinet. The constitution is unwritten and relies on a combination of statutes, common law and customs/conventions.[198] Over the last 20 years, the political governance structure within the United Kingdom has been undergoing a longstanding process of devolving power to the separate nations within the United Kingdom: England, Scotland, Wales and Northern Ireland. Currently, the United Kingdom is a unitary State formed by the union of four "home nations".

With a population of about 67 million (2020), it is one of the most densely populated countries in the world, averaging 700 inhabitants per square mile (270 people per km^2).[199] Its population growth rate is about 0.4 per cent per annum (2021) driven by both net immigration and natural growth.

The population is generally aging and in 2019 the average age of the population was 40 (up from 35 in 1985). Out of the total population, the 84 per cent live in urban areas. Looking at the specific case of England, both rural and urban areas saw an increase in overall population between 2011 and 2019. The rural population increased by 5.2 per cent and urban by 6.2 per cent. In 2019, 56.3 million people lived in urban areas (82.9 per cent of England's population).[200]

From an economic perspective, not withstanding the uncertainties associated with the long-term consequences of Brexit (the withdrawal of the United Kingdom from the European Union), the United Kingdom remains strong, with a gross domestic product of $3.19 trillion (2021).[201] From the point of view of overall human development, the United Kingdom is currently ranked 18 (United Nations Human Development Index, 2021).

1. Urban planning

The origins of the current planning system are often traced back to the reforms that were put in place in the immediate aftermath of the Second World War and reflected in the 1947 Town and Country Planning Act.

198 Commonwealth of Nations, United Kingdom Government. www.commonwealthofnations.org/sectors-united_kingdom/government/; Britain's unwritten constitution. www.bl.uk/magna-carta/articles/britains-unwritten-constitution.

199 World Bank Data. https://data.worldbank.org/indicator/EN.POP.DNST?locations=GB. Office for National Statistics, population estimates for the United Kingdom, England and Wales, Scotland and Northern Ireland: mid-2019. www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/mid2019estimates.

200 Government Office for Science, Urbanisation Trends, 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994570/GO-Science_Trend_Deck_-_Urbanisation_section_-_Spring_2021.pdf.

201 World Bank Data. https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=GB.

Whilst there have been many reforms since then, many of the key principles that were established then have remained in place, with plans providing guidance for individual decision making (no plan is legally binding) and all development rights have effectively been nationalized, with no development being permitted until the State, often through local planning authorities, has granted planning permission. Significantly the planning system covers the whole of the territory urban and rural where the rules are the same although the policy context might vary.

Externally, the planning system has often been perceived as being efficient and effective, which probably has as much to do with the capacity of local government (within which planning sits) and a culture of general compliance with the law. If you take the United Kingdom as a whole there are four planning systems related to the four devolved governments: England, Scotland, Wales and Northern Ireland. In the present paper we are focusing only on England and are exploring how the planning and governance arrangements work for that nation.

The main legislation governing urban planning in England is the following:

1. Planning and Compulsory Purchase Act, 2004
2. Planning Act, 2008
3. Localism Act, 2011
4. Housing and Planning Act 2016

In addition to primary legislation, there are regulations, the national policy and national guidance that, although plan making and decision-making is localized, entail a strong level of central control, guidance and scrutiny.

1. Planning objectives and plans' content and hierarchy

According to the 2012 National Planning Policy Framework, the planning system has three main objectives to achieve sustainable development:

2. **An economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure.

3. **A social objective** – to support strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high-quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.

4. **An environmental objective** – to protect and enhance the natural, built and historic environment; and, as part of this, making effective use of land, helping to improve biodiversity, using natural resources prudently, minimizing waste and pollution, and mitigating and adapting to climate change, including moving to a low-carbon economy.

This suggests planning should be positive and support growth through integration, communication and partnership with public and private stakeholders. This positive approach is reflected in the presumption that planning decisions should support development unless there are good reasons to prevent development taking place. Planning applications can range from individual household extensions to individual dwellings to large complex sites where multiple building units might be granted planning permission simultaneously. The decisions as to whether to grant planning permission, or not, are primarily and technically made by elected politicians, mainly at the local level.

Whilst there is a great deal of autonomy at the local level to prepare plans and make decisions regarding whether development should occur or not, the processes and procedures are heavily regulated by the central Government, and local plans are scrutinized before adoption to ensure they are in accordance with national policies and project applicants have the right of appeal to the Secretary of State (central Government) if planning permission is refused. Hence there is a lot of central control and scrutiny but plans and decisions are, to a large extent, managed at the local level.

Planning objectives are achieved in England at two main levels: the national level and the local level.

This is a relatively new structure, with the intermediate tier – the regional scale – having been abolished as recently as 2012, although arguably it still exists in London with the Greater London Authority, which maintains planning powers. The reasons for abolition of this tier of planning were largely political. For some, the regional tier allowed difficult and unpopular decisions to be made, which were often strategic in nature with regard to regional and local housing numbers, waste and mineral sites and sites for gypsies and travellers. For others, notably the incoming Conservative Party, the costs of preparing regional plans were long and complex and most importantly the bodies that prepared them lacked a democratic mandate, consequently imposing unpopular targets for development on local communities (Communities and Local Government Committee 2011).

Currently, at the national level, the National Planning Policy Framework[202] of 2012 formulates policy priorities and principles

202 National Planning Policy Framework (NPPF). www.gov.uk/government/publications/national-planning-policy-framework--2.

for spatial development and guidance to local planning authorities. In addition, it provides guidance in terms of the principles that local planning should take with regards to thinking about the various sectors of development. It does not contain legally binding elements on planning outcomes or on how plans should be written but includes material considerations that must be taken into account by local governments.

The policy does not allocate land for specific uses nor are the spatial implications considered: plan-making and decision-making are left to the local scale (Localism Act of 2011); therefore, planning is administratively highly decentralized, although with relative little autonomy at the local level. Indeed, even if this policy and overall plans are not legally binding in England, the rules of plan making and the principles established at the national level are prescribed, scrutinized and enforced by the central government. The fact of not having clear legal provisions making the plans binding is also due to the English legal culture of testing the interpretation and meaning of law and policy in the courts and then to base decisions on the outcomes of court cases, which in turn may lead to updates in either the policy or the guidance.

The National Planning Policy Framework does not contain specific policies for nationally significant infrastructure projects, such as power stations, airports, intercity rail and road networks which are the subject of separate legislation. Examples of this are the National Infrastructure Delivery Plan 2016-2021,[203] which outlines the priorities for investing in a whole range of infrastructures and committing expenditure plans to these ideas, and the National Infrastructure Strategy of 2020.[204]

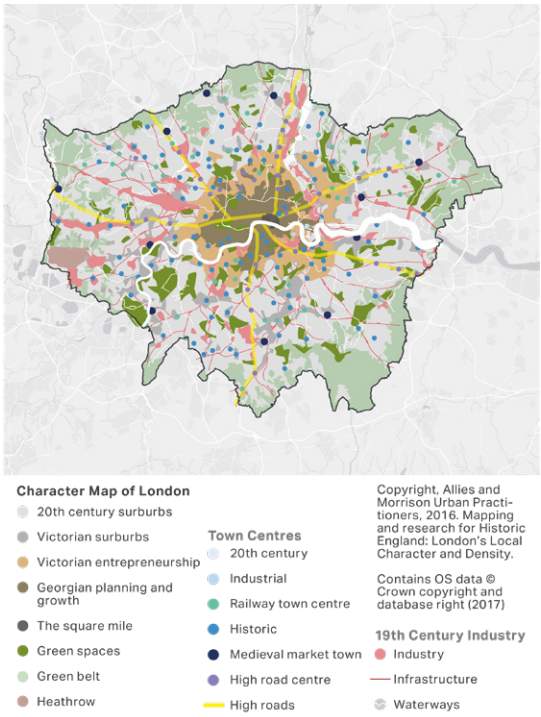


Figure 20. Character map of London

Source: London Plan, 2021.

203 National Infrastructure Delivery Plan 2016–2021.https://assets.publishing.service.gov.uk/government/.ploads/system/uploads/attachment_data/file/520086/2904569_nidp_deliveryplan.pdf.

204 National Infrastructure Strategy (2020). www.gov.uk/government/publications/national-infrastructure-strategy.

At the sub-regional level, the Greater London Authority Act of 1999, amended in 2007, requires the city mayor to formulate a spatial development strategy for London. Based on this requirement, the latest London Plan was published in 2021 and contains the structure for how London will develop over the next 25 years. It is a strategic plan covering all of the 32 London boroughs and providing a strategic framework within which more local plans should be situated. It also develops cross-sectoral plans that focus on, among other issues, transport, economic development, housing and culture. Besides being a strategic document, it also includes opportunity areas for growth and planning standards such as minimum space standards, minimum floor-to-ceiling heights,[205] among others.

The London Plan does not need to conform to the national policy framework, although it is scrutinized by the central Government (Planning Inspectorate) with regards to the respect of national established principles and rules. It provides strategic and land-use orientations to which local governments and neighbourhoods must conform, so this is the only binding plan for lower levels in England.

At the local level, local plans set out a vision for the area over a 15 to 20 year time horizon and provide the framework for individual decisions to be made.

The objective is to think about the short, medium and longer term in terms of how land may be phased for development.

The local development framework in England contains the following:

1. The core strategies, meaning a section of this framework including general policy guidelines.

2. Local land-use plans for cities and neighbourhoods. These plans set out a vision and framework (including strategic priorities and policies) for the future development of an area, addressing issues such as housing, infrastructure, the economy, the environment and good design. They include strategic priorities and policies for the development and use of land, and should be justified, including a robust evidence base and the exploration and evaluation of several options in the plan-making process.

As anticipated, local plans are not legally binding and the broad identification of areas for development does not immediately provide development rights; planning permission is still required. Moreover, the plans should be in broad consistency with national policy but have a legal obligation to conform only to London Plan, in case they refer to an area within that of the Greater London Authority.

205 The London Plan (2021). www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan/london-plan-2021.

The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in line with the relevant legal requirements (including the duty to cooperate, see next section) and whether it is "sound". The National Planning Policy Framework sets out four elements of soundness that Local Plans are considered against when they are examined:

1. Local plans should be **positively prepared**. This means that there should be open discussion and debate between stakeholders at various stages in the process so that in theory a broad consensus develops regarding the key issues and priorities of places that the plan should try to address. There is also a strong emphasis within this notion of public and stakeholder engagement that this must include neighbouring authorities because many issues and indeed opportunities cannot be contained within the boundaries of administrative areas. This has become known as the "duty to cooperate".

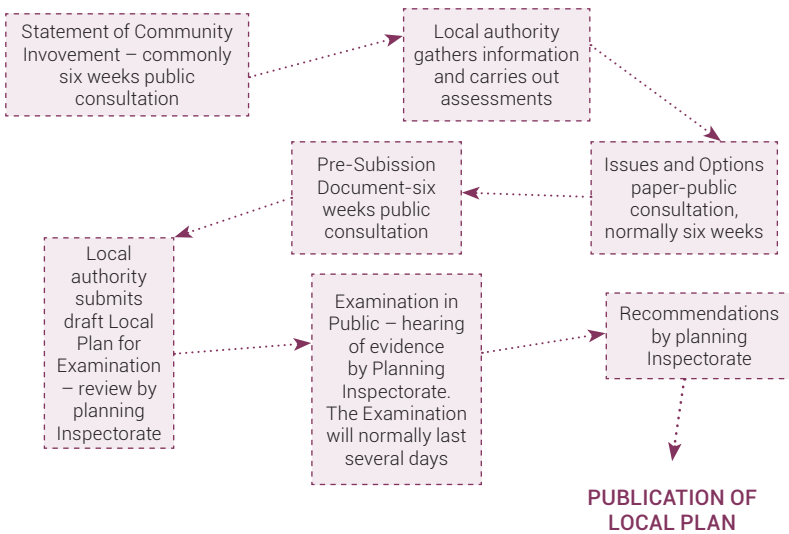
2. **Justified**. This means that the plan needs to be supported by a robust evidence base and that in the plan-making process various options should be explored and evaluated, including public consultation before the preferred option is chosen.

3. **Effective**. This means that the plan can be deliverable and that key stakeholders involved in delivery are broadly in support of the approaches being adopted.

4. **Consistent with national priorities**.

Figure 21. A simplified guide to local plan-making

Source: Urban Forum and Planning Aid (2012).



In England, neighbourhood-level planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. Neighbourhood planning is not a legal requirement, but a right which communities in England can choose to exercise and they have two options:

1. They can set planning policies through a neighbourhood plan (introduced by the Localism Act of 2011 and regulated also by the Neighbourhood Planning (General) Regulations 2012);
2. They can grant planning permission through neighbourhood development orders[206] for specific developments, which can be used to permit building operations, material changes of use of land and buildings, and/or engineering operations.

The objective of neighbourhood plans is to set out opportunity areas for new development and so encourage more development that is being proposed in the local plan.

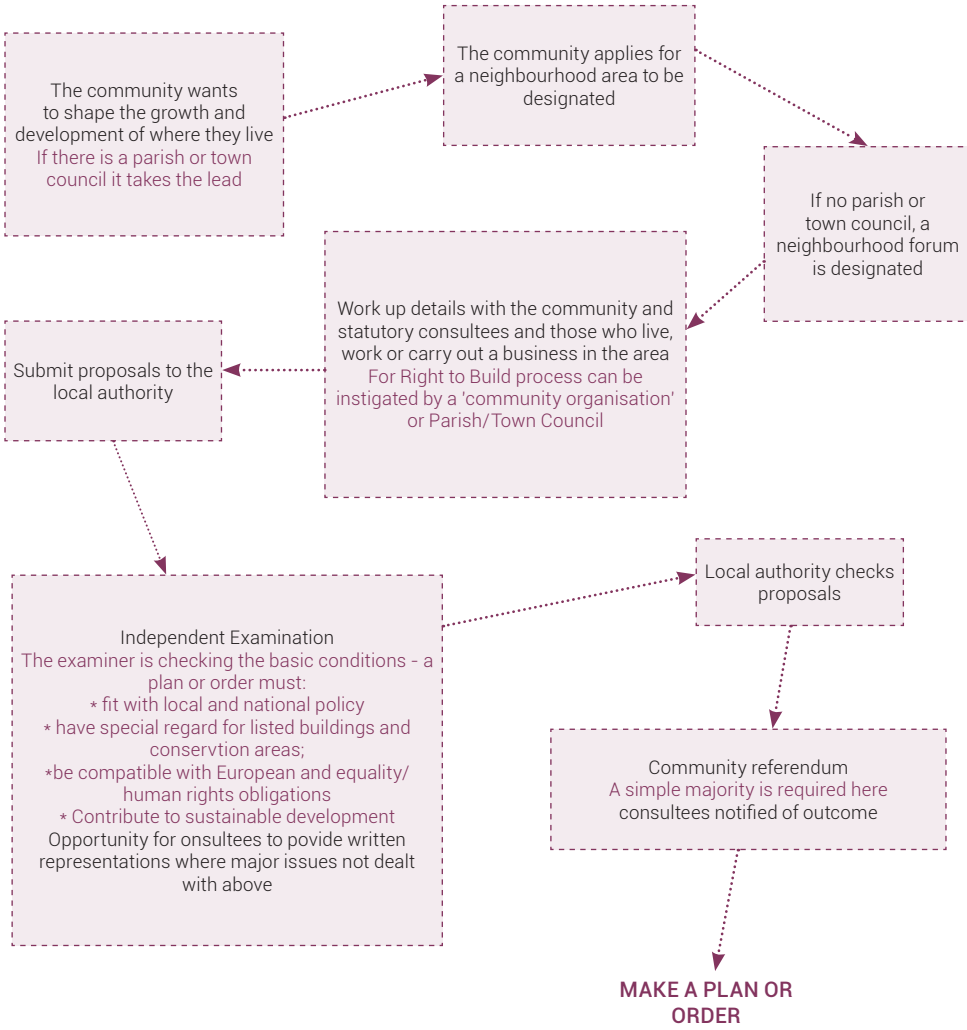
These plans should support the delivery of strategic policies set out in the local plan or spatial development strategy and should shape and direct development that is outside of those strategic policies. The specific planning topics that a neighbourhood plan covers are for the local community to determine; they can focus on any aspect of the neighbourhood that the community needs to address. Neighbourhood plans cannot restrict development in areas where development has been approved by core strategies and local plans, but they can designate additional land for development if this is in conformity with the National Planning Policy Framework.

After the designation of an area for which the plan needs to be developed, the community begins to prepare the plan, which can be specific and covering particular types of policy, e.g., affordable housing, or more general and comprehensive, looking at sites for development. Once prepared, it will be subjected to independent examination by a planning expert.

206 Neighbourhood planning guidance. www.gov.uk/guidance/neighbourhood-planning--2#What-is-Neighbourhood-Development-Order.

Figure 22. A simple guide to neighbourhood planning

Source: Urban Forum and Planning Aid (2012).



Only a neighbourhood plan or order that appropriately fits with local strategic and national policies and complies with important legal conditions may be put to a referendum. If the neighbourhood plan is approved at a referendum, then it will be adopted by the local planning authority and will be integrated into the local development plan, attaining the same legal status as the latter. It will be used by the local planning authority when considering decisions for sites within the plan area.

1.1. Planning institutional framework

The main institutions dealing with planning at the national level are:

1. **The Department for Levelling Up, Housing and Communities**, responsible for ensuring local government works effectively to meet the needs of their communities with a particular emphasis on housing and growth more generally.
2. **Department for Energy and Climate Change**, now merged with the Department of Business Innovations and Skills, becoming in 2017 the Department of Business Energy and Industrial Energy.
3. **Department for Environment Food and Rural Affairs**, protecting the environment, food and farming and rural communities, with an impact on land use.
4. **The Secretary of State** oversees the planning system as well as having a more direct role in a small number of decisions through the appeals system, the call-in process and decisions on nationally significant infrastructure projects.

Apart from ministerial departments, there are several public bodies called executive agencies and executive non-departmental public bodies (quangos) which are fully or partially funded by the central Government and have various responsibilities with a direct impact on planning.

Many have the power of statutory consultees who must be consulted by local planning authorities in preparing plans or with regard to considering whether particular planning projects should be approved or not. Among these, there are the following:

1. **Planning Inspectorate**, tasked with scrutiny and oversight on planning matters ensuring that planning rules are followed. It scrutinizes local plans (their conformity with the National Planning Policy Framework), decides on planning and enforcement appeals on behalf of the Secretary of State, and determines national infrastructure projects.
2. **Homes and Communities Agency**: helps to provide public land for housing and employment purposes and provides funding for social housing providers.
3. **Environment Agency**: amongst other responsibilities, it has a major role in managing flood risk, including advising on the location of new development to avoid risk.
4. **Natural England**: protects biodiversity and landscapes and the ecosystem services they provide.
5. **National Park Authorities**: they are 10 independent planning authorities mandated to manage areas designated as national parks.

At the sub-regional level, and so referring to Greater London Authority, the Mayor of London and the London Assembly are responsible for the preparation of the London Plan, which is then approved by the Mayor of London, after examination by the Secretary of State. The plan is then implemented by the mayor and the London Assembly. In London, the mayor also has powers to determine certain planning applications of potential strategic importance.

With respect to the local level, many parts of England have three tiers of local government:

1. County councils.
2. District, boroughs or city councils.
3. Parish or town councils.

Local government administers much of the planning system, preparing local plans, determining planning applications and carrying out enforcement against unauthorized development. Local planning authorities like the district councils are responsible for most planning matters, other than transport and minerals and waste planning which are typically functions of the county council. In some areas of the country single tier authorities are responsible for both district level and county level planning matters.

In a national park, planning functions are carried out by the National Park Authority.

Where they exist, parish and town councils play an important role in commenting on planning applications that affect their area. The national Government wants to see planning decisions taken at the lowest level possible and has introduced the ability for parish and town councils to produce the neighbourhood plans. Where parish or town councils do not exist, representatives of the local community may apply to establish a neighbourhood forum to prepare a neighbourhood plan or order.

For many years, to deliver large scale strategic projects including the development of new towns and cities or the regeneration certain areas, the creation of a free-standing location specific **Development Corporations** was used: these are statutory bodies set up to regenerate a designated area, bringing land and buildings into effective use, and acting as the planning authority for that area. These bodies often have control over the land and have effectively become a freestanding planning authority in their own right. The following are examples of development corporations: the Ebbsfleet, designed to create a new garden city on the edge of London; the London Legacy Development Corporation, originally designated to develop the Olympic Park at Stratford, West London and now ensuring that the whole site fulfils its regeneration potential. Among their responsibilities, there are:

1. Drafting proposals for the new developments which the oversight authority can approve.
2. Master planning and project development.

3. Bringing on board private investment.
4. Partnering with developers.
5. Overseeing completion.

As many planning issues cross administrative boundaries, it is important that there is a mechanism that ensures this happens effectively. To this end, the Localism Act 2011 introduces the "duty to cooperate" to ensure that local planning authorities and other public bodies work together in relation to the planning of sustainable development that extends beyond their own administrative boundaries. Local planning authorities must demonstrate their compliance with the duty to cooperate when their local plan is examined. Planning inspectors from the Government Planning Inspectorate examine local plans: if an inspector has significant concerns about a local plan in relation to the "duty to cooperate" or other procedural requirements, the inspector will inform the local planning authority and may suspend the examination process until the local authority has addressed the issue.

The duty to cooperate applies to other public bodies which have an interest in a particular plan.

Another mechanism for coordination, this time between local planning authorities and with the aim of achieving more functional city regions, is the possibility to create "combined authorities" (although none of these have been prepared yet); these are combinations of local authorities working together on a voluntary basis, which will have an elected mayor to oversee powers and competences that they have been given/negotiated. In these areas, the city region would prepare a structure plan for the whole region within which the local plans for the metropolitan boroughs would be expected to fit.

Moreover, the Neighbourhood Planning and Infrastructure Bill 2016-17 has provisions to strengthen neighbourhood planning by making the local government duty to support neighbourhood groups more transparent by improving the process for reviewing and updating plans.

Ebbsfleet garden © NaCSBA

1.2. Non-state actors or private sector involvement

There are many other actors who play a significant role in the operation of the planning system:

1. **The private sector** is an important consumer of the planning service and most development takes place on land that is in private ownership and/or is largely funded by the private sector, with a view to making profit through the real estate process. Within the private sector there are various sector specific actors including for example, property development companies, the construction industry, and private sector planning consultants etc., who collectively make a significant contribution to the overall economy.

2. **Utility companies**: public utilities have been transferred from the public sector to the private sector, who under license and state regulation are able to deliver services at a profit. They are also responsible for managing, renewing and refreshing the infrastructure. So, for example most public transport provision (road, bus and trams) are operated by private enterprises, water (potable and wastewater), energy production, supply and consumption, telecommunications infrastructure are other examples where competition in the market has been introduced with a view to improving efficiency and reducing costs.

3. **Non-profit organizations and civic society**: can influence decision making process and engage in the formulation of particular plans or issues, especially related to the environment.

1.3. Planning standards, planning processes and enforcement

Planning standards in England are established for specific sectors and by different instruments. For example, technical housing standards are established at the national level.[207] The London Plan contains planning standards such as: minimum space standards, minimum ceiling height, minimum standards for car parking, and others.

For example, a minimum floor-to-ceiling height of 2.5 m for at least 75 per cent of the gross internal area is required so that new housing is of adequate quality, especially in terms of daylight penetration, ventilation and cooling, and sense of space. The main idea here is to increase ceiling height to maintain ventilation.

207 Nationally Described Space Standard, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1012976/160519_Nationally_Described_Space_Standard.pdf.

A permission from the State before construction can begin is required (licence for building permit), with two main exceptions:

1. Generally, planning permission is not needed when the existing and the proposed uses fall within the same use class. However, if building work is associated with the proposed change of use, planning permission may be required for that work.[208]
2. Some changes from one use class to another are covered by "permitted development" rights (meaning that planning permission is deemed to have been given). Some building work associated with these changes of use can also be covered by "permitted development" rights,
   e.g., some minor household extensions. Specific limitations and conditions are set by national legislation (The Town and Country Planning (General Permitted Development) (England) Order 2015).

Planning permission can be divided into two broad categories of small- and large-scale planning applications (the latter includes complex, large or applications requiring an environmental impact assessment). They can also be divided into outline or full planning permissions. With outline permission, the applicant is seeking, in principle, permission to develop a site with the details being elaborated later. With full planning permission, once all the details have been accepted, the applicant has three years to start the development.

Recently, the Housing and Planning Act (2016) has suggested that sites in adopted plans zoned for housing and or brownfield land may have planning permission in principle but it is too early to know whether this will make any significant difference in practice .

Article 34 of the Town and Country Planning (Development Management Procedure (England) Order 2015 established that the prescribed time limit (set by central Government) for normal planning applications is 8 weeks; it is 13 weeks for applications for major developments (large-scale and complicated applications), 10 weeks for applications for technical details consent and (from 1 August 2021) applications for public service infrastructure development. For applications potentially sited on a sensitive location and often requiring an environmental impact assessment, it is 16 weeks.

Where a planning application takes longer than the statutory period to decide, and an extended period has not been agreed with the applicant, the Government's policy is that the decision should be made within 26 weeks at most to comply with the "planning

208 Planning Portal, Changes of Use, www.planningportal.co.uk/permission/common-projects/change-of-use/planning-permission.

guarantee" (the Government's policy that no application should spend more than a year with decision-makers, including any appeal). If the planning authority fails repeatedly to decide applications on time, Section 62B of the Town and Country Planning Act 1990 (as amended) allows the Secretary of State to designate local planning authorities that "are not adequately performing their function of determining applications", when assessed against published criteria (speed and quality of decisions).

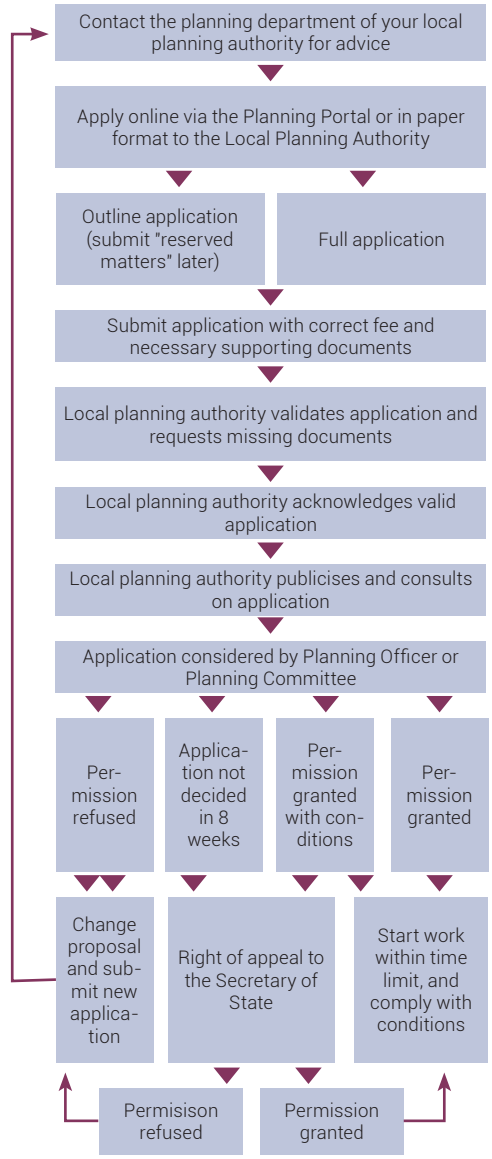
Section 62A of the Town and Country Planning Act 1990 (as amended) allows applications for the category of development for which the authority has been designated (i.e. major development, non-major development, or both) to be submitted directly to the Secretary of State (if the applicant wishes) as long as the designation remains in place.

The vast majority of development in England is highly regulated and the enforcement process is a very important part of the system. If it is suspected that a building has been erected without planning permission or is being used for a purpose other than its original use (unless this is permitted development) then the local planning authority can investigate and require the individual/s responsible for the unauthorized development to take corrective action. This needs to be proportionate and could include in less serious cases applying retrospectively for planning permission or in extreme cases demolition.

The Localism Act 2011 gave new powers to local planning authorities by extending the time available to them to investigate cases where unauthorized development has been deliberately concealed.

Figure 23. Planning application process

Source: www.planningportal.co.uk/planning/planning-applications/the-decision-making-process



1.4. Public participation

The United Kingdom Planning & Compulsory Purchase Act (2004) related to England, Wales and Scotland, establishes the requirement that local planning authorities state their "promise to consult" in a statement of community involvement; this commonly means a six-week public consultation. Since 2012, in addition to their statement of community involvement, English local authorities must also prepare a statement of consultation, which sets out how they have undertaken community participation and stakeholder involvement in the production of their local development plan.

According to the Planning Policy Statement 12: Local Development Frameworks,[209] local planning authorities are expected to fulfil several obligations in terms of openness and transparency in the plan-making process. Among mechanisms for public participation, there is a public consultation on issues and options paper (six weeks normally) and a pre-submission consultation on preferred options (a formal process to give people the opportunity to comment on how the local planning authority is approaching the preparation of the development plan document). This lasts six weeks too. After the plan is reviewed by the Planning Inspectorate, there is an examination in public and hearing of evidence by the Planning Inspectorate (several days normally).

Third sector organizations and civic society can have an input into the decision-making process and can influence particular plans or issues.

Also, there are public-private partnerships with a range of stakeholders working together to deliver action on the ground. Partly depending on market conditions, it might be much more private sector led, and managed, facilitated and guided by the public sector.

Moreover, neighbourhood planning, as said, is produced by local communities; they are invited to develop their own statutory plan and curate the process. They define problems and set agendas; organize public consultations; develop policies and actions for the neighbourhood and enable the plan to pass through its local referendum. If the plans pass the referendum, it is approved by the local planning authority (a simple majority is required).

In addition to the right to be heard, the public does have a right to access information and some feedback mechanisms and e-governance tools that allow people to participate. The Freedom of Information Act of 2000[210] creates a general right of access to all types of recorded information held by most public authorities in the United Kingdom, with an obligation to respond by 20 days.

209 Planning Policy Statement 12: Local Development Frameworks, https://files.cambridge.gov.uk/public/ldf/coredocs/RD-GOV-140.pdf.

210 The Freedom of Information Act of 2000, www.legislation.gov.uk/ukpga/2000/36/contents.

As a feedback mechanism, for example, it is worth mentioning the planning appeal complaint procedure: if after the decision on an appeal has been published, the Planning Inspectorate receives a complaint against an inspector's decision or the inspector or the way a case was administered, the customer quality team (independent) processes the case. All complaints are investigated thoroughly and impartially. To submit a complaint, it is possible to use an online customer contact form. Complaints procedures covers standard of service provided, conduct of staff, any action or lack of action by staff affecting individuals or groups, circumstances where staff have not properly followed government planning policy or guidance, relevant legislation and / or procedural guidance.

Finally, planning applications are available online for consultation so that individuals can respond to public consultation and see the decisions and the reasons for the decisions when they are made. Most local authorities have interactive maps where key policies and planning applications can be explored on a spatial basis.

1.5. Climate-friendly urban planning

The National Planning Policy Framework (updated in 2021) sets out the environmental objective of planning: to protect and enhance the natural, built and historic environment; and, as part of this, make effective use of land, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy. (National Planning Policy Framework, 2012). This means that all plans "should promote a sustainable pattern of development that seeks to (...) improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects" (Par. 11). Plans should take a proactive approach to mitigating and adapting to climate change, considering the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures (Par. 153, which also, and for the first time, refers to the provisions and objectives of the Climate Change Act 2008).

The main legal and policy framework for environment and climate action is also established at the national level and can be summarized as follows:

1. The Climate Change Act of 2008 commits the United Kingdom Government by law to reducing greenhouse gas emissions by at least 100 per cent of 1990 levels (net zero) by 2050. The Act also established the Committee on Climate Change to ensure that emissions targets are evidence-based and independently assessed. In addition, the Act requires the Government to assess the risks and opportunities from climate change for the United Kingdom (producing a United Kingdom Climate Change Risk Assessment), and to adapt to them (producing a National Adaptation Programme). The Committee on Climate Change's Adaptation Committee advises on these climate change risks and assesses progress towards tackling them.

2. The Renewable and Low Carbon Energy guidance was adopted in 2015 to help local councils in developing policies for renewable and low carbon energy and identifies the planning considerations.

3. The Town and Country Planning Regulations 2017 sets out a procedure for identifying those projects which should be subject to an environmental impact assessment and for assessing, consulting and coming to a decision on those projects which are likely to have significant environmental effects.

4. The Net Zero Strategy 2021 sets out policies and proposals for decarbonizing all sectors of the United Kingdom economy to meet the net zero target by 2050.

As a sub-regional example, the Greater London Authority adopted the London Environment Strategy in 2018,[211] which sets out an ambitious vision for improving London's environment for the benefit of all Londoners.

As a local example in England, in 2015, the Bristol City Council adopted a target for the city to be carbon neutral for direct emissions by 2050. This includes electricity, gas and road transport in the city. In November 2018, the city councillors and mayor declared a climate emergency. In March 2020, the Environment Board launched the city's first plan for collective climate action, called the One City Climate Strategy.[212] This is only a strategy and not a delivery plan (these will be developed and consulted on).

211 London Environment Strategy, https://www.london.gov.uk/sites/default/files/london_environment_strategy_0.pdf.

212 Bristol, One City Climate Strategy, 2020. www.bristolonecity.com/wp-content/uploads/2020/02/one-city-climate-strategy.pdf.

2. Land management

2.1. Land zoning and land uses

The types of land zone classes in the United Kingdom include:

1. Agricultural land
2. Woodland
3. Recreation
4. Transport
5. Residential
6. Community buildings

2.2. Commercial

The land area in England is predominantly of a non-developed use, with 91.5 per cent of the total land area of being non-developed land uses, 8.3 per cent developed land uses and 0.2 per cent vacant (unclassified in terms of land use).[213] The highest percentages of land use are agriculture (62.8 per cent), forest, open land and water (21 per cent) and residential gardens (4.8 per cent). The amount of land with developed use varies significantly by region. London has the highest percentage of land in developed use at 39.6 per cent and the south-west has the lowest figure at 6.7 per cent.[214]

The categories listed above are subdivided into even smaller and more specific categories. For instance, different types of commercial properties or businesses are differently zoned, although they are all categorized under "commercial use". It may be possible to get zones changed. To do this, the interested person would be required to provide the local authority with a good reason and how the changes will have a positive economic and environmental impact on the area.

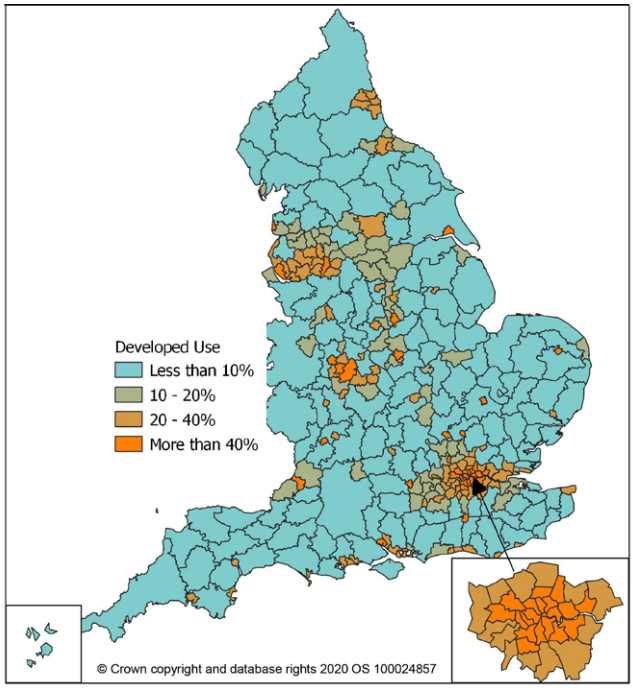
Just over approximately 40 per cent of the area of England (5.6 million hectares) is protected against development by one or more environmentally protected designations. Of land in the country, 10.5 per cent is classified as within National Flood Zone 3 by the Environment Agency.

Thisarea is assessed to be at risk of at least a one in one hundred chance of flooding each year from river areas or at least a one in two hundred chance of flooding from the sea. This area does not take into account the presence of defences and only focuses on flooding from rivers or the sea. Of land in National Flood Zone 3, 5.8 per cent is of developed use, compared to 8.6 per cent outside of Flood Zone 3.

213 Ministry of Housing, Communities and Local Government, Planning Official Statistics Release (2020). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900910/Land_Use_in_England__2018_-_Statistical_Release.pdf.

214 Government Office for Science, Urbanisation Trends (2021). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994570/GO-Science_Trend_Deck_-_Urbanisation_section_-_Spring_2021.pdf.

Figure 24. Ministry of Housing, Communities and Local Government, Planning Official Statistics Release, 2020.

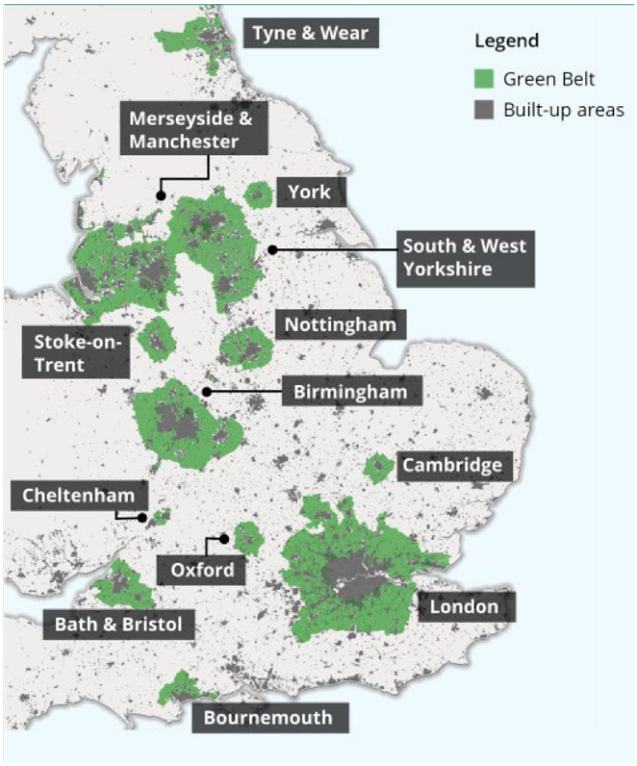


Of land in England, 4.7 per cent is classified as being at a high risk of flooding from rivers and the sea, while 3.8 per cent is classified as being at a medium risk. Unlike National Flood Zone 3, this considers the effect of any flood defences in the area. These defences reduce but do not completely stop the chance of flooding as they can be overtopped or fail.[215]

215 Ministry of Housing, Communities and Local Government, Planning Official Statistics Release (2020). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900910/Land_Use_in_England__2018_-_Statistical_Release.pdf.

Figure 25. Green Belt boundaries, 2021

Source: Department for Levelling Up, Housing & Communities, English local authority Green Belt dataset, 2020/21.



Moreover, the United Kingdom has a policy to control urban growth and prevent urban sprawl by keeping land permanently open: this policy is called the Green Belt. On protecting the Green Belt, the National Planning Policy Framework urges local planning authorities to maximize the use of suitable brownfield sites and under-used land before considering changes to Green Belt boundaries. The National Planning Policy Framework states that development on the Green Belt should be regarded as "inappropriate" and "is, by definition, harmful to the Green Belt" (paragraph 149f, National Planning Policy Framework). The framework provides examples of exceptions, such as limited affordable housing for local community needs under policies set out in the local plan. It also provides that development in the Green Belt should only be approved in "in very special circumstances" (paragraph 137). These "very special circumstances" exist only when the potential harm to the Green Belt is "clearly outweighed by other considerations" (paragraphs 147–149).

It is for local planning authorities to define and maintain Green Belt land in their local areas. The Government expects local planning authorities with Green Belts to establish Green Belt boundaries in their local plans, which can be altered as part of the plan review process.[216]

The extent of the designated Green Belt in England, as at the end of March 2022, was estimated at around 16,382 km^2 (or 6,324 square miles), covering 12.6 per cent of England's land area.[217] An estimated 93.2 per cent of the Green Belt was undeveloped land in 2018, and this land was primarily used for agriculture (65.6 per cent of all Green Belt land). Sixty-seven per cent of Green Belt land was developed, with over half of this developed land accounted for by roads and other transport infrastructure. Residential buildings accounted for 0.3 per cent of Green Belt land. In 2017/18, 8.9 km^2 of previously undeveloped Green Belt land changed to a developed use, of which 2.9 km^2 turned into residential use.[218]

2.3. Security of tenure: land tenure types and land registry

In England, there are essentially two main types of tenure: freehold and leasehold. Freehold comes closer to absolute ownership. Leasehold confers ownership for a temporary period, subject to terms and conditions contained in the contract or lease.[219]

A covenant is a promise contained in a deed, such as a deed passing ownership of property from one person to another.

216 House of Commons, Green Belt (2022). https://researchbriefings.files.parliament.uk/documents/SN00934/SN00934.pdf.

217 House of Commons, Green Belt (2022). Ibid.

218 Ibid.

219 Commonhold and Leasehold Reform Act 2002. www.legislation.gov.uk/ukpga/2002/15/notes

There are two types of covenants: the positive covenant, which is a promise to do something, such as to pay rent or to keep the property in repair, and the restrictive covenant, which is a promise not to do something, such as cause a nuisance to neighbours. For historical reasons, positive covenants cannot apply to freehold land once the first buyer of the property has sold it. However, both positive and restrictive covenants apply to leasehold property. As long-term residential leasehold has become more and more widely criticized, pressure has grown for the national Government to bring forward a scheme which would combine the security of freehold ownership with the management potential of positive covenants, which could be made to apply to each owner of an interdependent property. That scheme is the third type of tenure in England, called commonhold,[220] which could be made to apply to each owner of an interdependent property. However, this is extremely rare at present with less than 200 commonhold properties in the whole of England.[221]

In England (and Wales), the ownership of land is registered at the His Majesty's Land Registry, a non-ministerial department which provides landowners with a land title guarantee, as well as with a title plan that indicates the property boundaries.

To register land, citizens fill in an application for registration and pay the registration fee which depends on the value of the property. Once a property is entered into the register, the Land Registry records any ownership changes, mortgages or leases affecting it. The Land Registry holds, among others, the following information:[222]

1. the title register, i.e., the owner's name, the price paid for the property, the mortgage status;
2. the title plan, i.e., the property boundaries;
3. the title summary, which includes the lender's name and whether the property is freehold or leasehold;
4. a flood risk indicator that gives information on how likely the property is to flood.

This information is available in an online register and accessible to anyone by search by address or by location. For agricultural land, a specific land registry is available: the Rural Land Register.

2.4. Land acquisition for public purposes and compensation schemes

Sections 122 to 134 of the Planning Act of 2008 set out the main provisions relating to the authorization of compulsory acquisition of land, meaning the legal mechanism by which certain bodies (known as "acquiring

220 Ibid.

221 www.howardestateagency.co.uk/news/confused-about-tenure/howe-000084.

222 www.rocketlawyer.com/gb/en/quick-guides/land-registry.

authorities") can acquire land without the consent of the owner. These provisions specify the conditions which must be satisfied if a development consent order is to authorize compulsory acquisition and apply the provisions of the Compulsory Purchase Act 1965 (with appropriate modifications). Section 122 of the Planning Act provides that a development consent order may only authorize compulsory acquisition if the Secretary of State is satisfied that:[223]

1. the land is required for the development to which the consent relates, or is required to facilitate, or is incidental to, the development, or is replacement land given in exchange under section 131 or 132; and
2. there is a compelling case in the public interest for the compulsory acquisition of land (to be justified and demonstrated by the applicant).

The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. Expropriation or compulsory purchase is possible for both public and private developments, including infrastructure projects, public facilities and commercial projects such as retail and residential developments.

There are strong legal compensation rights for those affected. The overriding principle of compulsory purchase compensation is "equivalence": neither more nor less than the value of the land taken. As well as compensation for the market value of any land taken, additional compensation may be payable; for example, occupiers of residential properties may also be entitled to a statutory home loss payment. Compensation varies according to the type of property: business,[224] agricultural,[225] or residential.[226]

2.5. Land-based financing

There are several ways in which land and property are used to raise revenue for public entities (i.e., land value capture mechanisms).[227]

223 Planning Act 2008: procedures for the compulsory acquisition of land, 2013. www.gov.uk/government/publications/planning-act-2008-procedures-for-the-compulsory-acquisition-of-land.

224 Compulsory purchase and compensation: guide 2 - compensation to business owners and occupiers (2021). www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-2-compensation-to-business-owners-and-occupiers.

225 Compulsory purchase and compensation: guide 3 - compensation to agricultural owners and occupiers (2021). www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-3-compensation-to-agricultural-owners-and-occupiers#compensation-when-land-is-taken.

226 Compulsory purchase and compensation: guide 4 - compensation to residential owners and occupiers, 2021 www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-4-compensation-to-residential-owners-and-occupiers.

227 House of Commons, Land Value Capture Report (2018). https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/766/766.pdf.

Examples are provided below:

1. **Capturing land value uplift of a garden community**: making sure an appropriate portion of the enhanced land value arising from the development is made available to fund the delivery of infrastructure; facilities; legacy arrangements; other measures needed to support development of a sustainable garden community.

2. **Public land acquisition:** This can be used to capture the works, provisions and contributions required from developers to mitigate the impact of the development. Indeed, on publicly owned land local authorities would have greater power to introduce incentives to require developers to build sites within an agreed timeframe through the use of options to develop and forfeitable fees.

3. **Delivering a proportion of the planned units as affordable housing** (local plan will determine the size and the proportion of units expected).

4. **Section 106 planning agreements:** Often referred to as planning obligations—are legally enforceable obligations entered into under Section 106 of the Town and Country Planning Act 1990. They are agreements made between a developer and the local planning authority designed to meet the concerns the authority may have about meeting the cost of providing new infrastructure made necessary by the development. These can be used to capture the works, provisions and contributions required from developers to mitigate the impact of the development. They are site specific and used to meet prescribed outcomes (e.g., deliver affordable housing at rates set out in the local plan), compensatory payments (to overcome loss or damage because of the development (e.g., to open space or biodiversity assets) or mitigation (to help alleviate the negative impacts of the development through the provision of road infrastructure, support for public transport or cycle infrastructure).

5. **Community infrastructure levy:** This is a locally determined, fixed-rate development charge designed to help finance the infrastructure needed to delivery infrastructure to support the development of the affected area. The levy was brought into force on 6 April 2010 by the Community Infrastructure Levy Regulations 2010, made under Section 206 of the Planning Act 2008. In contrast to Section 106, which raises revenue for infrastructure associated with specific development, the community infrastructure levy was intended to address the cumulative impact of development in an area. The levy is set in terms of "£ per square metre" — rather than based upon the increase in the value of land.

Rather than being a site-specific tax this is a wider contribution to a local authority's broader infrastructure needs and is a payment based on most development. The fee can be pooled and used for delivering critical local infrastructure at the discretion of the local authority. The levy charge is based on an audit and costing of infrastructure needs at the scale of the local authority and is published via a Regulation 123 list. If community infrastructure levy payments are collected for a development that falls within the boundary of a neighbourhood plan the local community is entitled to 25 per cent of the charge and they can use this resource for their community benefit. It has the function of raising revenue arising from development gains.

6. **Taxation on landowners:** The tax level could be based on what is needed to encourage release of land and this would vary depending on the land use, with residential use taxed at a higher rate than industrial use.[228]

3. Dispute-resolution mechanisms

In England, property, land and neighbour disputes can be resolved through alternative dispute resolution. For example, land boundary disputes have these main four options before litigation:

1. Mediation
2. A binding evaluation by an expert
3. A non-binding evaluation by an expert
4. Following a pre-litigation protocol

Also, the Arbitration Act of 1996 foresees the possibility of resolving disputes through an arbiter, although with this mechanism the timeline to hear and determine the case is a little uncertain and the cost may be relevant and not accessible to all.

Under section 78 of the Town and Country Planning Act 1990 (England) project applicants have the right to appeal planning decisions to the Secretary of State (central Government), for example, in case a planning permission is refused or in case of non-determination (application has not been determined within the relevant statutory period).

There are three main procedures to appeal a planning decision: written representations, a hearing or an inquiry. Hearings and inquiries are open to the wider public. The hearing is an inquisitorial process led by the inspector who identifies the issues for discussion based on the evidence received and any representations made.

228 House of Commons, Land Value Capture Report (2018). https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/766/766.pdf.

The hearing may include a discussion at the site or the site may be visited on an accompanied (without any discussion) or unaccompanied basis. An inquiry is open to the public and provides for the investigation into, and formal testing of, evidence, usually through the questioning ("cross examination") of expert witnesses and other witnesses. Parties may be formally represented by advocates. The site may be visited before, during or after the inquiry.[229] While promoting and supporting online appeals through the Appeals Casework Portal, England also provides for the possibility for potential appellants without access to the Internet to contact the Planning Inspectorate and ask to receive the appeal form(s) in another format.

There are different time limits to make an appeal depending on the type of appeal and the circumstances. Most planning applications decisions must be appealed within six months from the decision notice.

The planning inspectors decide most appeals on behalf of the Secretary of State. The Planning Inspectorate will be responsible for setting the hearing or inquiry date. This should occur between 10 and 14 weeks from the start date (although for the inquiry there is flexibility for within 13 and 16 weeks).

There are strict timeframes[230] and procedures in place to ensure that relevant information is submitted in a timely manner and to enable all parties the opportunity to comment. The whole process from submission to decision should take around three months.[231]

There is no opportunity for general public/objectors to have the merits of a statutory planning document or a planning decision reconsidered. This would involve an appeal and only an applicant can appeal for a public inquiry on the grounds of planning merit (and make subsequent appeals to the High Court). Aggrieved members of the public/objectors have no right of appeal.

There is the possibility to challenge planning appeal decisions within 42 days from the date of the decision: the High Court is the only authority that can formally identify a legal error in an inspector's or Secretary of State's decision and require that decision to be re-determined. Timeframes can vary considerably. Many challenges are decided within six months, some can take longer.

This judicial review, under Part 54 of Civil Procedure Rules, can only be exercised by the High Court and applies also to decisions by public authorities, including planning decisions by local planning authorities, statutory agencies, as well as appeal decisions of the Secretaries of State.

229 Planning Appeals Procedural Guide. www.gov.uk/government/publications/planning-appeals-procedural-guide/procedural-guide-planning-appeals-england.

230 Appeals average timescale. www.gov.uk/guidance/appeals-average-timescales-for-arranging-inquiries-and-hearings.

231 www.planningportal.co.uk/planning/appeals/types-of-appeal/planning-appeals.

4. Key takeaways and lessons

One of the key characteristics of the English planning system is continuity in terms of the basic principles of a plan-led system, with many decisions being decentralized to the local level, although there is also a high degree of national level scrutiny to ensure that locally made decisions (whether in relation to plans or planning applications) are consistently delivered and in accordance with nationally derived policy and political priorities. A way to effectively implement decentralization to the local level is through land-based financing mechanisms which allow local authorities to capture the value of the land (e.g., the community infrastructure levy, or the Section 106 Agreements through developer exactions).

Nevertheless, despite this degree of continuity, it is also a system that is evolving to meet political priorities. Planning therefore is a political process and to large extent the system would be described as working, particularly in terms of the way that development is effectively controlled and managed.

Indeed, specific and clear time limits are set for planning applications that also foresee different times for major development, for public service infrastructure development, and for applications potentially sited on a sensitive location and often requiring an environmental impact assessment.

The "planning guarantee" ensures that no application should spend more than a year with decision-makers, including appeals. In this regard, planning appeals decisions follow strict timeframes and procedures. The whole process from submission to decision should take around three months.

Moreover, the United Kingdom has a policy in place, called the Green Belt, which aims to control urban growth and prevent urban sprawl by regarding development on the Green Belt as "inappropriate" and approving it only in very special circumstances.

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ANNEX: CASE STUDY ON SPAIN (CATALONIA)

Link between city plans and district plans in Catalonia

SPAIN COUNTRY PROFILE
QUICK FACTS

Country name	Kingdom of Spain
Type of government	Constitutional parliamentary monarchy
Form of State	Unitary State
Surface area	505,970 km2
Gross domestic product	$1.43 trillion (2021)
GDP per capita	$30,115.70 (2021)
Population	47.32 million (2020)
Urban population (percentage out of the total population)	81 (2021)
Urban population growth (annual percent)	0.2 (2021)
Population density	95 inhabitants per km²

Barcelona, Spain
Source: Pixabay https://cdn.pixabay.com/photo/2018/03/14/23/00/barcelona-3226639_960_720.jpg

List of acronyms

FARs	Floor area ratios
GDP	Gross domestic product
MITMA	Ministry of Transport, Mobility and Urban Agenda
PAU	Action urban plan
PAUM	Municipal urban action programmes
PEU	Special urban plans
PDU	Urban development plans
PMU	Urban renewal plan
POUM	Municipal urban plan
PP	Detailed plan
PPR	Residential detailed plan
PPUD	Detailed urban delimitation plans
PUD	Derived urban planning
SNU	Non-buildable land
SU	Urban land

COUNTRY BACKGROUND

Spain is a constitutional parliamentary monarchy, subject to the rule of law[232] and led by the monarch, who is the Head of State, and the president of the Government, who presides over the Council of Ministers, which constitutes the executive power. Powers and responsibilities of the monarch are laid down in the Constitution.[233] The General State Administration comprises of:

1. The Central Organization, which includes the ministries.
2. The Territorial Organization.
3. Foreign state administration entities (e.g., embassies).

There may also be higher or managerial bodies or public agencies not integrated or dependent on the general structure of the ministry which, exceptionally, are directly attached to the minister.[234] There are 22 ministries in Spain; the Ministry of Transport, Mobility and Urban Agenda is the one in charge of:

1. Land, air and maritime transport infrastructure
2. Control, planning and administrative regulation of transport services
3. Access to housing, building, urban planning, land and architecture
4. Regulatory organization of postal and telegraphic services

232 The Constitution of Spain of 1978, Article 1.1: www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf

233 Chapter v, Part II of the Spanish Constitution is disciplining the Crown.

234 The Government of Spain web page, administracion.gob.es, General State Administration Organization: https://administracion.gob.es/pag_Home/en/espanaAdmon/directorioOrganigramas/OrganizacionAGE.html.

5. Services relating to astronomy, geodesy, geophysics and cartography[235]

Spain is located in the southern part of Europe and is a unitary State composed of 17 autonomous communities (i.e., the regions into which the national territory is divided), including Catalonia, and two autonomous cities with varying degrees of autonomy.[236] The autonomy of the regions is granted by Article 2 of the Constitution of Spain. The capital of Spain is Madrid, while the capital of the Catalan region is Barcelona.

Spain has a flourishing economy with a gross domestic product (GDP) of $1.43 trillion and in 2021 and a GDP per capita of $30,115.70 in the same year.[237]

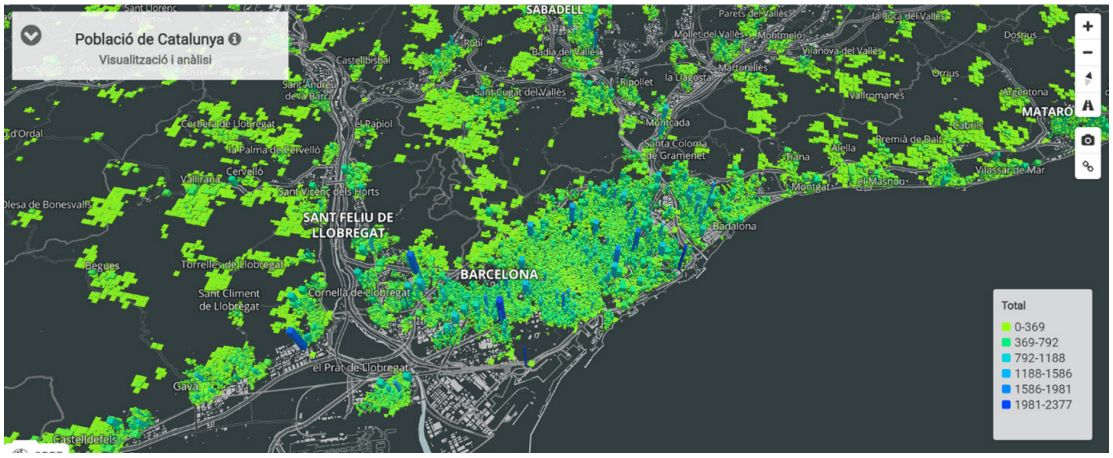
Demographically, Spain has a population of 47.32 million (2021) over a surface area of 505,970 km^2, with a population density of 95 inhabitants per km² (2020).[238]

The autonomous region of Catalonia is in the north-east part of Spain at the border with France. Catalonia has a surface of 32,107 km² and 7,7 million inhabitants, according to the 2020 population census, 67 per cent of whom live in Barcelona.[239]

Catalonia has 947 municipalities, but little rural population, because most citizens (around 95 per cent) are concentrated in 300 municipalities with more than 2,000 inhabitants, therefore Catalonia can be considered a highly urban region.[240]

Figure 26. Frame of the interactive map of the population of Catalonia

Source: Catalan Statistical Institute, interactive map of the population (2016) http://betaserver.icgc.cat/poblacio-catalunya?XYZPB=2.147861,41.409255,10,30.0,-17.6&PROP=TOTAL&ANY=2016&COLORS=96ff11,0047ff&FILTERS=0,2378&.



235 Ministry of Transport, Mobility and Urban Agenda web page: https://www.mitma.gob.es/ministerio.

236 European Union web page, countries profiles, Spain: https://european-union.europa.eu/principles-countries-history/country-profiles/spain_es.

237 https://data.worldbank.org/country/spain.

238 Ibid.

239 Government of Catalonia web page "GenCat", territory and population https://web.gencat.cat/es/temes/catalunya/coneixer/territori-poblacio/.

240 bid.

The structures, powers, institutions and their functions of the autonomous region of Catalonia are regulated by the Decree No. 306 of 2006,[241] modified by the Statute of Autonomy of Catalonia (Catalan statute).

The Catalan region is territorially divided into counties, municipalities and "vegueries" (provincial administration) (Art. 83.1 Catalan statute). Counties constitute the supra-municipal area, municipalities are the basic local bodies of the territorial organization (Art. 86), while vegueries are Catalan supra-municipal administration for the exercise of the inter-municipal government of local cooperation having their own legal personality (Art. 90).

1. Urban planning

1.1. National spatial planning system

The Spanish planning system is highly decentralized as planning competences are devolved to regions. However, regional spatial planning must be coherent with the national framework. Article 148.3.a of the Spanish Constitution outlines that the autonomous communities can assume urban and country planning competencies as well as delivery of housing.

1.2. Catalan spatial planning system

The Statute of Catalonia, Article 149.1, attributes to the Generalitat[242] the following exclusive competences over spatial planning:

1. Establishment of guidelines for the planning and management of the territory, the landscape and the actions involved they affect.
2. Establishment and regulation of territorial plans and the procedure for processing and approving them.
3. Establishment and regulation of the plans for the protection of natural spaces and biological corridors.
4. Forecasts on locations of infrastructures and equipment under the jurisdiction of the Generalitat.
5. Determination of specific measures to promote territorial, demographic, socio-economic and environmental balance.

241 The Statute of Autonomy of Catalonia https://portaljuridic.gencat.cat/eli/es/lo/2006/07/19/6.

242 The Generalitat is the institutional system in which the self-government of Catalonia is organized politically and it is made up of the Parliament, the Presidency of the Generalitat, the Government and the other institutions established in Chapter V of Title II of the Catalan Statute. The Generalitat is territorially organized into municipalities, vegueries (larger territories that divide the Catalan region of medieval origins), counties and other local bodies. The local government of the autonomous Catalan region is regulated by Chapter VI of the Catalan Statute.

Regarding urban planning the Catalan regional government has exclusive competence over matters including (Art. 149.5):

1. The regulation of the land planning regime, including the determination of the criteria for the various types of land and their uses.
2. The regulation of the legal system of land ownership, respecting the basic conditions established by the State to guarantee the equality of the exercise of the right to property.
3. The establishment and regulation of planning and urban management instruments, and of their processing and approval procedure.
4. The regulation of public land and housing assets and the regime of administrative intervention in building, urbanization and the use of land and subsoil.
5. The protection of planning legality, including planning inspection, orders to suspend works and licenses, measures to restore altered physical legality, and planning discipline.

The exclusive jurisdiction of the Generalitat covers also public works – including planning, construction and financing of the works – carried out in the Catalan territory that have not been classified as of general interest or affect another autonomous community (Art. 148 of the Catalan Statute), as well as matter of housing (Art. 137 of the Catalan Statue) and land transport (i.e., roads or rails) within the territory of Catalonia, regardless of the ownership of the infrastructure (Art. 169). The Generalitat shares the right to revise urban expropriation with the State (Art. 149.6).

1.3. Planning objectives and hierarchy of plans

Urban and territorial planning is implemented through the "Planejament urbanístic General" (general planning) which is composed of "Plans Directors Urbanistics" (PDU – urban master plan – supramunicipal level), "Plans d'Ordenacio Urbanistica Municipal" (POUM – city plans) and the "normes de Planejament urbanístic" (planning regulations). The "programes d'actuació urbanística municipal" (PAUM – municipal urban action programmes) also form part of general planning and complement it (Art. 55.1 of the Urban Planning Law).

General planning is developed through the "planejament urbanístic derivat" (PUD – derived urban planning), which is supplemented by "plans especial urbanistic" (PEU – special urban plans), "plans de millora urbana" (PMU – urban renewal plans), "plans parcials urbanístics" (PPU – detailed urban plans) and "plans parcials urbanístics de delimitació" (PPUD – detailed urban delimitation plans) (Art. 55.2).

Derived urban planning is subject to the determination of general planning.

However, special urban plans may introduce general planning-specific modifications necessary for the fulfilment of their functions. In the case of urban improvement plans, Article 70.4 applies. (Art. 55.3)

Land that urban planning reserves for mobility, community facilities and public open spaces is included in general urban systems if the level of service is communal or higher. General urban systems shape the general structure of the land and determine urban development (Art.34.1).

At the same time, the local urban systems include land that urban planning reserves for mobility, community facilities and public open spaces, if the level of service is an urban or buildable land action area or the urban land stock in a municipality, as determined, in the latter case, by the municipal land use plan or the "Programa d'Actuació Urbanística Municipal" (PAUM – municipal urban action programme) (Art.34.2).

The urban system of community facilities includes public centres, religious, cultural, educational, sports, health, welfare, technical services, transport and other facilities of public or social interest.

The urban system of public open spaces includes parks, gardens, green areas and spaces for recreation, leisure and sport. The specification of the elements that compose this system must consider the existence of archaeological remains of declared interest.

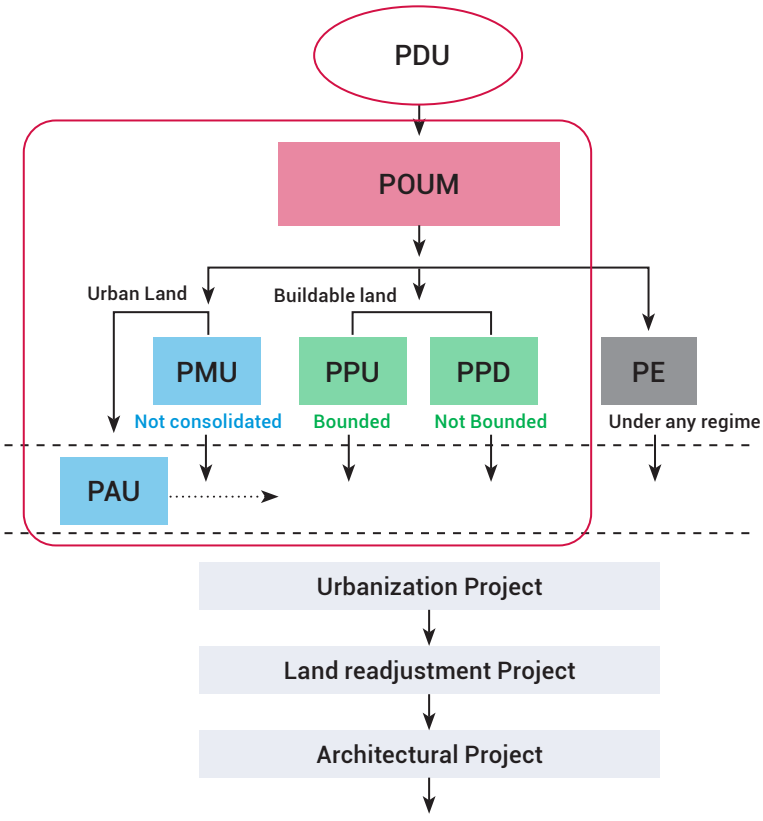
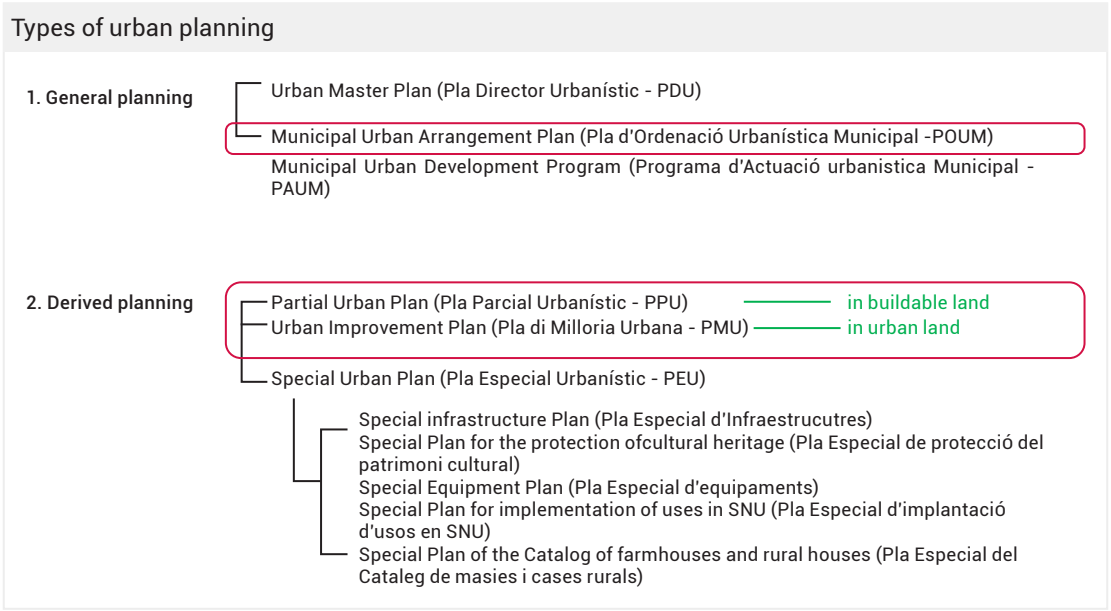


Figure 27. Summaries of urban plans

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Escola Sert CO AC, Intensification programme in urban planning practice (3rd edition) - Module 1, Introduction to urban planning, interrelation between different instruments (2009).

Figure 28. Types of urban planning

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Escola Sert CO AC, Intensification programme in urban planning practice (3rd edition) - Module 1, Introduction to urban planning, interrelation between different instruments (2009).



1.4. Content of plans

1.2.1 Land classification

The urban regime of the land is determined by the classification, the qualification in zones or systems and the inclusion in a derived urban planning sector or in an urban action boundary (Art. 24 of the Urban Planning Law)

The land classification system is one of the core elements of the Spanish planning system. All local level plans (city and village plans) must classify their land according to one of the following categories (Art. 25):

1. **Urban land** – land that is already urbanized, has proper streets and connections to basic services such water, electricity and sewerage;
2. **Buildable land** – land that can be built on and become urban once streets and connections to basic services are built;
3. **Not buildable land** – land that needs to be protected and cannot be built on.

Figure 29. Land classification (1986)

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Escola Sert CO AC, Intensification programme in urban planning practice (3rd edition) - Module 1, Introduction to urban planning, interrelation between different instruments (2009).

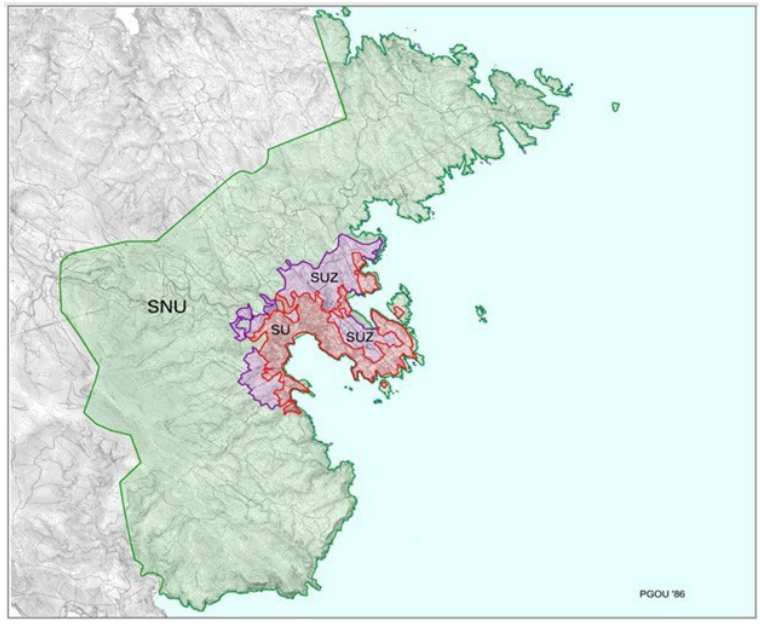
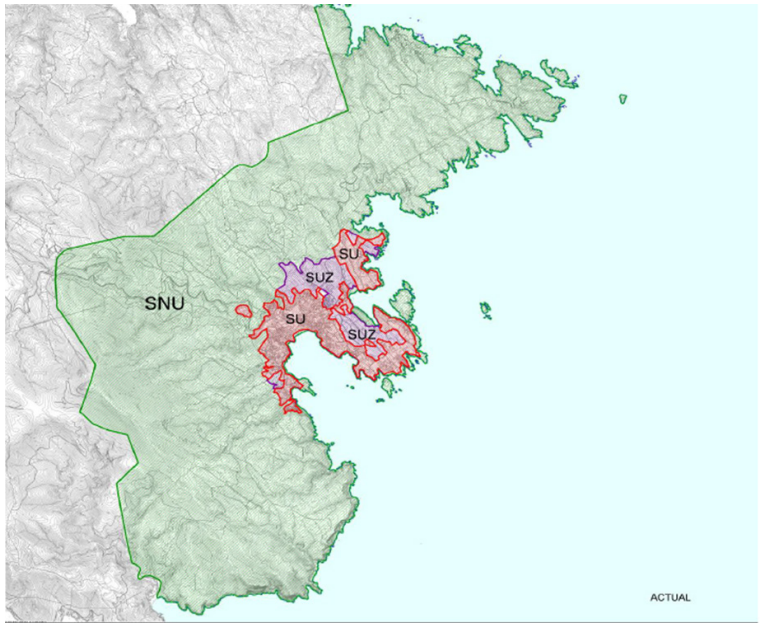


Figure 30. Land classification (2009)

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Escola Sert CO AC, Intensification programme in urban planning practice (3rd edition) - Module 1, Introduction to urban planning, interrelation between different instruments (2009).



Urban land is defined by Article 26 of the Urban Law No. 3 of 2012[243] as the land that has been integrated into the urban fabric and therefore has all the basic urban services, or is included in areas at least two-thirds of whose buildable area has been built on. However, the simple fact that the land faces roads, interlocal connection roads, or roads that delimit the urban land does not imply that the land can be considered as urban. Urban land also includes the land that, in the execution of urban planning, achieves the degree of urbanization it determines (Art. 26.1.b). Basic urban services consist of the following (Art. 27):

1. The road network has a sufficient level of consolidation to allow connectivity with the primary municipal road network.
2. Water and sanitation networks.
3. Electricity supply.

Urban land can be either consolidated or non-consolidated. To understand the difference between the two, it is crucial to previously define the concept of "plot". According to Article 29, a plot is the land classified as urban buildable land according to its zoning qualification, and that:

1. Has been urbanized in accordance with the urban plan or, in any case, is equipped with the essential urban services, fronts a street with public lighting and is completely paved, including the pedestrian area
2. Can obtain an immediate licence because it is not included in an area subject to an urban renewal plan or a pending urban development boundary under development.
3. To build it, no land must be ceded for use as roads or streets in order to regularize alignments or complete the road system.

According to Article 30, consolidated urban land is land that can be considered to be a plot.

Article 31 defines non-consolidated urban land as land that lacks one or a few urban basic services needed to access the licence to build (e.g., connection to the sewerage system, connection to the main streets, etc.). Consolidated urban land can become non-consolidated when the general planning subjects it to urban transformation by incorporating it into areas subject to an urban renewal plan or urban intervention boundaries, or when it ceases to be a plot because of new development (Art. 31.2).

Under Article 32, non-buildable land is that which the municipal urban plan must classify, or deems necessary to classify, as non-buildable due to, among other things, the following:

243 Urbanism Law No. 3 of 2012: https://territori.gencat.cat/web/.content/home/01_departament/normativa_i_documentacio/documentacio/territori_mobilitat/urbanisme/publicacions/text_refos_i_reglament_de_la_llei_durbanisme/ql-94urbanisme2.pdf.

1. A special protection regime that aims to avoid the transformation of the land to protect its connecting, natural, agrarian, landscape, forestry or other interest.
2. The subjection of land to limitations or easements for the protection of the public domain.
3. The objective is to ensure the rational use of land and quality of life, in accordance with the sustainable urban development model defined in Article 3, as well as other objective criteria established by territorial or urban planning.
4. The agricultural value of land included in protected geographical indications or designations of origin and the reservation of land for general urban systems not included in urban or buildable land.

Buildable land is defined by Article 33 as the land that, according to article 3, the corresponding municipal land-use plan POUM deems necessary and appropriate to ensure the growth of population and economic activity. Buildable land must be quantitatively proportional to the growth forecasts of each municipality and must allow, within the urban or metropolitan system into which it is integrated, the realization of land and housing programmes.

Private owners of buildable land cannot apply for licensing directly, but they need an additional plan, the "plan partial", to be approved to do it.

According to the planning legislation, their land is still not urban as it lacks streets, water, sanitation and electricity. To be considered urban land and to apply for licensing, the owners will have to build those connections and pass through the approval of the partial plan. Once the partial plan is approved and due to the urbanization works, the land has acquired the plot status, the land becomes buildable.

1.2.1 Municipal urban plan

The "pla d'ordenació urbanística municipal" (municipal urban plan) is the overall urban planning instrument for the territory and may cover one or more municipalities (Art. 57.1).

The municipal urban plan's purpose includes the following: (Art. 57.2):

1. To classify the land – between urban land, buildable land (consolidate or non-consolidate) and non-buildable land – to establish the corresponding legal regime.
2. To define the implementation urban model and the determinations for urban development, according to Article 3[244] of the Urban Planning Law.
3. To define the general framework to be adopted for the urban planning of the land and the guidelines for development. However,

244 Article 3 defines the sustainable urban development and sets the sustainable principles for urban planning.

autonomous urban plans can also implement other integral elements of the general land use.

Moreover, the municipal urban plan (Art. 58.1):

1. Classifies the land in the categories defined by the Urban Planning Law (e.g., urban, buildable and non-buildable), establishes the determination as well as the general structures and models for each class.
2. Includes forecasts on the availability of water and energy resources.
3. Defines the general system of public open spaces (e.g., spaces for schools etc.).
4. Establishes the necessary determinations to achieve sustainable mobility in the municipality.
5. Determines which architectural, archaeological, landscape and environmental values are to be protected.

In consolidated urban land and non-consolidated urban land areas, not subject to an urban renewal plan, the municipal urban plan defines spatial planning, sets the planning parameters necessary for the granting of building permits and indicates alignments (A. 58.3). In consolidated urban land, the municipal urban plan defines the land-use specific parameters and uses such as volumes, number of floors of the buildings and other detailed parameters that must guide the building project.

In buildable land, the municipal urban plan defines the delimitation of the boundaries drafted in plans for new development, infill, etc. ("sectors") and, for each of them, the gross buildability indexes, the maximum density, the main and compatible uses, and the standards that determine the minimum reserves for the local open space and equipment system ("public facilities").

In non-buildable land, the municipal urban plan:

1. Regulates each of the possible qualifications coherently with the desired grade of conservation and protection;
2. Regulates the basic parameters of admissible buildings;
3. Establish the limits referred to in Article 49.2;
4. Contains, where appropriate, the catalogue referred to in Article 50.2.

The municipal urban plan for urban land contains more detailed provisions as the builders will have to refer to it to understand how to build on a plot (e.g., numbers of floors, features of buildings, etc.). On the other hand, the municipal urban plan for consolidates or non-consolidated buildable land contains more general provisions to give more flexibility to the detailed plan

to come (e.g., it establishes the number of buildings per area or the amount of land that must be dedicated to urban services). The definition of the main infrastructures (e.g., road, accesses, etc.), new neighbourhoods, maximum number of units, etc. through the municipal urban plans is flexible and it is a subjective decision of the planner to provide or not details in such plans.

Figure 31. Example of a municipal urban plan identifying a boundary for a detailed plan

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Escola Sert CO AC, Intensification programme in urban planning practice (3rd edition) – Augusti Serra Monté, Module 1, Urban planning regime.

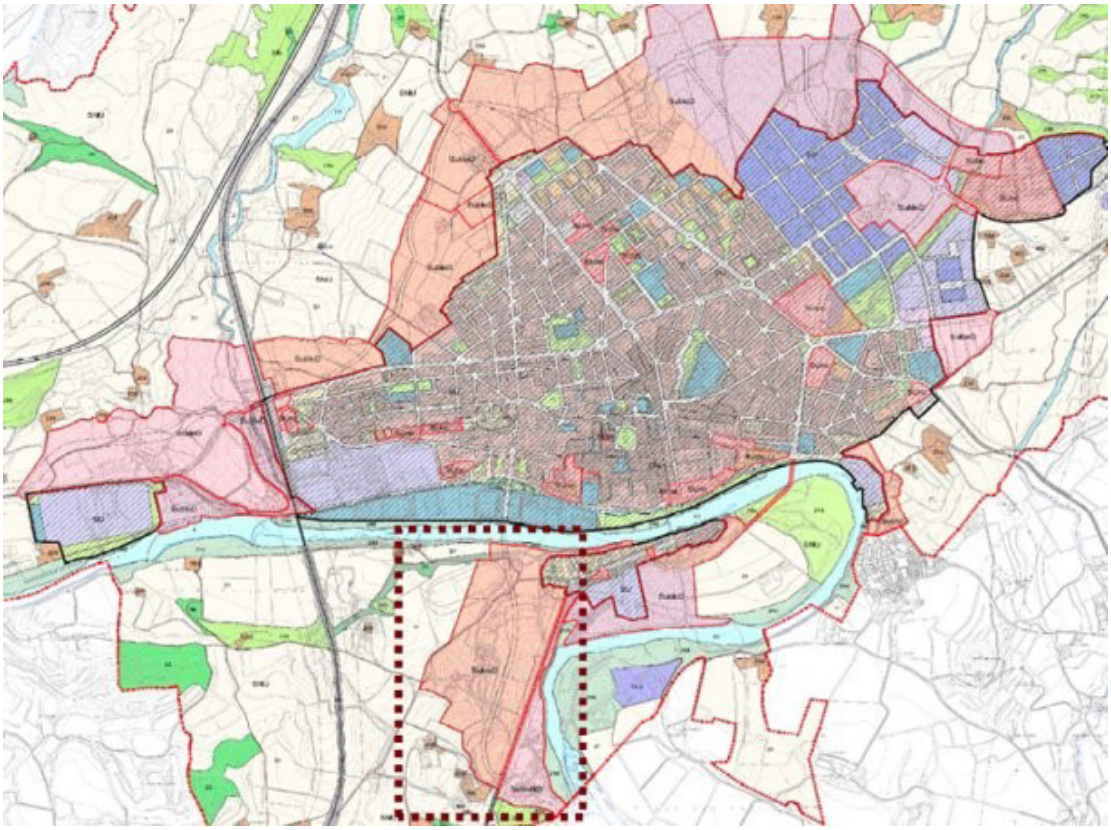
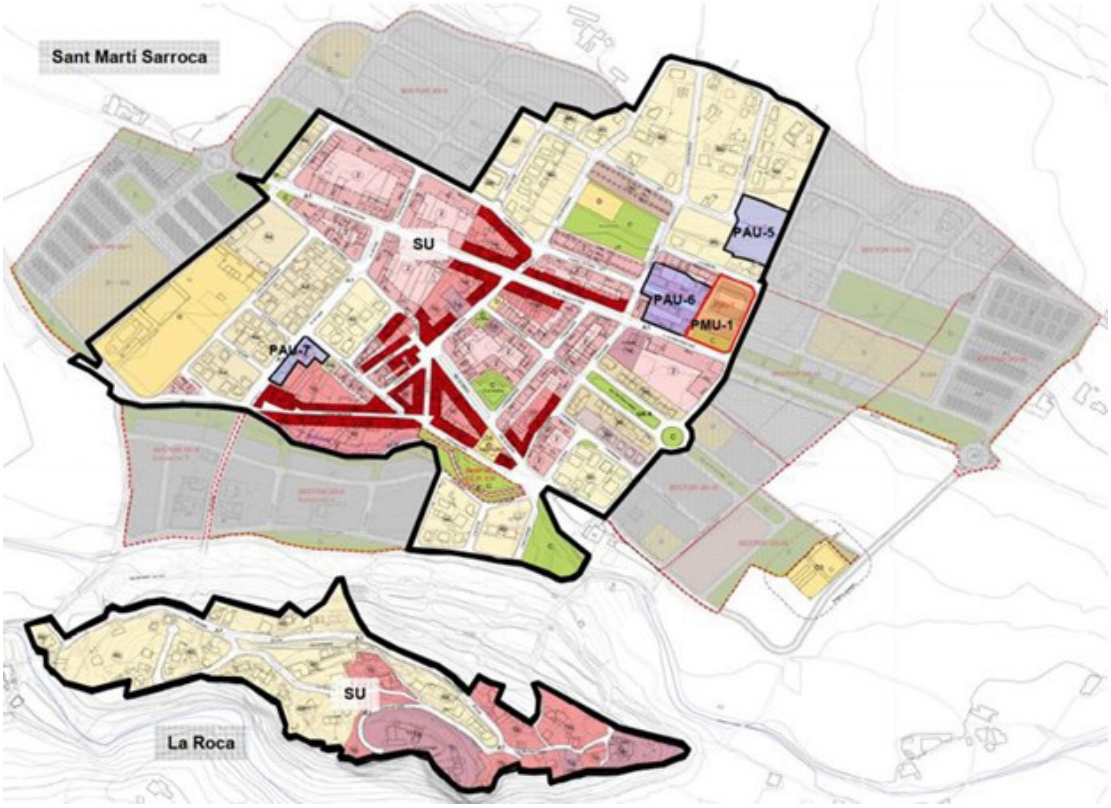


Figure 32. Sant Martì Sarroca – La Roca municipal urban plan defining urban land and non-buildable land

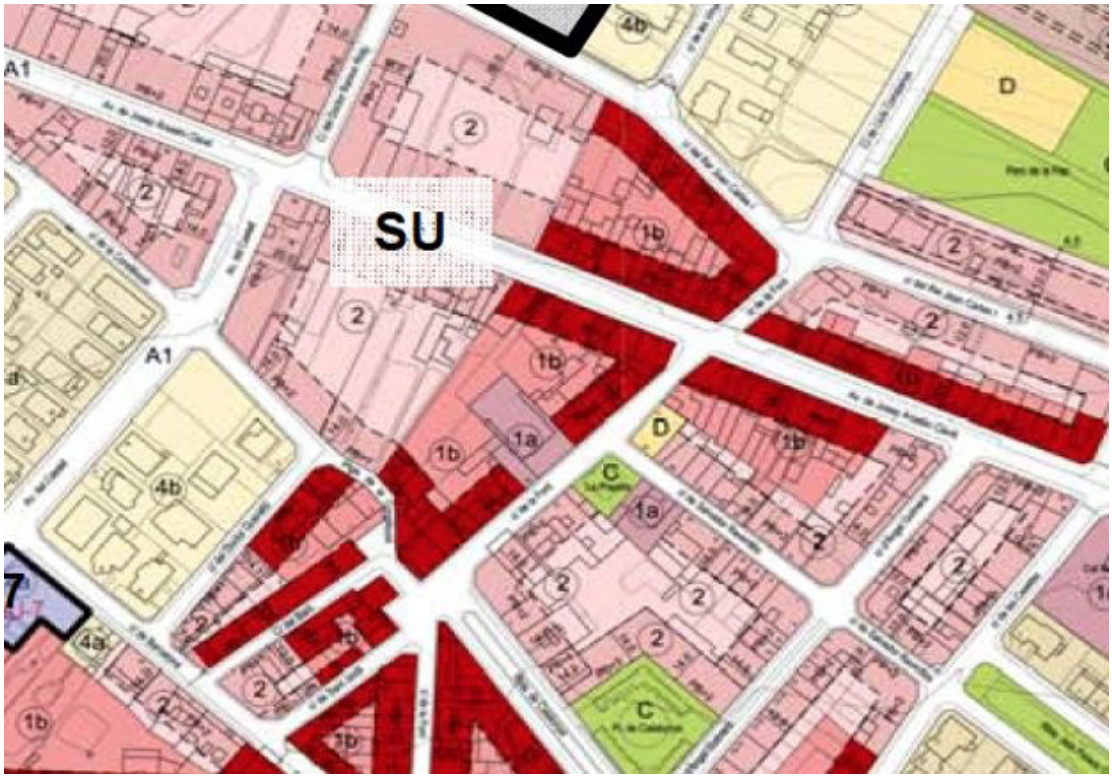
Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Escola Sert CO AC, Intensification programme in urban planning practice (3rd edition) – Augusti Serra Monté, Module 1, Urban planning regime.



The municipal urban plan in figure 33 classifies the land as "buildable" and not "urban" by including the area (PMU-1 in orange) in an urban renewal plan boundary. As a result, that piece of land cannot be considered urban anymore as it lacks streets and connections. Therefore, landowners will have to build those streets and connections passing through the approval of the urban renewal plan.

Figure 33. Sant Martì Sarroca – La Roca, enlargement of a municipal urban plan in an urban area

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Sant Martì Sarroca – La Roca



The area within the black boundary in figure 33 has been classified as urban land because all land has access to existing streets and basic services (e.g., sanitation, water, electricity). This classification in the plan is objective and not subjective.

Private owners within the urban land area can apply directly for licensing to build or transform their plots. The detailed regulations on urban land areas are contained in the municipal urban plan and they include the following:

1. Permitted and not permitted uses.
2. Number of floors, units and floor area ratios (FARs[245])
3. Alignments and volumetry.
4. Specific rules for each zone (e.g., colours, materials, etc.).

245 A floor area ratio is the measurement of a building's floor area in relation to the size of the parcel on which the building is located.

1.2.3 Detailed plan

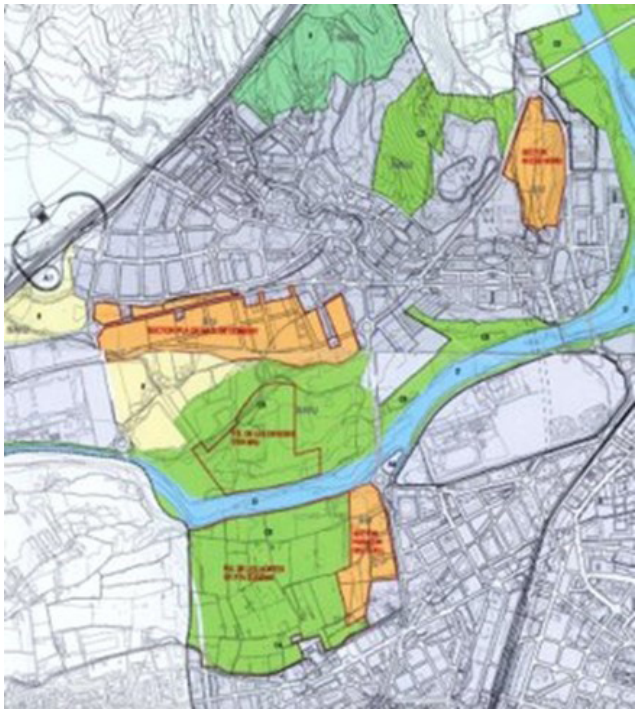
The objective of the "plan parcial" (detailed plan) is to develop the general planning of buildable land and it contains dispositions related to the detailed urban planning (Art. 65.1).

The detailed plan (Art. 65.2):

1. Categorizes the land into urban, buildable and non-buildable land.
2. Defines urbanization rules and principles as well as the design of public spaces.
3. Regulates uses and parameters of building needed for the granting of licences.
4. Indicates alignments and levels.
5. Defines the basic volumetric parameters (that can be mandatory or eligible between different alternatives).
6. Directly define the characteristics and the layout of basic urbanization works and contains basic schemes for utilities connections (e.g., water, drainage, electricity, etc.).
7. Establishes terms and conditions for execution of urbanization works and constructions yet modifiable by the municipal urban action programmes.

Figure 34. Example of a detailed plan

Source: Municipality of Girona, PP for Pla de Baix de Domeny (2012).



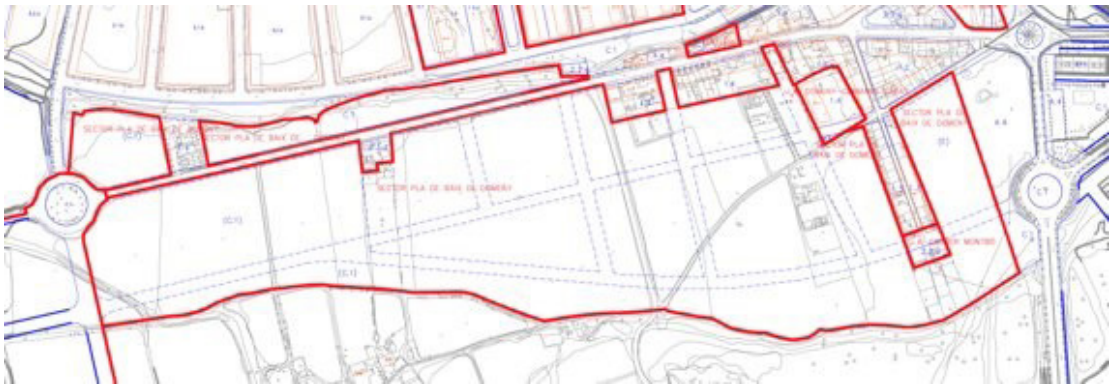
As an example, figure 35 shows how the municipal urban plan establishes the basic streets structure of an area. The detailed plan will then have to confirm that structure.

For instance, the municipal urban plan could establish general parameters such as:

1. A floor area ratio of 0.45 built m^2/ land m^2;
2. Maximum density of 50 units/ha;
3. Public spaces:
4. Open spaces min 40 per cent of total land
5. Min. public land 60 per cent
6. 10 per cent of total residential floor to be assigned to social/affordable housing
7. General use of the area is residential.

Figure 35. Municipal urban plan boundary for a detailed plan

Source: Municipality of Girona, PP for Pla de Baix de Domeny (2012).



Then, the residential detailed plan would define:

1. Urbanization principles and rules.
2. Zones, including public spaces, facilities, streets, residential, etc.
3. Floor area ratios (residential blocks) and volumes.
4. Basic schemes for utilities connections, such as water, drainage, electricity, etc.

Figure 36. Detail of a division between private space and public space in a detailed plan

Source: Municipality of Girona, detailed plan for Pla de Baix de Domeny (2012).

Figure 37. Detail of a block

Source: Municipality of Girona, detailed plan for Pla de Baix de Domeny (2012).

Figure 38. Volumetries in a detailed plan

Source: Municipality of Girona, detailed plan for Pla de Baix de Domeny (2012).

Figure 39. Public spaces in a detailed plan

Source: Municipality of Girona, detailed plan for Pla de Baix de Domeny (2012)

Figure 40. Construction details of road sections in a detailed plan

Source: Municipality of Girona, detailed plan for Pla de Baix de Domeny (2012).

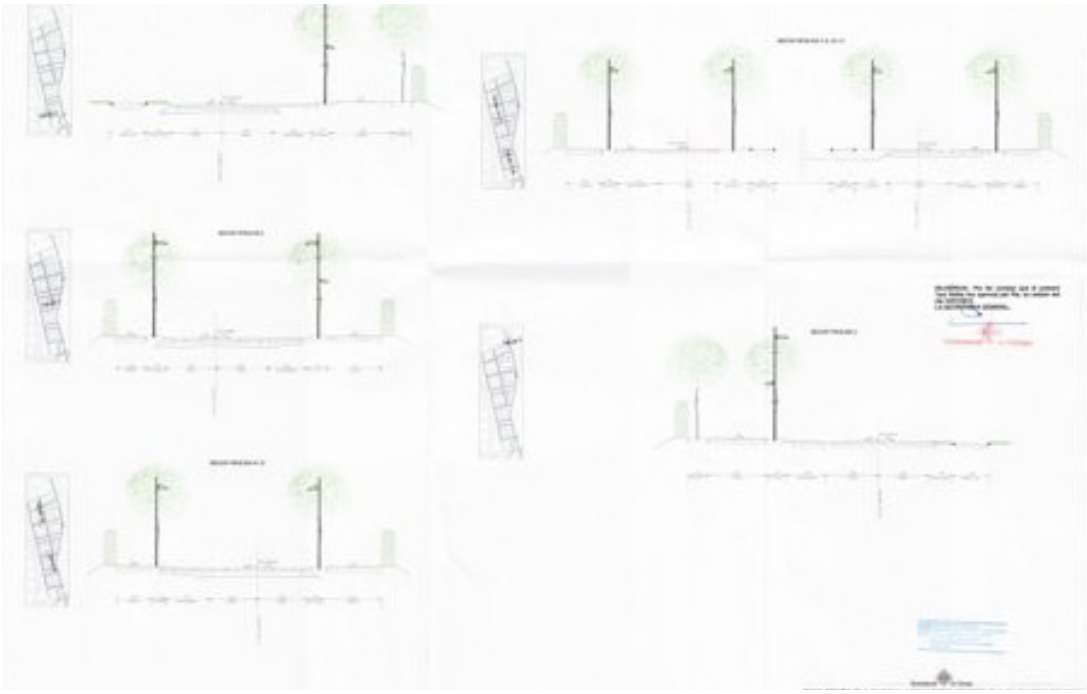


Figure 41. Road section in a detailed plan

Source: Municipality of Girona, detailed plan for Pla de Baix de Domeny (2012).

The detailed plan may contain a document called the urbanization project,[246] for less complex projects, or it may be a stand-alone document for more complex projects. Urbanization works must be completed before applying for a licence as it is not possible to obtain a licence and build if the area is not considered to be urban.

Private landowners are the ones in charge for building public spaces, infrastructures and utilities connections to transform the land into urban land and then to apply for a licence to build. Landowners do not have to pay urbanization fee or taxes and there is no transmission of property from private developers to the public at this stage.

Once the necessary works are completed, the local authority controls the quality of the works done by the private developers and if there is conformity with the approved projects and plans, the public "receives" the public part of the land that become officially a "public space"; as a result, the local authority becomes responsible for the maintenance of the work done by the private developers.

Public facilities' buildings are maintained by Government, but land on which they are built is given for free by developers.

1.2.4 Urban renewal plans

A system similar to the extensions through the detailed plan is used for urban renewal through urban renewal plans (plans de millora urbana). The municipal urban plan drafts areas that need to be regenerated, including within urban and built areas that have bad streets, or insufficient public space or facilities.

The "plan de millora urban" (urban renewal plan) acts like a detailed plan but for urban areas.

Overall, the urban renewal plan is intended to complete or finish (Art. 70):

1. The urban fabric or carrying out rehabilitation, internal reform, urban remodelling, transformation of uses, re-urbanisation, subsoil planning or population rehabilitation and similar in non-consolidated urban land;

2. The urbanization process of consolidated urban land and regulate the volumetric composition and facades of buildings.

The land included in an urban renewal plan boundary automatically became buildable land and not urban, thus, landowners of a buildable area need to develop an urban renewal plan to access licensing.

246 See paragraph 1.2.5 for the definition.

Figure 42. Urban Renewal Plan of Sala I Badrinas, Terrassa, Catalonia

Source: Escola Sert CO AC, Intensification programme in urban planning practice (3rd edition) - Module 1, Introduction to urban planning, interrelation between different instruments (2009).

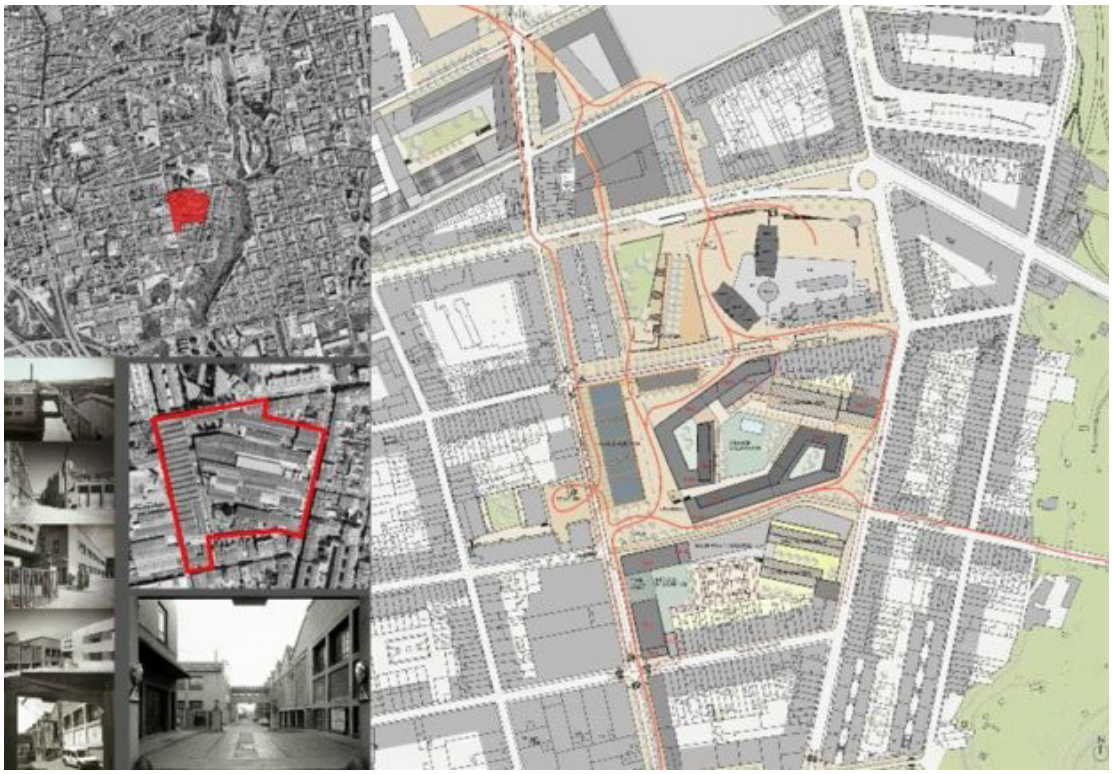
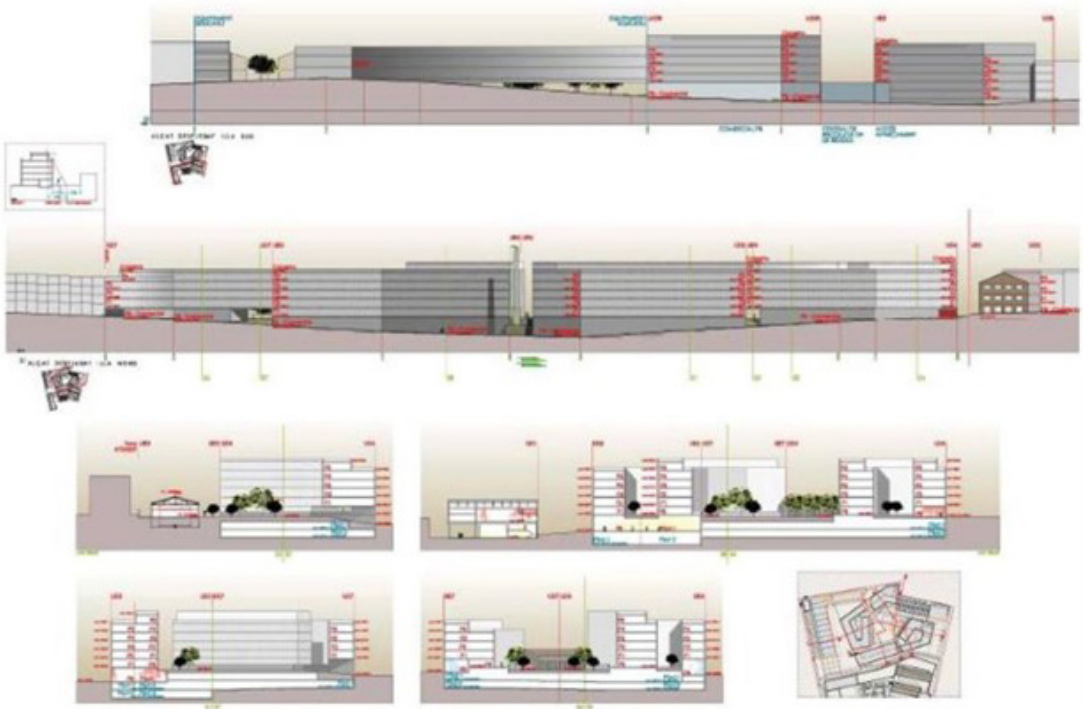


Figure 43. Urban Renewal Plan of Sala I Badrinas, Terrassa, Catalonia

Source: Municipality of Terrassa, Urban Renewal Plan of Sala I Badrinas, Terrassa, Catalonia

Figure 44. Urban Renewal Plan of Sala I Badrinas, Terrassa, Catalonia

Source: Municipality of Terrassa, Urban Renewal Plan of Sala I Badrinas, Terrassa, Catalonia.



1.2.5 Urbanization project

Urbanization projects are detailed projects of works that aim to materially execute the dispositions of municipal urban plans and derived urban plans (urban renewal plans and detailed plans) in the areas of urban intervention. These projects may refer to all urbanization works or only to basic urbanization works (e.g. sanitation, levelling of land for roads or streets, telecommunications networks, etc.). If the urbanization project refers only to basic works, it must subsequently be integrated by one or several complementary urbanization projects.

The urbanization projects cannot alter the urban determinations they implement (Art. 72). The urbanization project must be approved by the municipality.

1.2.6 Land readjustment project

There are two systems to implement urban planning, expropriation and land readjustment (re-parcelling – Art. 121 of the Urban Planning Law).

Land readjustment project is intended to:

1. Distribute benefits and burdens arising from urban planning regulations.

2. Regularizing the configuration of land ("fincas").
3. Allocating the amount of buildable land between the participant of a landowners' association.

According to the land readjustment plan, the land parcels resulting from the division of the land subject to a detailed design are assigned to each owner participating in the landowners' association in proportion to their respective rights, which depend proportionally on the amount of land originally owned.

The new division between land dedicated to urbanization services and the several buildable plots assigned to each owner must be recorded in the land register.

Once the urbanization project previously approved by the municipal administration has been executed, the owners can apply for a building permit as the land is now classifiable as a plot.

Guidance on how to build is contained in the detailed plan in accordance with the municipal urban plan.

Figure 45. Land readjustment project – initial configuration of land

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Directorate General of Urban Planning.

Figure 46. Provisions of a detailed plan

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Directorate General of Urban Planning.

Figure 47. Land readjustment project – final configuration of land

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Directorate General of Urban Planning.

1.3. Planning institutional framework

The municipal administration is responsible for drafting both the municipal urban plan and the municipal urban action programmes (Art. 76.2).

Urban renewal plans and detailed urban plans are drafted by public local entities, urban special entities or other competent urban planning bodies, without prejudice to the private initiative according to Article 101[247] (Art. 78.1).

Regional councillors are responsible for the approval of the municipal urban plans of municipalities of more than 100,000 inhabitants, according to the prior report of the competent territorial urban planning commission (Art. 79.1).

Urban territorial commissions (regional level) are responsible for the approval of (Art. 80):

1. The municipal urban plans and the urban planning action programmes for which the regional councillors are not competent for the final approval.
2. Urban renewal plans and urban detailed plans when local public bodies are not competent.

247 Iniziativa privata cittadini i privati possono fare PMU e PP

After the report of the relevant urban territorial commission (town planning councillorship) has been issued, the municipal administration is responsible for the final approval of (Art. 81):

1. Urban detailed plan affecting the municipal land which are promoted in accordance with the determinations of a municipal urban plan or a municipal action programme plan.
2. Urban renewal plans affecting the municipal land which are promoted in accordance with the determinations of a municipal urban plan or a municipal action programme plan.
3. Urban detailed plans or affecting the municipal land if they are promoted accordingly to the municipal urban plan or a municipal action programme plan.
4. Detailed urban plans of priority urbanization areas.

The urban territorial commission is responsible for the initial approval and provisional approval of municipal urban plans; the interested municipal administration must be consulted on the overall objectives a month before the final approval (Art. 83.1 and Art. 84.1).

The municipal urban plan must be published for a month. Once the term for the publication of the plan expires, the plan must be submitted for another month to the public local bodies interested in the plan (Art. 83.2).

During the public information period, other public entities or interested departments must submit a report on the plan within a month (Art. 83.3).

The initial approval and provisional approval of a municipal urban plan or of a derived urban plan[248] (urban renewal plan and detailed plan) affecting the land of a single municipality belongs to the corresponding municipality. In the case of derived urban plans whose final approval belongs to the municipal council, the final approval agreement may be adopted directly, independently of the provisional approval once the public information procedure has been completed (Art. 85.1).

Once initially approved, the municipal urban plan and the derived urban plan must be published for one month (public information phase) (Art. 85.4). Simultaneously to the public information phase, other public entities or interested departments must submit a report on the municipal urban plan and derived urban plan within a month (Art. 85.5) and a hearing must be granted to municipalities whose territorial area borders on that of municipality covered by the plan (Art. 85.7).

248 The approval of the municipal urban plan is double, initial and provisional approval, while the approval of derived urban planning, such as a detailed plan or urban renewal plan, is a single approval.

1.4. Non-state actors and private sector involvement

In the Catalan spatial planning system, the participation of the private sector is widely foreseen and plays a major role in the definition of detailed plans. According to Article 101 of the Urban Planning Law, private individuals may formulate, inter alia, urban renewal plans and detailed plans in accordance with the relevant general planning. Private promoters of plans have the right, subject to authorization by the municipal administration, to obtain the necessary information from public bodies.

Private promoters are also responsible for the execution of the formulated plans.

Private promoters do not have the right to demand the approval of the proposed amendments to the municipal urban plans. However, the municipal administration can expressly take the public initiative by reformulating the municipal urban plans.

1.5. Planning standards and planning processes

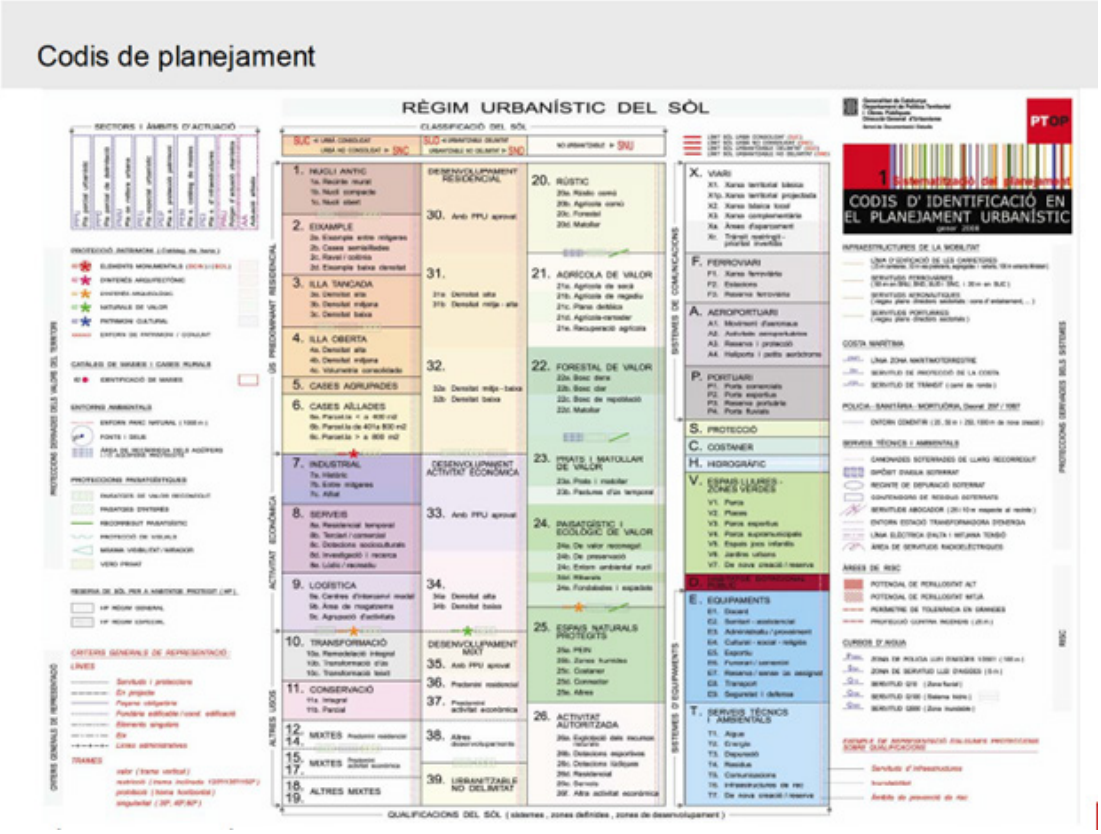
Catalan planning framework, composed of the Urban Planning Law and its Regulations (D. 305/2006), delegates most of the standards' definitions in relation to densities, gross and net floor area ratios to its municipal plans, understanding that standards are context specific and have to respond to contextualized needs.

Control over quality and quantity of planning proposals will be realized during the approval process for plans, according to sectoral laws and sustainable urbanization principles that are mentioned in the law and its regulations. The only standards fixed in law are the minimum numbers of green areas and public facilities in municipal urban plans, detailed plans and urban renewal plans, the minimum amount of built floor area that should be given to local administrations for social and/or affordable housing and the maximum steepness of slope that can be built.

Municipal urban plans define the general system of public open spaces which must at least correspond to the proportion of 20 m^2 for every 100 m^2 of roof space allowed by urban planning for residential use not included in any sector. This minimum standard is not applicable to municipal urban plans for municipalities with fewer than three thousand inhabitants and little urban planning complexity (Art. 58.1.f).

Figure 48. Planning codes

Source: Generalitat de Catalunya - Department of Territorial Policy and Public Works, Directorate General of Urban Planning, Systematization of Planning, Identification Codes in Urban Planning (2008).



1.6. Public participation

Under Article 23 of the Spanish Constitution of 1978, citizens have the right to participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage.

This constitutional right to public participation is incorporated in Article 29 of the Catalan Statue, which states that Catalan citizens have the right to participate under conditions of equality in the public affairs of Catalonia, directly or through representatives.

Catalan citizens' right to participate translates, among others, into the right to promote and present legislative initiatives to Parliament, to participate in the process of drafting the laws of Parliament, as well as to promote the convening of popular consultations by the Generalitat and the town councils in matters of their respective competences.

Citizens' participation is also encouraged by Article 43 of the Catalan Statute that charges public authorities with the duty to promote social participation in the preparation, provision and evaluation of public policies, as well as individual and associative participation in the civic, social, cultural, economic and political spheres, with special attention to the less populated areas of the territory.

Regarding participation in spatial planning, Article 8 of Catalan Urban Planning Law No. 3/2012 stipulates that citizens' rights of initiative, information and participation in urban planning and management processes must be guaranteed and encouraged.

Municipal councils may voluntarily establish urban planning advisory councils as local information and deliberative bodies (Art. 8.2). In matters of urban planning and management, public authorities must respect a private initiative, promote it to the greatest extent possible and replace it in cases of insufficiency or non-compliance, without prejudice to cases of direct public action (Art. 8.7). Finally, urban management can be entrusted to private initiatives as well as to public entities companies or joint ventures (Art. 8.8).

The descriptive and justifying report of the municipal urban plan must include the citizen participation programme to be applied by the municipal council throughout the entire planning process, starting from the elaboration and formulation of the plan, to guarantee the right to citizen participation referred to in Article 8 (Art. 59.3.a).

Citizens are also involved in the executive process of the urban plans (Art. 116). Article 26.6 of Government Law No. 50 of 27 November 1997[249] establishes two ways of enabling the participation of citizens, organizations and associations in the process of drafting preliminary bills, draft legislative royal decrees and draft regulations promoted by the General State Administration.[250]

Prior to the drafting of the legislative text, a public consultation is carried out through the web portal of the competent ministerial department to obtain the opinion of the potential addressees of the regulation.

Once the draft text or preliminary draft text has been prepared, and in the event that it affects the legitimate rights and interests of citizens, it is published on the same web portal for the purpose of substantiating the public information process or granting a hearing to the persons affected, directly or through the organizations or associations that represent them, as well as to obtain any additional contributions that may be made by other persons or entities.

249 Government Law No. 50/1997. See: www.boe.es/buscar/act.php?id=BOE-A-1997-25336.

250 The government of Spain web page, administracion.gob.es, Public Participation in Regulatory Projects: https://administracion.gob.es/pag_Home/actualidadParticipacion/ParticipacionPublicaProyectosNormativos0.html.

The minimum period for public hearing and information is 15 working days and may be reduced to a minimum of 7 working days when duly motivated reasons justify it.

The hearing and public information procedure may only be omitted when there are serious issues of public interest, which must be justified in the Regulatory Impact Analysis Report.

Public participation of priority groups such as young people is also contained in the Constitution (Art. 48).

1.6. Climate-friendly urban planning

According to Article 45 of the Spanish Constitution, everyone has the right to enjoy an environment suitable for personal development as well as the duty to preserve it. The public authorities should safeguard rational use of all natural resources with a view to protecting and improving the quality of life as well as preserving and restoring the environment by relying on essential collective solidarity.

At the regional level, the Catalan Statute requires public authorities to ensure the protection of the environment through the adoption of public policies based on sustainable development and collective and intergenerational solidarity (Art. 46).

The reform introduced by law no. 3/2012 aims to enforce the constitutional principle of environmental protection by concentrating in urban planning legislation all the regulations of the environmental assessment procedure of urban plans, which are currently divided between this legislation and environmental legislation.

The Urban Planning Guidelines, provided for in Article 9 of the urbanistic law, outline, inter alia, that the change of use of a non-buildable land plot (i.e., a forest or environmentally protected area) is only permitted if it is provided for by an urban planning instrument awaiting approval and already subject to a favourable environmental impact assessment (Art. 9.5). If the environmental impact assessment is mandatory, the urban planning must contain the appropriate determinations to make the measures contained in the related declaration effective (Art. 9.6).

Appropriate environmental documentation and, at least, the environmental report are required for the formalization of municipal urban plans. (Art. 59.1.f). Moreover, detailed urban plans are formally composed, inter alia, of the relevant environmental documentation and, at least, the environmental report (Art. 66.1.i).

The environmental assessment procedure of urban planning instruments is regulated by Article 86-bis, establishing that the environmental assessment of plans and programmes is integrated into the urban planning process.

2. Land management

2.1 Land uses, zoning and allocation

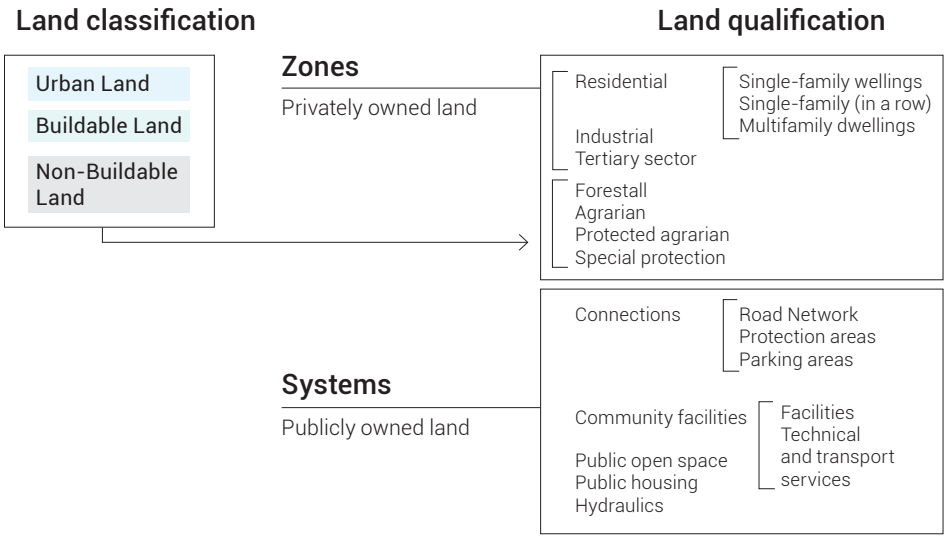
Land uses are defined by 34 of the Urban Planning Law and they can be schematized as in figure 49.

Overall, land uses comprehend the land that the general planning reserves for connections, community facilities and public open spaces, at a general (if their level of service is communal or higher) or local level (if their level of service is an urban or buildable land action area or the urban land as a whole in a municipality).

Urban connections systems encompass all the infrastructure necessary for the mobility of people and goods, whether by land, sea or air, and include protection areas and the respective parking areas for vehicles.

Figure 49. Land uses in Catalonia

Source: Escola Sert CO AC, Intensification programme in urban planning practice (3rd edition) - Module 1, Introduction to urban planning, interrelation between different instruments (2009).



According to Article 58.2 of the Urban Planning Law, on urban land, the municipal urban plan:

1. Applies the techniques of land qualification or zoning and reservation or allocation of land for generals or local urban development systems, always respecting the adequate proportion for the needs of the population;
2. **Allocates** detailed use for each zone;
3. **Regulates** the parameters and criteria for the formal and compositional harmonization of buildings;
4. **Determines** which architectural, archaeological, landscape and environmental values are to be protected;
5. **Regulates** the use of the subsoil, in accordance with Article 39, to make possible the provision of services and the construction of infrastructure necessary for the community, always respecting the compatible private uses.

2.2 Security of tenure: land tenure types and land registry

Any act affecting ownership or rights in rem over real estate, whether publicly or privately owned, are registered in the Land Register (Cadaster).[251]

Certain administrative concessions and public property may also be registered. The Land Register provides legal certainty for registered rights, promotes the security and speed of legal transactions and saves transaction costs. The Land Register makes the registered facts, acts and rights public for those who have a legitimate interest in knowing them. The Land Register falls under the Ministry of Justice and all matters relating to it are entrusted to the Directorate General of Registries and Notaries. Each land registry is under the responsibility of a registrar, who is a civil servant, and each registry has a specific territorial circumscription.

The registers are kept by property, with each property having a folio in which its legal history is recorded.

There are several types of records in land registry:

1. **Filing records** - are made by the registrar in the journal when documents are presented to the registrar, recording the date and time of filing. It is subject to a time limit.
2. **Registration records** - are definitive records by means of which certain facts, acts or rights affecting real estate are recorded and published in the land register.

251 Ministry of Justice, Land Register web page: www.mjusticia.gob.es/ca/ciudadania/registros/propiedad-mercantiles/registro-propiedad.

The acts subject to registration in the land register are the following:

1. Deeds by virtue of which the ownership of immovable property is transferred or declared.
2. Deeds in which rights over real estates are constituted, recognized, transmitted, modified or extinguished, such as:
3. Mortgages;
4. rights of usufruct, use, habitation, emphyteusis, censuses, easements, surface, flight and any other rights in rem.
5. Judicial decisions declaring legal incapacity to administer, and any other decisions modifying the civil capacity of persons regarding the free disposal of their assets.
6. Leasing or non-leasing contracts for real estate, subleases, assignments and subrogations thereof.
7. Deeds relating to real estate and rights in rem belonging to the State, or to civil or ecclesiastical corporations.
8. Deeds relating to certain administrative concessions.
9. Deeds relating to certain real estate in the public domain.
10. Preventive annotations – are records subject to an expiration period that are used to protect rights that are not yet final or to give publicity to certain judicial or administrative decisions. Preventive annotations are extinguished by cancellation (when the registrar makes an entry deleting the annotation), by expiration (they expire four years after the date of the annotation itself, except for those that have a shorter term established in the law) or by their conversion into registration.

Only preventive annotations expressly provided for in the law may be issued, including those of:

1. Land claims;
2. Land expropriation;
3. Prohibition of land alienation;
4. Claim of legal incapacity;
5. Inheritance rights;
6. Refinancing credit;
7. Rectifiable defects that prevent registration.
8. Marginal notes - are made in the margin of the records of presentation, inscriptions, annotations or cancellations and serve to give notice of a secondary event that affects the registered properties or rights.
9. Cancellations - are the records that repeal other records, whether they are registrations or annotations.

Access to the land register for registrable deeds is voluntary, except in the case of mortgages, which must always be registered as they do not exist without registration. Whoever wishes to register a deed must apply for it in the register in whose district the real estate is situated.

By registering a deed, the registrar will qualify under its responsibility the legality of the extrinsic forms of the documents of all kinds by virtue of which the registration is requested as well as the capacity of the grantors and the validity of the dispositive acts contained in the public deeds by what results from them and from the records of the register. Therefore, to access the register, the deeds must meet the requirements of form and content in the terms established by law.

Those entitled to register a deed in the register are:

1. Those acquiring the right;
2. Those transferring the right;
3. Those interested in securing the right to be registered;
4. Those having the representation of one of the above-mentioned.

To be registered, a title must be recorded in a public deed or authentic instrument issued by a judicial authority or by the Government or its agents in the manner prescribed by the regulations.

To register or record deeds, the right of the person granting the deed must have been previously registered or recorded. If the right is registered in favour of a person other than the person granting the transfer or encumbrance, the registrars will refuse the requested registration.

If the chain of title ownership has been interrupted, it must be resumed through of one of the following procedures:

1. **Act of notoriety** - a procedure carried out by a public notary, at the request of the interested party, whereby the public notary records the notoriety of a fact, e.g., the ownership of a property, by virtue of witness testimony and other evidence.
2. **Proprietary proceedings** - a procedure carried out by the Judge of First Instance of the place where the property is located, at the request of the interested party, in which the applicant will present the documents proving his or her right and in which the judge will summon and hear those who may have a right over the property to finally decide on the applicant's right.

To register a title in the land registry, the payment of the taxes corresponding to the act or contract to be registered must be accredited beforehand. However, it is possible to obtain the record of presentation before payment of the taxes.

Registration in the land register produces, among others, the following effects:

1. **Registration legitimacy** – it grants the legal evidence that the registered rights in rem exist and belong to their holder in the manner determined by the respective record.

2. **Inopposability** - third parties cannot oppose titles of ownership or other rights in rem over real estate duly registered or recorded.

3. **Public faith in the register** – a person who in good faith acquires for valuable consideration any right from someone who is shown in the register as having the power to transfer it, will be maintained in his or her acquisition, once he or she has registered their right, even if the transferer's right later proves to be invalid for reasons not shown in the register.

4. **Judicial protection** - the records in the register are under the protection of the courts and produce all their effects until they are declared to be inaccurate in accordance with the terms established by law.

The land register is public for those who have a known interest in ascertaining the status of registered immovable property or rights in rem.

2.3. Land acquisition for public purposes and compensation schemes

The legal regime and procedure regarding expropriation is set by Article 159 of the Catalan Statue. Regarding forced expropriation, the Generalitat has the executive power to determine the purpose, causes and conditions in which the Catalan administrations can exercise the expropriatory power. The Generalitat also establishes the valuation criteria for expropriated assets according to the nature and social function that these assets must fulfil, in accordance with state legislation, and creates and regulates its own competent body to determine the fair price and set the expropriatory procedure.

Land reserved for publicly owned urban systems, if included in an urban intervention area subject to the redevelopment system, should be acquired by compulsory contribution free of charge, subject to the provisions of Article 156 of the Urban Law. If the acquisition of public property and the direct use regulated by the aforesaid article is not sufficient, an isolated expropriation action may also be carried out, in which case the acquiring administration is subrogated to the rights and duties of the owner (Art. 34.7 of the Urban Planning Law).

Land reserved for public urban development systems that are not part of an urban development area subject to the redevelopment system may be acquired through the relevant expropriation deed (Art. 34.8).

The approval of an urban development plan, zoning, urbanization project or land demarcation project for public property entails the declaration of public utility of the works and the need to occupy the land and buildings concerned, for the purposes of expropriation or the imposition of

easements, or temporary occupation of the land. The expropriation must cover all the land and facilities necessary to ensure the full value, performance and functionality of the assets concerned. (Art. 109.1 of the Urban Planning Law).

The land expropriated for urban planning reasons must be used for the purposes determined by urban planning (Art.109.3).

Expropriations carried out for urban planning reasons must be registered in the land register (Art.109.6).

Regarding the land valuation and compensation, Article 115 establishes that the value of the land, and that of the other goods and rights to be expropriated by the administration, must be adjusted in accordance with the current land legislation.

The Expropriation Jury of Catalonia[252] is the competent body for the appraisal, valuation and setting of the price in the expropriation proceedings of the public administrations of Catalonia.

It was created by law no. Ley 6/1995 within the framework of Catalonia's powers of development in matters of compulsory expropriation and the local system, and the exclusive power to regulate the administrative procedure derived from its organization.

The Expropriation Jury is a permanent collegiate body of an administrative nature, without legal personality and with hierarchical independence. It is attached to the Department of the Presidency, which provides it with the technical and administrative support necessary for the exercise of its functions.

The jury is structured into five territorial sections: Barcelona, Lleida, Girona, Tarragona and Terres de l'Ebre. Each territorial section exercises its functions in relation to expropriations carried out in the territory of the municipalities included in each demarcation.

252 Law No. 9 of 7 July 2005, of the Expropriation Jury of Catalonia https://www.boe.es/buscar/pdf/2005/BOE-A-2005-14079-consolidado.pdf. Gencat, Presidency Department, Expropriation Jury of Catalonia webpage: https://presidencia.gencat.cat/es/ambits_d_actuacio/jurat-d-expropiacio/.

2.4. Land-based financing

Overall, according to the Constitution, autonomous communities such as Catalonia can generate revenue, among others, through their own taxes, rates and special levies, as well as from their property and private law income (Art. 157). However, it is made clear that autonomous communities cannot introduce measures to raise taxes on property located outside their territory or that is likely to hinder the free movement of goods or services.

Among the taxes under the competences of the Catalan autonomous community there are the tax on the income of natural persons at 50 per cent, property tax, tax on inheritances and donations, tax on property transfers and documented legal acts, tax on the added value at 50 per cent and the tax on certain kinds of transport (seventh additional provision to the Catalan Statue).

Other sources of the Generalitat's financial resources includes income from perceptions of public prices, returns from the heritage, private law income, product of debt issuance and credit operations, income from fines and penalties and any other resource that may be established under the provisions of the Catalan Statute and the Constitution (Art. 202 of the Catalan Statute).

The Tax Agency of Catalonia is the authority responsible for the management, collection, settlement and inspection of all taxes owned by the Generalitat of Catalonia (Art. 204.1). The Tax Agency can also exercise tax management functions in relation to local taxes by delegation from the municipalities (Art. 204.5).

Local finances are governed by the principles of resource sufficiency, equity, autonomy and fiscal responsibility (Art. 217). Local government capacity to regulate their own finances within the framework of the laws includes the power to set the rate or rate of local taxes, as well as bonuses and exemptions (Art. 218.3). At the same time, the Generalitat can establish and regulate local governments' own taxes (Art. 218.2) and more generally exercise financial supervision over local governments without prejudice of their constitutionally recognized autonomy.

3. Dispute-resolution mechanisms

According to the jurisprudence of the Supreme Court[253], land and urban planning cannot be appealed in administrative proceedings, unless the act of final approval is challenged in its more formal aspects (e.g., quorum and procedure of the agreement).[254]

The substantive content of these provisions can only be challenged in the courts in accordance with Article 1 of Law No. 29/1998 on contentious-administrative jurisdiction.[255]

However, the municipal corporations and other administrations can request the annulment or revocation of the planning through the prior request to the contentious administrative appeal in accordance with Article 44 of Law 29/1998.

Only agreements and resolutions that are administrative acts can be challenged in the administrative way. These acts include:

1. Authorizations in non-developable land and provisional authorizations.
2. Resolutions of the Director General of Land Planning and Urbanism and of the Minister for Territory and Sustainability regarding the protection of urban planning legality and the registration of landowners' associations.
3. Resolutions of the Minister for Territory and Sustainability issued in expropriation proceedings by the Ministry of Law, provided for in Article 114 of the Urban Law.
4. Definition of the consolidated urban plots processed in accordance with the provisions of Article 8 of Decree-Law 1/2009, of December 22,[256] on the organization of commercial facilities.

According to Article 1 of Law No. 29/1998, acts of an administrative nature[257] can be challenged in the court of first instance of the contentious-administrative order.

253 Based on the general provision of Article 107.3 of Law 30 of 1992, on the legal regime of public administration and of the common administrative procedure, which states that there is no administrative appeal against this type of provision www.boe.es/buscar/act.php?id=BOE-A-1992-26318.

254 Government of Catalonia web page "GenCat", department of the territory https://territori.gencat.cat/ca/06_territori_i_urbanisme/urbanisme/recursos_i_reclamacions/preguntes_frequents/#bloc1.

255 Law No. 29 of 1998 www.boe.es/buscar/act.php?lang=en&id=BOE-A-1998-16718&tn=1&p=.

256 Law decree No. 1 of 2009, on the organization of commercial facilities www.boe.es/buscar/pdf/2010/BOE-A-2010-738-consolidado.pdf.

257 E.g., acts of the public administrations subject to Administrative Law, to general provisions of lower rank than the law and to legislative decrees.

Administrative courts are competent to hear matters arising in connection with all acts of the Government or of the Councils of Government of the Autonomous Communities, whatever their nature is, and acts and regulations of bodies governed by public law, adopted in the performance of public duties. (Article 2 of Law No. 29/1998)

The administrative jurisdictional order is made up of the following courts (Art. 6):

1. Administrative Courts
2. Central Administrative Courts
3. Administrative Chambers of the High Courts of Justice
4. Administrative Division of the National High Court (Audiencia Nacional)
5. Administrative Division of the Supreme Court

The time limit for filling the administrative appeal of first instance is regulated by Article 46 of Law No. 29/1998.

An appeal for reconsideration may be lodged against orders and judgments that are not subject to appeal or cassation, without prejudice to which the contested decision shall be enforced, unless the court, either of its own motion or at the request of a party, decides otherwise. An appeal for reconsideration must be lodge withing five days from the day following the date of notification of the contested decision. (Art. 79 of Law No. 29/1998)

The judgments of the Contentious-Administrative Courts and the Central Contentious-Administrative Courts are subject to the appeal (Art. 81).

The appeal may be lodged by those who, in accordance with this Law, have standing as complainants or defendants (Art. 82).

The appeal shall be lodged with the court that delivered the judgment that is being appealed against, within 15 days of its notification. Once the 15-day period has elapsed without the appeal having been lodged, the clerk of the court shall declare the judgment to be final. (Art. 85)

The Superior Court of Justice of Catalonia is the court of last instance of all processes initiated in Catalonia and its competent to hear the appeals and procedures, inter alia, in administrative matters (Art. 95 of the Catalan Statute).

Appeals before the hierarchically superior judicial body (recurs d'alçada) is regulated by Articles 114 and 115 of Law 30 of 1992.[258]

It can be filled by (Article 19 of Law No. 29/1998):

- Natural or legal persons who hold a right or legitimate interest;
- Corporations, associations, unions and groups and entities that are affected or are legally empowered to defend collective rights and legitimate interests;

258 Law 30/1992, www.boe.es/buscar/act.php?id=BOE-A-1992-26318.

- The different administrations and public law entities that are linked to them, to challenge acts or provisions of a general nature coming from a different public administration;
- Any citizen, in the exercise of popular action, in the cases expressly provided for by law (such as urban planning).

Against:

- Acts of the Territorial Urban Planning Commissions concerning authorizations on non-buildable land and provisional authorizations;
- Resolutions of the Director General of Urban Planning and Land on the protection of urban legality (e.g., demolition orders, sanctions, etc.);
- Act of final planning approval in its most formal aspects.

Figure 50. Summary of procedures

Source: GenCat, Territory and urbanism, urban planning, resources and claims, https://territori.gencat.cat/ca/06_territori_i_urbanisme/urbanisme/recursos_i_reclamacions/sintesi_dels_procediments/.

	PROCEEDINGS	INTERPOSING DEADLINE	DICTATE AND NOTIFY	COMPETENT AUTHORITY RESOLUTION	SENSE OF SILENCE
Appeal	SNU, Aut. Provisional and urban Discipline	1 month	3 months	hierrarchical superior	negative
Replenishment appeal	Expropriations by the Ministry of Law and Urban Discipline	1 month			negative
Requirement 44	Urban, teritorial planning, SNU and Aut. provisional	2 months			negative
Ex officio review	Acts nul and void	anytime			negative
Administrative contentious appeal		2 months express act; 6 months alleged act			negative
Property liability	Assuptions article 139 Law 30/1992	1 year from the act, or from the finality of the judgment anulling it	6 months	councilor	negative
Warning expropriation by ministry of law	urban planning systems	2 or 5 years	2 years	councilor	Positive and the interested party presents the approval sheet

4. Key takeaways and lessons

Spain has a highly decentralized planning system and, as a result, urban planning happens at the regional level.

The key aspects of the Catalan planning system that are worth mentioning are the following:

1. **The land classification system** – The Catalan planning system is based on the division of land between urban, buildable and non-buildable land. This division plays a crucial role in the urbanization process as it is possible to build only on urban land, which is the land that has access all the basic services such as public roads, electricity, sewerage system etc. This mechanism allows all construction to be homogeneous and with access to basic services.

2. **Private participation** – In the Catalan planning system, participation by the private sector is widely foreseen and plays a major role in the definition of detailed plans. Private entities are in charge of preparing and implementing detailed plans and urban renewal plans. This means that it is the landowner's responsibility to plan and build all the public facilities needed to land to be urbanized. To do so, owners of buildable land can reunite in landowners' associations to share the costs and benefits proportionally to the amount of land owned. Once the urbanization works are completed and approved by the municipality, the land where the public facility was built has become public and the municipality is in charge of maintaining it, while the remaining land is divided into plots and redistributed among the owners who can now access a building licence.

3. **The municipal urban plan** is the overall urban planning instrument for the territory. This plan classifies land into urban, buildable and non-buildable land and establishes the determination as well as the general structures and models for each class. Moreover, the municipal urban plan defines the general system of public spaces, the implementation urban model, the determinations for urban development and the general framework to be adopted for the urban planning of the land. The plan also determines which architectural, archaeological, landscape and environmental values are to be protected.

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Through this international benchmarking case study on planning laws in five countries (**Morocco, Netherlands, South Africa, Republic of Korea and the United Kingdom of Great Britain and Northern Ireland**), UN-Habitat has assessed the impact of these urban laws on sustainable urban development to provide a spectrum of regulatory models and schemes for the spatial planning legal reform in the Sultanate of Oman.

These case studies reveal that planning legal framework should clearly define planning objectives for each level of planning which is part of sound policymaking to articulate the scope of the planning instrument as well as an opportunity to reflect the local needs and challenges. Additionally, for smooth implementation, planning laws should promote coordination between institutions at the national level with institutions at the regional and local levels for the planning, implementation, approval and oversight of development projects, plans and documents. Community engagement principles and mandatory requirements for public participation should be provided in planning legislation to provide binding obligations to be followed during the entire spatial planning process. Varied types of land ownership and the continuum of land rights should be promoted by legislation, considering cultural customs, including freehold, leasehold or customary ownership to promote greater security of tenure which will minimize the threat of forced evictions. Finally, the possibility to challenge planning decisions both through the appeal and judicial review mechanism should be provided in law including access to fair alternative dispute-resolution systems that allow individuals to avoid the burdens associated with traditional judicial systems, where possible.

The publication also contains an Annex showcasing the case study of Catalonia, Spain which delineates how the land classification system, through municipal and detail plans, influence access to urban basic services and infrastructure as well as forming the basis for the grant of a building permit.

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