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Partnerships : a view of issues and perspectives through the Brabantse poort, Nijmegen

By Carley Pennink

Institute for Housing and Urban Development Studies

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Introduction

This working paper deals with the subject of public-private partnerships (PPPs) in urban redevelopment and, in doing so, focuses on one particular example of a partnership project, the Brabantse Poort, implemented in Nijmegen, the Netherlands. The paper looks particularly at the process involved and the choices made in setting up the partnership. This is done with an eye on the context of development and the trends in thinking concerning partnerships in the Netherlands. The paper also looks at the links between contextual factors, the aims and objectives of the partners and the ultimate form of partnership chosen by these partners. Finally, the paper takes a first step in assessing the PPP and analyses whether the objectives of the partners were met through the project and the partnership, in other words, whether the benefits sought were actually gained by implementing a partnership.

Many factors play a role in why and how a partnership approach is applied. For example, the political and economic climate, the legal structure and the strength and attitudes of the public and private sectors, to name a few, will all have a significant affect on the form chosen and the process undertaken. It is understood that in other countries, particularly Third World and Central and Eastern European countries, where contextual factors vary, comparisons will be difficult to make and the elements difficult to replicate. However, specially because few PPP cases have been analysed in depth, it is the objective of this paper to pinpoint these various factors, look at how this PPP can be assessed and try to identify some of the issues which should be taken into account.

In western countries new forms of public-private partnerships are being increasingly applied as a mechanism for managing redevelopment projects, particularly larger scale ones. There are a number of general (external) circumstances bringing about this trend (discussed in Chapter Two). In fact, in many countries, PPPs have begun to figure on the policy agenda. In 1986, in the Netherlands, the national government made the following policy statement:

“New forms of public-private partnerships are being established between municipal governments and regionally-located private sector firms, and when necessary, the national government, which focus on the increase in the volume of investment in, amongst others, urban renewal.”
(Regeerakkoord, 1986).

“Public-private partnerships”, as a term, remains loosely defined and is used to represent a wide range of relationships between two (or more) parties (see Chapter Three). In fact, the type (form) of partnership undertaken by various parties is largely dependent on the motivations of the partners involved in the project. Partnerships are a way of mobilising the private and public resources for development in an effective manner and reducing the budgetary and other constraints of the local bodies involved in the project.

Partnership schemes aim to reduce the isolation in which the sectors usually work, resolve potential conflicts between them, meet the needs of the divergent public and private objectives inherent in a land development project, and, for the government, all for the purpose of achieving more effective development.

The trend has also seen partners working with more sophisticated forms of partnerships. The implications of this are that governments and the private sector are shifting further away from their more traditional domains and roles in the area of redevelopment. The assumption is that this is occurring because there are significant benefits to be realised from this change in approach. It is therefore important to chart various projects and different forms of PPPs being implemented to truly understand the benefits (or costs) the partners are realising from the relationship versus the more 'traditional' and distinct roles taken by the two sectors. Often, it seems that these benefits and costs are not really fully understood or fully assessed by the partners themselves.

Again, partnerships do not come in any ready made form; they are structured to reflect the needs of the particular context in which they are applied. For the Brabantse Poort, the local government settled on forming a joint venture with a consortium of private developers but only after a lengthy process of decision-making and setting of priorities. This paper sets the stage, for the case study, in Chapters Four and Five, by looking at the context of the situation: the historical background of the Netherlands, in general, and Nijmegen in particular, the land use policy and legislation in the Netherlands, the changing physical and financial realities which have helped to form the national and local policy towards land development and the major factors which brought the municipality of Nijmegen to the decision to implement a partnership of this sort.

The case study, discussed in Chapter Six, looks closely at the particular partnership structure chosen, the motivation for choosing this form of relationship, and the benefits from this relationship for the partners. This project is considered to be a success based on many criteria, financial, social, and physical, but there are many lessons to be learned from the experience (see Chapter Seven). With the experience gained from these lessons, the municipality is now implementing new instruments in the partnerships in which it is presently involved (Chapter Eight).

Illustration 1.1 location of Nijmegen in the Netherlands



1 The Spectrum of Traditional Government Policies Towards Land Development: the Shift to Public-Private Partnerships

The urban land policy of the government governs the role played by actors involved in land development. In turn, the urban land policy is a part of the overall urban development policy. One of the goals of development policies is to mobilise the resources of the country in order to achieve socio-economic objectives. The basic goal of the urban land policy can therefore be translated into the desire of the government to achieve the socio-economic maximisation of land use (Darin-Drabkin, 1977)¹.

For this reason, in many countries, access to land is often largely controlled by the government bodies, who hold that it is their socio-economic responsibility to manage land development. These countries, which are characterised by a strongly centralised political authority policy, believe that government should provide essential services to the population and promote the development of the national economy. These types of land policies exist in many developing countries and in industrialised countries such as Sweden, the Netherlands and France.

These policies differ in other countries. The United States is a prime example of a country in which substantial private ownership of land exists and private development of land occurs. Government policies toward land are of a laissez-faire attitude, leaving the private sector to effect changes in urban development by responding to market signals. Policies are such that regulations and property rights governing the allocation of land provide ease of access to the private sector to own and develop land and, in fact, encourage private sector initiative vs. public initiative in the role of urban land developer.

However, the policies of governments towards land development are changing in many countries as are, therefore, the roles of the public and private sectors. There are several reasons for this. Whereas it was formerly government policy in many countries to provide essential services to their city inhabitants, it is now becoming increasingly difficult to do so due to the increasing financial constraints on government budgets. Governments are experiencing difficulties in providing developed land at affordable prices and, therefore, have begun to look for alternative measures to do so. The cumbersome nature of the government and its ties to political objectives have resulted in certain inefficiencies in the allocation of land. Public development corporations handling land management have experienced severe capital losses in the process of the allocation of land, a condition which they can no longer afford.

¹ Though this reference is quite old it is still one of the most comprehensive related to land policy and development, with particular regard to the Netherlands.

Given a well-designed regulatory framework and ease of entry into the land market, the private sector has been proven to be more efficient in providing developed land to urban regions than the public sector. The private sector is argued to be more in touch with market demand for land and therefore can be more influential in contributing to land development in the appropriate location, at the appropriate time.

Governments are increasingly looking to the private sector to tap their knowledge of market signals. However, giving the private sector a free hand in land development and allowing land to be developed purely based on market requirements often does not satisfy many of the social objectives important to the public sector. The government still must have a place in guiding growth. Therefore, in place of tight control over land use through programming and planning, governments have been increasingly focusing on using investments as a steering mechanism in land development. (Darin-Drabkin, 1977).

Local governments have been steering these investments by beginning to undertake the execution of land development projects in direct partnership with the private sector. However, the success of public-private partnerships is much dependent upon the reconciliation of the two sectors' objectives. Private firms are interested in making a profit and, in fact, cannot survive without doing so. The public sector is interested in fulfilling its social and economic objectives. Private sector firms function according to short- and mid-term criteria (corresponding to the capital turnover that they aim to valorise); they reason and make decisions in terms of investment opportunities and are principally concerned with the direct effects of intervention at the micro-economic level (that of a project). The public sector functions according to mid- and long-term imperatives: it is as pre-occupied with the long term effects induced by its interventions as by their direct effects. Unlike the private sector, the public sector is more likely to intervene at the macro-economic level and to induce leverage effects (Durrand-Lasserre, 1987).

2 Understanding Public-Private Partnerships: What Are and Why Use Partnerships?

Partnerships have been defined in a variety of different ways; amongst others as ‘a co-operation between people and organisations in the public and private sectors for mutual benefit’ (Holland, 1984), or, as the ‘mobilisation of a coalition of interests drawn from more than one sector in order to prepare and oversee an agreed upon strategy for the regeneration of a defined area’ (Bailey, 1994: 293), or, as ‘frameworks for integrating complementary interests and joint efforts of the public and private sectors in order to address societal problems in communities [...]’. The PPP device combines public powers, on the one hand, and the private resources on the other, with joint acceptance of risks as a result’ (Kloppenborg, 1991: 1). Many other definitions exist.

The form a partnership takes depends a great deal on the aims and objectives of the parties involved. The definitions above underline the complementary nature of the interests of the two sectors. Given these interests and therefore, the degree to which the parties wish to be legally tied to each other, partnerships can range from a co-ordinated effort made by the two parties without a formal binding contract to a relationship in which the two partners establish a joint venture company with shared risks and benefits. There are many permutations to partnership models.

McQuaid develops this idea by describing the components and dimensions of partnerships in the following manner: ‘If form does follow function, then the most significant dimension concerns the aim of the partnership’ (McQuaid, 1994: 5). He then continues by citing additional dimensions of a partnership as the range of actors, the formal structure (from contracts to informal co-operation) and the implementation mechanisms.

McQuaid then distinguishes partnerships by outlining the criteria used by partners when establishing a partnership. These are:

- mutual interest,
- complementary nature of roles
- sharing of losses and benefits,
- risk sharing, and
- joint finance.

These definitions establish, to a certain extent, why the public and private partners are motivated to institute a partnership. The focus is on ‘mutual benefit’, based on the presumption that the ‘complementarity of the sectors, the fact that the work of each can improve the performance of the others, so that the whole is, indeed, much more than the sum of the individual parts’ (Kloppenborg, 1991: 164).

In outlining the purpose of partnerships, Kloppenborg also emphasises the application of partnerships as a means to counteract social problems. 'Through their high complexity and scale such (social) problems are of an extraordinary nature and require alternative devices for ordering interests apart from the effective mechanisms of market and state hierarchy' (Kloppenborg, 1991: 1). McQuaid further develops this statement by stating that 'partnerships can be argued as an effective way of overcoming market imperfections that are caused by externalities' (McQuaid, 1994: 8). These two statements establish the precedent for the assumption that there are benefits to be realised from the two sectors working together, benefits that normally would not be achieved if the two sectors worked separately, leaving development subject to simple market mechanisms.

3 Setting the Scene in the Netherlands

So far, the paper has given a general overview of the spectrum of government policies towards land redevelopment, has looked at the reasons for the shift to public-private partnerships and has discussed the definitions and dimensions of a PPP. Next, the paper looks at the context of one country, the Netherlands. The following chapter begins by looking closely at the physical nature of the Netherlands and its physical planning policy and land use planning controls. This information will begin to give a background to the case study to come later.

3.1 The Context: Development in the Netherlands

The Netherlands can be distinguished by its particularly high population density and by the fact that, on the whole, the country is very highly urbanised. On an average there are about 415 people per km²; in the west of the country, this number rises to 900 people per km². There are four large cities, situated at the centre of the country and to the west which, in combination with some smaller cities, have a population of 5.5 million (the country's population totals over 15 million). In addition, there are some 35 cities of medium size (population of at least 50,000). Since the Netherlands is also highly agricultural; the urbanisation of the country puts great pressure on the farm land adjacent to the cities.

Due to the fact that much of the country is located below sea level, more than half of the highly fertile land must be protected by dikes against flooding from the sea and rivers. For centuries, the Netherlands has had a sophisticated system for draining the land lying within the dikes. The high water table in and the weak nature of the soil makes construction a lengthy and difficult procedure. No building, particularly in the west of the country, is constructed without first driving piles into the soil.

The difficulties in building with such soil conditions limits the amount of urban sprawl which can occur and the urban areas are, therefore, of a very compact nature. The density of urban buildings is very high.

The Netherlands, in addition to its extensive agricultural output, is highly industrialised. This has led to a major focus on the part of the government on infrastructure provision and development. The infrastructure system provides an extensive system of traffic and transport by land and by water (Ministry of Housing and Physical Planning, 1981).

As a result, land in the Netherlands is a scarce commodity and development must, therefore, be highly controlled. The following section outlines the policies and controls that are presently in use.

3.2 The Framework: Physical Planning Policy and Land Use Legislation in the Netherlands

The Netherlands has a very strong system of land use policy and legislation. The basic components of the Dutch approach to land development can be delineated as follows:²

Table 1: Main Elements of the Dutch Physical Planning Policy and Land Use Control

- Administratively, the responsibilities for land development are divided between the national, provincial and local levels of government.
- The national government lays down the physical planning policy in government reports published periodically. These reports serve as strategic policy guidelines for the future (Also see Section 5.2 for further information).
- Long range development is outlined in a national programme which classifies the different parts of the country according to land use, future land use, recreational areas and agricultural land.
- The government plays a very active role in stimulating and developing new growth centres. Financial assistance from the central level is given to these areas, both residential and industrial, to support the development of infrastructure, and the mitigation of environmental problems.
- Land development is highly decentralised to the municipal level. Municipalities have two plan models at their disposal: the structure plan and the land use plan. The structure plan indicates the future development of the municipality (or a part of it). Neighbouring municipalities may jointly make a structure plan to plan their collective areas. The land use plan, in contrast, indicates the land utilisation at the local level and is legally binding for the citizen. (Re-)development decisions are made according to the land use plan.
- A great deal of the land in the Netherlands is publicly owned.
- Land production, or the servicing of land, has until recently been solely the task of the local land agencies. These agencies have a very specialised function and play a significant role in the land market. They have the authority to purchase, service, manage and sell land. They set the price of the land for sale to the developer or to housing corporations. Prices include the costs of acquisition, servicing and interest.
- Housing corporations play a large role in the construction of social housing and until recently received large subsidies from the national government.
- Expropriation of private land by the government is a common and highly accepted method of acquiring land for development.

Source: Ministry of Housing, Physical Planning and Environment, 1981, 1987

It should be underlined here that, considering the traditional amount of control exercised over land in the Netherlands, any release of this control and change in the existing systems could only be for good reasons.

² For further information on physical planning policy and land use legislation in the Netherlands refer to Annex I

4 Background for the Case Study

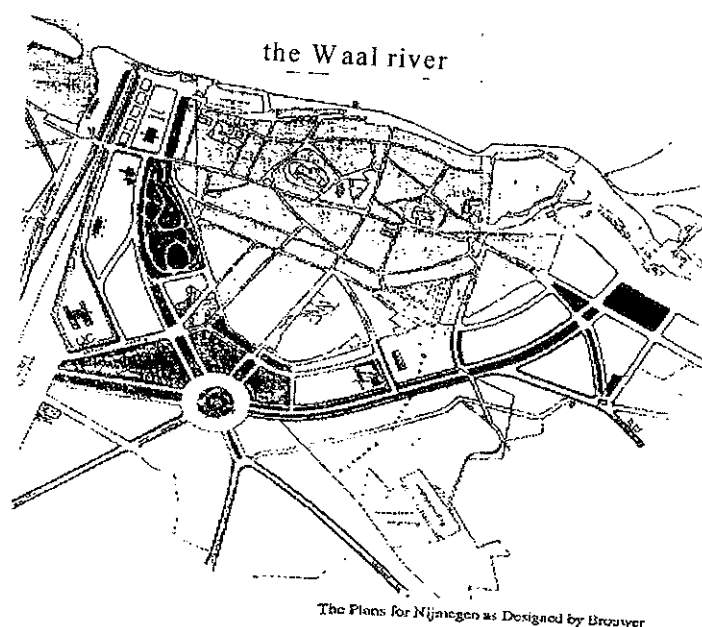
Given the background described above concerning the land use policy and legislation in the Netherlands, the following chapter adds further background for the case study by looking more closely at the history of development in Nijmegen, the city in which the case study was implemented, the trends in development policy and economic realities and the affects of these on development locally, and the resultant changes in the attitudes of the public sector in Nijmegen related to role of the private sector in urban land and property projects.

4.1 The Historical Background to the Physical Development of the City

Nijmegen is the oldest city in the Netherlands. Under Emperor Trajanus, the city was given the name *Ulpia Noviomagus*. 'Ulpia' refers to the family name of the emperor; 'Noviomagus' means 'new market'.

Until 1874, Nijmegen was a fortress. The city remained cut off from the rest of the country, was not connected to the railway system and was excluded from the industrial revolution. Life in the fortified city became difficult as the population grew to 23,500 and finally, in 1876, the job began to dismantle the wall. This was completed in 1880.

Illustration 4.1 The plans for Nijmegen as designed by Brouwer



At that time, Nijmegen established the goal of becoming an attractive place to settle; a city of canals and parks, of attractive houses and villas. The municipality chose an urban scheme developed by Bert Brouwer, also requesting that he implement the plans. To do this a company was established, the NV Nijmeegsche Maatschappij tot Exploitatie van Bouwterreinen (the Nijmegen Society for the Implementation of Building Sites), of which Brouwer became a 75% shareholder. This was, in fact, one of the first examples of a public-private partnership. The entire plan was executed and the 'singelgebied', the moat area, as the area is called, is to this day still one of the most valued (and historically protected) parts of the city.

Nijmegen's population grew quickly to 30,000 in 1886, 40,000 by 1897 and 50,000 by 1905. The built up areas quadrupled and, in the early 1900s, the local government began to build social housing through 'woningbouwverenigingen', or housing associations, which were established to develop simple but appropriate housing.

The city also began to experience economic growth. However, along with the development of economic diversity, there was also a shift away from the traditional harbour activities, resulting in the decay of the harbour areas.

On 22 February 1944, Nijmegen was bombed and a big portion of the central area, as well as the area around the station, were destroyed. After the war, the city took on three major tasks: the rebuilding of the bombed areas, the renewal of the harbour area and the further development of surrounding areas. The reconstruction of the centre city was completed in the 50s, the renewal of the harbour area in the 80s. The development of the surrounding areas remains a continuous process (Sweens, 1995 and Abma et al, 1984).

4.2 The Trends in Development Policy and Economic Realities, and the Affects of These on Local Development

As elsewhere in the Netherlands, the municipality of Nijmegen has always taken on an active policy towards land development, a policy which stems from the beginning of the century when the attitudes adopted by the government required the provision of high quality social housing and public spaces for all. The city uses the land use plan to spur development and acts as an entrepreneur to operationalize as many portions of the plan as possible.

The organisation which takes a central position of entrepreneur in the local land market is the 'Grondbedrijf' (established in 1928), a local land agency which makes land ready for sale to developers or housing associations.³ The land agency acts commercially in that it competes with other municipal land agencies in the sale of land. In the pricing of land, it is the intention that the costs attributable to servicing works be included in the final land prices to the purchasers of the land and that the value of this land be tied to the function/use which is shown on the land use plan. It is for this reason that is important to the land agency to control the costs which make up the end price (for more details, see 4.2 and Annex I).

³ Making land 'ready' essentially means servicing the land with infrastructure so that it is building 'ready'. The standards of servicing are established nationally.

Much of the cost of making land ready for social housing is distributed over other plots which are intended for commercial and mid- and high-income housing projects. This methodology acts as cross subsidisation between functions and makes it possible for the housing corporation to buy the land at a cheaper price and to provide cheaper housing to the low income levels. Social housing has, until recently, been subsidised by the national government.

Though the local government of Nijmegen has long held a monopolist position in bringing land onto the market (as have other municipalities), it has been clear, in the last few years, that this has been changing. There are three reasons for this:

- the national government has begun to give more of its responsibilities over to the market;
- there has been a shift in national government policy to economic and physical planning; and
- the housing corporations have been growing more independent.

The government has long had a dominant role in development. The disastrous influence of the industrial revolution, the resultant quick, unguided growth, and an all-time low in the quality of life (housing, sanitation, health, etc.) forced the government to step in at all levels and take control. After the war, this was taken even further. Social democratic attitudes were also such that the state guaranteed care of its citizens throughout their lives. However, it has now become obvious that the government can no longer hold this position economically. The government is changing its tack and transferring many of its responsibilities to the market.

In addition, over the years the national government has been going through an evolution in its thinking regarding the direction of the physical and economic development in the Netherlands. This process of change came to a culmination in 1992, when the Dutch national government released the *Vierde Nota Ruimtelijke Ordening*, one of the government reports mentioned earlier, which established the government policy towards spatial and economic development. This report constituted what the government considered should be the new strategic approach to development in the Netherlands and was much driven by the advent of the European Union (EU). With the changes in the physical and economic relationship of the European nations, the Dutch government performed an analysis of the importance of its cities in relationship to the remainder of the cities in Europe, taking into account the location of Schiphol Airport and the Rotterdam harbour as major centres of economic activities. It established, in the report, the focal areas in the Netherlands for economic development and growth (one of which is Nijmegen), strictly stipulating the areas in the Netherlands which were to be urbanised and those to be preserved as green and agricultural areas.

This report has had a very strong affect on the behaviour of the private sector in the Netherlands. In possession of information regarding the areas of 'concentrated' development, the cities which were to be developed and those that were not, private firms began speculatively purchasing large tracts of raw land and holding this land for future development. This has been happening in and around Nijmegen (as it has also in other focal urban areas), and the local government has not been able to maintain its monopolist position. In addition, expropriation has become increasingly more difficult. For one, speculative purchase of the land by the private sector has driven the price of land up. Second, private firms are now stating that they can implement the requirements of the land use plan, which legally makes the expropriation law invalid. The municipality now has greater difficulties in exercising its rights of compulsory purchase.

Finally, after substantial investment by the national government in social housing, it has become clear that the housing corporations which handle the construction and management of social housing have become financially stable enough to take on an independent function. The national government has therefore implemented a strategy to eliminate all support from the state. This includes the elimination of debt related to all subsidies to the housing corporations as well as cutting off any future subsidies to these institutions. To maintain their stable positions, these corporations have begun to build a mix of housing for all income groups. They now also have the authority to determine the terms of their survival without interference from the municipality.

The facts stated above reveal that the municipality of Nijmegen is being stimulated by certain structural and contextual factors to shift from a monopolistic to a more facilitating role. In addition, the private sector is taking advantage of new opportunities and thereby restructuring its role. Purely private projects are acceptable just as long as the private sector is able to fulfil the objectives of the land use plan, meet the quality requirements laid out by the municipality, and compensate the city for the costs of changing the plan. Public land developed by the private party is returned to the municipality after completion of the project.

4.3 The Changes in Municipal Attitude Regarding its Relationship to the Private Sector

With the reduction of the municipality's control, the city of Nijmegen has begun to reconsider its relationship to the private sector and to explore the benefits of participating with the private sector in risk-sharing ventures for the development, sale and timely execution of land projects (Sweens, 1995).

Nijmegen has worked closely with the private sector for many years, often in what could be described as different forms of partnership arrangements (but without there being much focus on the nature or outcome of these projects). However, the public sector has usually taken the role of initiator, particularly in larger projects, whereas the private sector role has been limited to executing the components of the project according to public desires.

Experience has shown, particularly with major restructuring and renewal projects, that the private sector cannot and will not take the risk of implementing large projects on their own, particularly those with many social components, while the municipality has great interest in doing so particularly with the involvement of the private sector. However, the over-controlling attitude of the public sector of the past has often resulted in a deterrent to the private sector particularly in these large, complicated projects.

With a change in the municipality's attitude to its relationship to the private sector in development, something which is also being supported at the policy level by the national government, the focus is now on initiating projects with greater contribution from the private sector from the start.

The municipality is particularly interested in establishing partnerships in projects of an extensive and intricate nature (also with a regional focus) for which the financial and technical experience of the private partner and the possible involvement of other government bodies (other municipalities or the national level) are required. These are projects which, due to their scope and mixed-use composition, have a long running time (8-10 years or more) and for which the co-ordination required is of a highly complicated nature. The municipality has been searching for the best way of structuring these projects to incorporate the social obligations and duties of the public sector, to encourage the private sector to provide its expertise in following market signals (Sweens, 1995 and Plan van Aanpak, 1988).

Illustration 4.2 Nijmegen as a focal point between the west and the east

Nijmegen as a focal point between the west and the east



5 The Case of Brabantse Poort

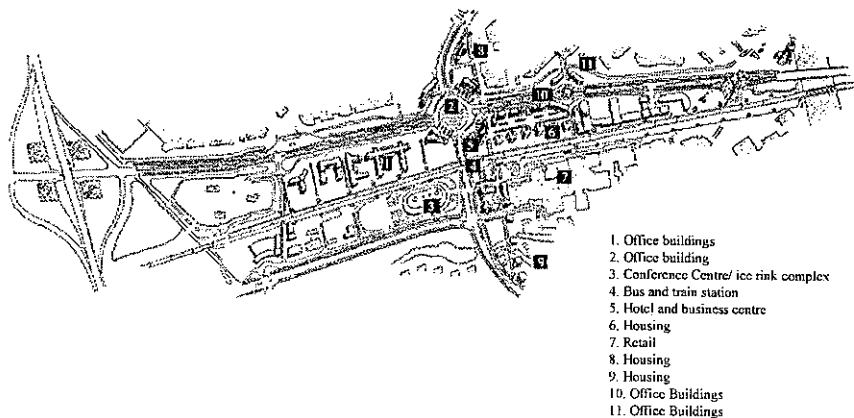
This chapter gives a description and analysis of a public-private partnership called the Brabantse Poort. The project developed was the brain-child of the local government in Nijmegen. It was executed with full participation of private partners from a very early stage in the whole process. The manner in which the project was structured and implemented represents an evolution in the thinking of the municipality of Nijmegen and the following chapter describes much of this process of thinking. The project is now in mid-construction and all components should be completed by 1999.

5.1 Introduction to the Project

The concept plan developed by the municipality proposed the creation of a new mixed-use area within the city limits, to the south-west of the city centre, composed of a core of office buildings, new residences and a number of ancillary activities. The concept met with wide acceptance at the national level. Nijmegen had been highlighted as a growth city with good access to the European nations to the east and the municipality was interested in bolstering the city and its image by attracting business and industry to the area. Coupled with this, Nijmegen was also intent on implementing a project of this sort because the city's unemployment figures were showing a substantial and worrisome rise and through this project they intended to focus on the improvement of their employment opportunities in the area.

Illustration 5.1 Site location and lay-out

Site location and layout: Brabantse Poort, Nijmegen, the Netherlands
source: City of Nijmegen



Contrary to many Dutch 'business park' schemes which are located in areas distant from urban centres, accessible only by car, this scheme was deliberately located within the city and within walking distance of the public transportation system to bring business 'back to the town'. Its mixed-use nature was also carefully considered to avoid the emptying out of the area in post-work hours, a condition which now is considered by the government to be an encouragement to increased criminality.

The area to be developed was until 1990 no more than a traffic link connecting Nijmegen to highways to the east and west. The highway constituted a strong line of demarcation between the city parts, Dukenburg and Lindenholt, to the north and south and was becoming not only a handicap to their development but to the overall local quality of life. The plan proposed the 'bundling' of the highway to reduce its scale to the size of a city street and, at a major highway branch-off location, the conversion of the road to a round-about around which office buildings could be built. This change was intended to reduce high-speed traffic through the area and to establish a point of connection between the towns adjacent to the road.

90% of the land was, at the time of project initiation, owned by the local government of Nijmegen. The remaining land belonged to the national railway (NS) and the national government. Strips of land adjacent to the train tracks were sold to the local government for their use by the NS for Nfl. 12 m².

The following, Table Two, constitutes an initial outline of the proposed development programme:

Table 2: the Proposed Development Programme

- 'Bundling' of highways, building of roundabout.
- Development of secondary slower travel roads and a good, integrated system of bicycle paths.
- 20,000 m² new office space.
- 3,000 m² new shops, including the renewal and enlargement of the existing shopping centre in Dukenburg.
- 1,500 m² attendant private service functions and public facilities.
- 364 new housing units of different price classes, including social housing.
- Enlargement and renovation of local train station and bus terminal.
- Multi-functional ice rink and convention complex.
- New hotel/business centre.
- Theme park: mixed-use shops and sport centre.

Source: Toelichting Plan Brabantse Poort, 1989 and Carel Sweets, 1994.

5.2 The Process⁴

The Initial Proposal to the Local Council

The strategic proposal for the project was presented to the Local Council on 7 December 1988. The municipality earmarked the Brabantse Poort as the major area for the focus of future development. As stated in the proposal, the plans for the area responded to two major challenges for the city:

- how to utilise these uniquely located zones to respond to the shortage of economic activities and housing; and
- how, through the development of these zones, to improve upon the physical quality and the shortage in spatial and functional relations in the existing area, while preventing undesirable development and continuing to support the daily functions of the local residents (Plan van Aanpak Stedelijke Ontwikkelingszones, 1988).

The arguments behind the development of the programme were supported by market research performed by the city on the demand and supply of employment, business and industrial activities, housing and work space in the area. Research conducted revealed:

- a shortage of office space and land for the development of office buildings for the growing office market, implying a distinct pressure on the centre area of Nijmegen for this kind of facility;
- coupled with the growth in the office market and the existing and growing industrial sector in the city, a substantial growth in the service sector, mostly small and medium sized firms. The service businesses showing the most growth potential were legal counsel, accountants, advertising agencies and computer companies;
- an interest on the part of the large businesses interviewed in locating or relocating to an area where there would be easy access to service businesses. These large firms, in an effort to trim costs, contract out a good deal of their services to specialists in the service industry;
- an interest on the part of these smaller service firms in locating to an area close to other service firms. Common practice is to join forces with other service firms to be able to produce a better package of services;
- unemployment figures of 25% in the office/education categories. Of the women searching for a job, 35% were also in this category;
- a desire on the part of the businesses to be located in an area with integrated housing and retail functions; and
- a serious shortage of housing in Nijmegen proper (Toelichting Plan Brabantse Poort, 1989).

The municipality also included in its initial proposal to the city council its arguments for executing the Brabantse Poort in the form of a public-private partnership. They underlined the need for a more 'modernised' form of partnership⁵, one which could be structured to respond to the requirements of a large and complicated project such as the Brabantse Poort.

The proposal also outlined what the municipality expected the phasing of the project to be, and how and at what point the private sector should become involved. They saw the project going through the following phases:

⁴ See Annex II for the schedule of activities in setting up the partnership

⁵ The municipality's call for a more 'modernised' form of partnership stems from their study of various PPPs in the Netherlands (Amsterdam, Rotterdam, the Hague, Groningen, Maastricht).

- The orientation phase
- The setting of conditions phase
- The start phase
- The development phase

They described the activities in each of these phases :

- *Orientation phase:* at this stage the major framework for the project is analysed and the potential approach to the project is established. Even at this stage the city planned to involve the private sector by asking potential partners to contribute suggestions for the formulation of the framework of the project (this was also to be used as a test of their appropriateness for selection). The municipality described the means it would use to attract private partners (developers and investors) through brochures, contacts with potential firms, congresses, promotional campaigns for the city;
- *Setting Conditions:* the partners are chosen, negotiation on the major conditions of all parties begins, options for financing are considered. The mutual goals, interests and demands of all parties are established and the commitment for financing is preliminarily pinned down. The involvement of each party with respect to responsibilities and risk sharing are determined and, in fact, the type of PPP is determined. On the basis of this stage, the viability of the project can finally be analysed;
- *Start Phase:* with conclusion of the previous phase the parties agree contractually to the terms in the form of a 'letter of intent'. The legal aspects and the structure of the PPP are specified; and
- *Development Phase:* this is the period in which the project is realised. Plans are completed, the necessary tests are performed, permits are attained, cost estimates are obtained, bids are submitted. All these components are further elucidated in a 'partnership contract'. At this point partners cannot withdraw without paying substantial penalties. As a part of this phase, the functions which are still purely public are, namely, the development of a new land use plan based on the agreed upon parameters of the project by all parties, the preparation of specifications for public works, the implementation of all infrastructure work and the issue of land through rent, lease or sale to the private parties by the local government.

The municipality underlined its intent to involve the private sector at the early stages to eliminate possible disagreements at the beginning and to make sure that all the public regulations were recognised. They emphasised the need for commitment from all participants due to the fairly long time horizon of the project. Given the private sector's desire for short term gain, the project would have to be structured to meet the needs of all involved. The city further enumerated what they felt the preconditions for success would have to be:

- a broad basis for trust between the participating parties;
- mutual interests and objectives which are clearly defined and respected by all;
- clear and stable sources of finance, with a clear and fair distribution of risk, long term commitment by knowledgeable personnel;
- a situation in which the cultural differences of the private and public sectors do not become an obstruction to the project, suggesting the need for a co-ordinated approach via a project organisation which handles the project management, for a legal mandate which would give local public representatives sufficient leeway to negotiate, and for a legal structure which would ensure a clear system of satisfying conflicts and, in the long run, the continuity of the project; and

- timely participation of the community in the decision-making process and in all phases of the process.

The municipality went on to describe what they felt was necessary in terms of public personnel to execute the project. They stated that the experiences of the past had led them to the opinion that there was a need within the local apparatus for a body with background in project management and the workings of the market to manage the project. They considered the possibility of hiring an outside project management firm with expertise in the market and in generating development activities. This possibility was, however, considered disadvantageous. The municipality feared that they would become too dependent on the manner in which this firm conducted business, (possibly in conflict with the manner in which a public entity conducts business), and that they would, in the long run, not have sufficient input into relationships with the developers and investors. In the end these factors would work against their overall goal to represent their own interests in the project while gaining a level of experience in the private partners' way of thinking. They ultimately advocated setting up a project office run by an autonomous public official with a good overview of the municipal apparatus and processes, and of governmental relations (Plan van Aanpak, 1988).

Searching for a Private Partner

After approval by the Local Council, the municipality started the process of looking for a private partner. They spoke to a number of candidates but finally released a proposal document to 18 potential candidates in mid-1989, which outlined the parameters of the project, the local government goals and objectives, their views concerning the division of tasks and, finally, a questionnaire which was to be filled out by all private parties. The criteria for selection were based on the ability of the private firms to make substantive suggestions regarding the proposed project and were structured around three main themes:

- the qualitative and quantitative visions of the applicants concerning the realisation of the programme and the urban design;
- the solvency and the acquisition possibilities (tenants) of the applicants; and
- the manner in which financial, juridical and contractual aspects of the project were dealt with by the applicants.

The government supplied, in the document, the following financial and legal parameters for the project:

- The city would only make a contract with one party. This contract party could be made up of a combination or consortium of parties;
- the contract would be based on the actual realisation of the programme in an agreed upon period;
- the city would, in every case, implement the large scale infrastructure. The preparation and the supervision of the infrastructure works would be their responsibility;
- the developer would in principle be allowed to choose between ownership and lease of the land;
- backing out of the contract before the start of construction would lead to a non-refundable charge of 10% of the total land purchase price. Pulling out at the midway stages during building would lead to a substantial penalty since the city, as well as the other developers of other portions of the Brabantse Poort, would have to be able to depend on the realisation of the project. The municipality would not accept constructing a building without being somewhat certain of its future occupancy since adjustments to the programme in mid stages could harm and delay the project in many ways;

- the ground prices at which the municipality proposed to sell land to the developers at the level of prices in mid-1989 were listed as:

364 residences at an average of Fl. 20,000	7,280,000
20,000 m ² for office space at Fl. 175 per m ² (b.v.o) ⁶	3,500,000
3,000 m ² for shops at Fl. 750 per m ²	<u>2,250,000</u>

Total **FL. 13,030,000**

- these prices were to be based on the provision of land in a ready state, were exclusive sales tax and were based on a design with parking on the property (a higher cost to the private parties);
- during the period between the signing of the contract and the date at which the land would be sold for development, no financial commitment in the form of a down payment would be required from the developers; and
- these prices could be readjusted to meet changing land values. The land price would have to be paid at the time of transfer of the land. Delays in the payment in full would result in a late penalty being applied. Certain financial benefits could be arranged in the structure of the sale, for instance an ABC sale construction could be implemented. (This process, in which entity 'A' sells to entity 'B' who then sells to entity 'C', is a process which is subject to reduced taxes for all those involved) (Toelichting Plan Brabantse Poort, 1989).

The Selection Procedure

An analysis of the proposals submitted was made by a working group of employees from five different local departments (Financial Policy, Policy Development, Project Bureau, Economic Development and Urban Planning). The pre-selection process was completed in October of 1989 and a preliminary choice was made after consultation with various municipal representatives. This preliminary choice was presented for approval to the council.

Certain aspects of the proposals were considered and discussed in the working group. Differences in the reactions of the applicants were analysed, for example, to what extent the applicants addressed the questions (not at all, generally or in great depth), or how tentative or creative the answers were (some parties demonstrated a preference for breaking the project and the contractual obligations down into phases with a commitment to go forward with the project only if the market permitted. This reduced the risk to them but also reduced the comprehensiveness of the project and virtually eliminated the possibility of having a partnership of the kind foreseen by the city).

At a certain point in the decision-making process, the choice was narrowed down to five applicants, all of them consortiums, which stood out from the rest. The documentation of the selection procedure shows a further analysis of the proposals.

Most used visuals with text to support their bids and to express their vision. It was then easier for the municipality to evaluate to what extent the proposals responded to the original 'urban model'. Some proposals added aspects or suggested changes, some diverging a great deal from the original ideas. All five were strong.

Related to the financial, juridical and contractual issues, applicants gave comments on their preference for certain forms of PPPs, and the extent of risk sharing to be undertaken by all parties (and at what stage in the process). They also analysed the level of the land prices set by the municipality, and the timing and scheduling proposed. All applicants wanted to involve investors right from the start.

⁶ Square meter calculations are based on gross floor (b.v.o) area calculations.

With reference to the market orientation/ acquisition possibilities of the applicants, the working group looked at the ideas on and financial analysis of the mix of housing for the area (flats vs. attached single family, sale vs. rent, social vs. market and the pricing of the units). The applicants were also judged on their suggestions concerning the acquisition of tenants. The working group looked for substantive understanding of the market and target groups, and some kind of information about how the parties would approach the acquisition of future tenants (General file research, 1995-96).

The Choice of a Partner

In 1990, Nijmegen released the information that they had decided on a consortium comprised of three private parties, two developers (Heijmans and Hendriks) and the Dutch National Investment Bank (NIB).

The consortium had several strong points going for them other than the strength of their proposal. First, the NIB, (with 49% of their shares owned by the government) had good contacts in both the private and public sectors. Second, the consortium had sound experience with projects in co-operation with government bodies. Last, the consortium was strong financially and was well prepared to provide financial backing for the project.

From the private side, the partners were interested in the project because it represented a good mix of offices, housing and shops in a well situated area of town. The consortium calculated that the project could be a success with this mix of functions but did so with certain reservations. They felt that the present market for housing and shops was a solid one but that the market for offices would require some support through public policy decisions and certain public concessions. The private partners asked the municipality to:

- curtail major office development in any areas other than the Brabantse Poort. The private parties feared a potential over-saturation of the market for office space and requested that the Brabantse Poort become the primary location for offices in Nijmegen; and
- exercise control over the types of land use in adjacent areas and, particularly, limit any industrial development. Experience has shown that a mix of industrial terrains and office space does much to reduce the demand for such office locations from potential tenants.

In addition, there were some unresolved issues which the private parties brought forward as major points to the next phase of discussions (the 'setting of conditions' phase). The four major issues to be dealt with were:

- how to define a 'good looking building in high standard surroundings which can be sold to potential tenants';
- the location and standards of parking facilities (one parking space per 50m² or less): in the buildings, on site or in the areas surrounding? The private partners calculated a greater need for parking but wanted to negotiate the location of the lots;
- the extent of risk commitment by the public sector. The private partners felt that it was necessary for the local government to commit 'visibly' to the project and share in the risk (and profits) by investing in the construction of the buildings themselves; and
- the scheduling of release of serviced land for sale/lease and, therefore, the precise phasing of the project (Schuwer, 1996).

After the major conditions of the municipality and the consortium were determined, the partners signed the 'Letter of Intent' and entered what the municipality had termed the 'Start Phase'. It must be stressed that, even at this point, the relationship as outlined in the Letter of Intent really only constituted a commitment to the intent to establish a partnership. Final negotiation of the terms of the partnership still had to take place. Ironing out differences and coming to terms with conditions became the deciding factors in whether or not the partnership would actually be established.

In the Letter of Intent the contractual obligations of each party and what was to be achieved during this phase were clearly outlined. The document stated the goals of this phase, namely, the research and determination of the urban, economic, financial and other criteria for the project. It listed the activities of this phase, the organisation structure of the 'partnership' at this time, the boundaries of the decision-making process, the financial obligations of each partner in this period, and the legal means for settling disputes. The document stated that the project could not reach the next phase, the signing of the partnership agreement, without the mutual resolution of all the objectives and a final decision about the structure of the public-private partnership (Intentieovereenkomst, 1990).⁷

Establishing the Partnership

After considering a number of different legal forms for the partnership, the partners finally settled on a private company with limited liability (BV). There were several reasons why this type of partnership was chosen. First, as opposed to the other forms considered (a mixed private limited company/special partnership and a limited partnership split into daughter companies to handle different portion of the project), a BV is of a simple legal construction and is very transparent. This simple construction would facilitate much of the co-ordination and financial management which had to occur in the course of the project. Second, after much consultation with tax advisors, it was decided that the fiscal benefits to be realised by all partners would be the best in a BV. In coming to a conclusion related to these benefits, the following points were taken into account:

- Whether the local government, as a partner in a BV, should be considered a private body and therefore subject to the same taxes as the private partners;
- if, through the interpretation of the law, the activities of the municipality could still be considered public and therefore, untaxable (under certain conditions), whether the benefits to be gained from this were sufficient to warrant the added complications of a more complex form of partnership and financial management process; and
- based on an analysis of three different kinds of partnership structures, whether and how the various partners would be taxed. The three taxes they would subject to were transfer tax, sales tax and corporate tax (Rechtsvorm Project Brabantse Poort, 1991).

In the long run, the local government decided to act in a private capacity and accept the same taxes as its partners in a BV.

For the BV shares and profit were divided as follows:⁸

NIB	40%
Heijmans	25%
Hendriks	25%
Nijmegen	10%

⁷ See Annex III for an outline of the Letter of Intent.

⁸ In the case of profit over and above a given margin per year, the municipality was to get 60 % of the extra.

The company's Advisory Board was formulated with five members: 2 from NIB, 1 for each of the developers and 1 for the city of Nijmegen. These representatives had an overseeing function and were expected to settle any disputes which could not be settled by the daily managers, comprised of 1 representative of the NIB, 1 from the city of Nijmegen and 1 from the two developers combined.

The outcome of the negotiation process between all the parties resulted in the following points being incorporated in the partnership agreement, signed on 8 October 1991, as project standards:⁹

- the project must be in accordance with national standards for physical planning, the environment, and transportation. Central government regulations required that the project respond to environmental concerns by focusing on reducing car use in the area, by increasing the use of public transport and the bicycle. The project had heavy standards regarding sound transmission throughout the area. Sound barriers had to be installed in all residential areas to reduce the noise level to the required 65 dB at building facades;
- the project must conform to the requirements of the land use plan;
- the project must be phased to protect against risk of financial loss and to increase options for plan readjustment and flexibility;
- the land must be issued (sold) to the BV ready for construction (serviced);
- infrastructure provision must be put up for public bidding. This was based on a EU requirement that all projects with costs in excess of 5 million ECU (Fl. 11 million) must be made available for bid to all EC firms;
- if a higher than standard level of infrastructure was desired than was required by law, the cost must be borne by the BV;
- parking was to conform to the standards of 50m² gross coverage and must be built within project property lines at the costs of the BV;
- developers must rent out 40% of the office buildings before the start of construction. For the rental shopping and housing, acceptable renters must also be found prior to the beginning of construction;
- parts of the project could be sold to investors and/or the end users. The partnership did not wish to undertake the management of the properties after completion;
- the BV must make additional investments for the renovation of the railway station. After renovation, the property was to be returned to the national railroad for maintenance and upkeep;
- for areas surrounding the project area, options could be given to private parties outside the BV to develop land according to their own initiatives. Projects by outside firms included: the theme park, the ice rink/convention centre, the hotel and business centre. The ice rink/convention centre was to receive major financial contributions from the municipality in keeping with Dutch policy to subsidise the cost of tickets to entertainment events. Investors included the local, regional and national government, a bank, and other local investors.
- with respect to the bids for the construction of (parts of) the project, the partnership was to give the first opportunity to the construction company Heijmans-Hendriks Nijmegen VOF to give an open bid. In this bid, the VOF would assure a standard mark-up of 9% for administrative costs, profit and risk; and

⁹ See Annex IV for an outline of the partnership agreement.

- national grants: only for those portions of the project which focused on improvements in environmental conditions: 80% for costs related to improvement in bus system, 50% for costs related to bike paths (Sweens, 1992 and Samenwerkingsovereenkomst, 1991).

On the financial side, projections were that the total investment by the BV (at start of process) would be Nfl. 112,800,000 excluding the two extra office buildings and Nfl. 146,500,000 including the two extra office buildings.¹⁰ Financing of the construction of most buildings was obtained through the pre-sale of the property to investors. Pre-sale luckily came very early in the process, during the Start Phase, and added financial security to the project. Payments were received in instalments over the course of the construction period. Servicing costs and portions of the project not pre-sold were financed through loans from NIB.

¹⁰ See Annex V for a schedule of construction and breakdown of the (actual) investment in different building types.

6 Commentary on the Project and Partnership

6.1 Introduction to the Commentary

The chapters above outlined the present conditions and problems in land development in Nijmegen, the reasons for implementing the project and the process the public and private sectors went through to implement it as a PPP. The information cited from the documentation on the case reveal a) the evolution of the relationship and the negotiation process between the public and private sectors, b) the mix of objectives, both public and private, on which the negotiations were based, and c) the end result, the structure (a PPP in the form of a BV) and the framework of the project.

Certain questions still remain which are important for establishing to what extent the project can be assessed as a success:

- Did the project, as set up, meet these objectives?
- Since certain objectives led to the decision on the part of the public and private sectors to enter a partnership, did the partnership respond to the objectives?
- Were these objectives (those related to and not related to the partnership) met more satisfactorily because the partnership was implemented?

It is crucial, at this point, to make a differentiation. It is clear that the municipality and the private partners had certain interests (let's call them 'external' interests or objectives) before entering into the project, interests which must be separated from their objectives (let's call them 'internal' objectives) for entering the partnership. In other words, certain objectives (external) stemmed from the inherent interest of the two sectors, such as the municipality's desire to develop that particular area and the private sector's interest in involving themselves in a construction project in the area (under certain conditions). These interests or objectives would have existed had the partnership been implemented or not and must be differentiated from those (internal) which directly led to the formation of the partnership.

One would naturally assume that, if this PPP can be deemed a success, then it must satisfy the 'internal' objectives for implementing a PPP. However, it is also important that the 'external' objectives of the partners be met by the execution of the partnership. If this is the case, the partnership is also a success on that level. Finally, the question remains as to whether both sets of objectives were realised more satisfactorily through the implementation of the PPP. All these issues will be discussed below. The external and internal objectives of the partners can be summarised as follows:

Table 3: A summary of the objectives of the partners

External objectives of the local government	Internal objectives of the local government
<ul style="list-style-type: none"> • To implement a large scale mixed-use project which would respond to the trends in development in the Netherlands as set forward in the national government documentation; • Through this project, to reduce the business and housing pressures placed on the city of Nijmegen and the lagging employment opportunities of the region; • To focus, in the area chosen for development, on improving the spatial and social quality of life (housing, recreation, shopping, physical attractiveness, local safety) of the citizens and improving the economic position of the area; • In response to the change in thinking in the Netherlands regarding the policies towards land development and the role of the public and private sector in developing urban land, to establish a PPP with a private sector partner, and share in the development of the project in a risk-sharing venture; and • To test out a PPP as a mechanism for guiding development, providing incentives to the private sector to get involved in projects of this sort, and implementing urban projects according to local government (and private sector) initiatives. 	<ul style="list-style-type: none"> • To be able to safeguard public interest, as is government responsibility (is also 'external'); • Through participation in a private company and working with a private partner, to acquire greater knowledge of the manner in which the private sector conducts business (financial and project management, profit seeking behaviour, negotiation procedures) and, through this connection to the private sector, to be more responsive to market signals; • To mobilise private funding for development; • To establish a clear and fair distribution of risk; • To make a profit; and • On the project management level, facilitate the overall co-ordination of the project, to manage the project efficiently while maintaining a certain schedule, thereby ensuring a minimisation of losses and a maximisation of profits.
External objectives of the private sector partners:	Internal objectives of the private partners
<ul style="list-style-type: none"> • To make a profit; • To become involved in the process of development of the region (present and future), to establish a reputation in the area; and • On the project management level, facilitate the overall co-ordination of the project (could also be 'internal'), to manage the project efficiently while maintaining a certain schedule, thereby ensuring a minimisation of losses and a maximisation of profits (necessary for the survival of the firm). 	<ul style="list-style-type: none"> • By working closely with the public sector, to safeguard private interests such as having the opportunity to negotiate for certain changes in regulations which might hinder the execution of the project; • To mobilise public funding for the project, i.e. increase access to certain financial benefits such as tax breaks, government subsidies and grants; • To develop a clear and fair distribution of risk; and • To develop a good reputation with the local government (source of future work).

6.2 External Objectives

It is obvious that certain 'external' objectives of the local government and the private sector have already been (partially) realised. The local government took steps to develop Nijmegen's position in the Netherlands, both physical and economic, by instituting the project. They have also taken steps to reduce the housing shortage, attract businesses to the area and reduce lagging unemployment in Nijmegen by implementing the project. The private sector partners have managed to involve themselves in what the national government calls a 'focal project' for the region around Nijmegen, a fact that will not hurt their future business.

On the short term, related to these objectives, the project can be considered a success for both partners. For now, responses to the project by potential new residents and businesses have been excellent. The construction completed to date (mostly offices) is fully occupied, demand for office space is twice what was originally expected, and two additional office buildings have been added to the programme. There continues to be good demand for the other portions of the project still in the planning stages (housing units and the shopping area) and for the additional functions that are to be built outside of the project (ice rink and hotel/business centre). Employment levels are up, additional jobs have been created by the large firms in the project area (Sweens, 1994).

Only on the long term, however, will it become clearer whether the local government goals to spur the regional and local physical/economic growth will be fully realised through this project.

As far as the local government's goal to improve the spatial and social quality of the local area and the two adjoining city parts are concerned, the steps taken, through the programming of the project, are a definite improvement on the old situation. This project, from the start, was targeted to improve the quality of life of the residents in the area and to stimulate economic growth by providing better facilities and increasing the attractiveness of the site. The existing highway was a deterrent to the locality's attractiveness and alterations to the road system were a sound starting point for improvements. The mixed-use and comprehensive qualities of the project focused on providing a balanced standard of development to the area; special care was given to avoid having the area turn into an 'office building strip'. Emphasis was placed on the reduction in street parking (control of office related traffic), the increase of bicycle use, noise reduction, and control of crime (the Nijmegen police acted as a consultant on this job). The local government gave special consideration to the types of commercial establishments developed in the area, based on the market research performed, and with the objective of protecting the interests of the commercial establishments in other surrounding areas.

One other external objective has been realised. The local government has undergone the process of establishing a PPP with a private partner and has shared in a risk-sharing venture. This experience has helped them to develop more ideas about the nature of PPPs. It has also affected their definition of and approach to future decision-making related to 'risk-sharing' in projects: increased capacity now exists to construct projects which more clearly reflect diversified forms of risk sharing and greater transparency.

The 'profit' of the project, an 'external' objective of the private partners (necessary in any case for their survival) and an 'internal' objective of the municipality, is, at this time, hard to judge. The project has shown 'positive' results since inception but is still expected to run through till 1999, at least.

6.3 Internal Objectives

It is the local government's responsibility in urban land development to protect the public interests of the citizens. PPPs are argued (see Chapter Three) to be a good mechanism for governments to use to protect these interests, since working closely with the private sector in a partnership can allow the public sector to emphasise these interests and avoid many of the negative externalities which might come from allowing a project to be executed purely through market forces. However, if this is really to be the case, then the public body must maintain a strong position regarding the public interests it wishes to protect and must have a strong negotiating strategy.

On the other hand, PPPs are also argued to benefit the private sector in another way. Partnerships allow them to negotiate for the relaxation of certain stringent regulations which lengthen and hinder the execution of a project and thereby drive up the costs of the project.

These different objectives are, in most cases, a major source of conflict and must be resolved by the partners for the project to be instituted successfully. In the case of the Brabantse Poort, these differences were ironed out at an early stage of the partnership and the compromises made satisfied the needs of the partners. Some examples of the compromises made are as follows. In response to changing attitudes towards environmental issues, the local government insisted that all parking be located on the properties being developed (reducing parking on the street). This requirement adds substantially to the costs of constructing a building and reduces the space used for other more financially beneficial purposes. The private partners insisted on an even higher standard for parking than required by the public sector but did not want to accommodate parking on the site. Agreements were reached on a site by site basis but one solution was to build a communal parking lot on one site purposely laid aside for this purpose (Schuwer, 1996). Other factors which lengthen the execution of a project, such as the approval of permits and the performance of certain tests, were expedited by having the municipality, as a partner, take care of them. With respect to the co-ordination of these issues, the relationship of the partners in the partnership contributed substantially to the timely satisfaction of differences in objectives.

Another 'internal' objective of the partners was to improve on the management of the project through closer co-ordination between the parties in a PPP. The objective has been realised on some levels but not on others. First, there were some problems with the overall co-ordination of the project. The project is presently nearing the final stages of construction. The central area of the project around the rotunda, where the office buildings are located, is complete. In this area the infrastructure was completed on time by the municipality, as were the two first office buildings, as a matter of fact, they were completed early.

However, the rest of the project seems to have experienced some delays. There were delays in the land preparation, in the two additional office sites and in the completion of the first housing units. The planning for some of the housing has been subject to reprogramming but, based on the phased scheduling, these units are to be constructed in 1997 and, therefore, have not caused any unnecessary delays. As a side effect of these delays and changes, the local government expects that the costs of infrastructure investment by the municipality (outside of the project) will rise by Fl. 20 million by the completion of the project.

The fact that there were changes in the programming of the project is not a problem. The project was originally phased to remain flexible in the face of changes in the market. The changes in the office and housing components of the project are a proof that this was a wise choice. However, there has been one lesson learned from this experience. The fact that the provision of infrastructure was not included in the scope of the project affected the overall co-ordination of the project and the changes in the programming may have affected this. Restructuring of the project to include new (or additional) functions required the local government (as servicer of land outside of the scope of the partnership) to make additional changes, causing delays in the provision of infrastructure to the site and a substantial increase in costs. All partners feel that the process of land servicing might have been better handled within the scope of the partnership under the management of the project team.

The reaction to the working relationship of the parties in the project has been a good one. There is one factor which must be mentioned which contributed to this and ultimately to the management of the project in the construction phase. This is the fact that the parties worked together in the initial programming and planning stages of the project. This eliminated much of the duplication which sometimes can occur over the length of the process if parties work separately and also provided a better response to the needs of the market through the involvement of the private sector from the early stages. The municipality's present opinion is, as a matter of fact, that there may be benefits to be realised from giving even greater leeway to the private sector to provide suggestions concerning the direction or scope of a project and they have decided to test this out in a future project (to be discussed later).

In addition, the early involvement of the private sector from the beginning allowed the partners to get to know each other. They established a system of communication early on and built up mutual trust and respect. This type of relationship contributed to the reduction of differences over time.

Other conditions experienced by managing the project in a partnership were positive. Some of the aspects of this relationship were as follows:

- the government felt that the project was of crucial benefit to them in improving their insight into the costs and profit structure, and risk conditions. Greater understanding of market conditions, profit-seeking behaviour, negotiating procedures and financial management was attained;
- the parties continued to work together well during the partnership. Since employees of both the public and private sectors were working together within the structure of the partnership, in a project group and away from the political influences of the municipality, the daily system of work took on its own nature, tailor made to the needs of the group and the project. The system in place for settling disagreement was an effective one. If problems occurred in the daily management of the project, the differences were taken to the Advisory Group for a final decision;

- the system of co-ordination was improved upon when the two sectors worked together. Having made major decisions in the preliminary phases, the focus during the project was on co-ordination at the project level and both parties focused at this level, thereby improving the performance of the project overall;
- the contractual obligations of the partnership provided a binding obligation for both parties to meet the requirements of the project. This contractual agreement acted as a supervisory tool, giving incentives to both parties to behave in an appropriate manner. Establishing the confines of the obligations in a phased manner, first through a Letter of Intent and then through a partnership agreement, gave all parties a chance to air their views and negotiate their terms to the fullest degree (Sweens, 1995, Buksens, 1995 and Kolpron, 1992).

The municipal objective to mobilise private funding for the project was also met through the partnership. In fact, the private partners agreed to contribute more to components of the project for which they, in a pure market situation might not have been persuaded to pay for (i.e. upgrading of the local train and bus stations). In addition, the commitment of the private sector to the partnership and to mobilising their funds for the project, induced the public sector to come forward with additional funds (substantial subsidies from the national and local level) for certain elements of the project (environmental protection, sound barriers). The partnership worked successfully to satisfy the mutual objectives of the public and private partners.

But was the risk to the partners distributed clearly and fairly? The risk was, to a certain extent, shared. However, a number of additional factors which have not been fully reviewed in this case, also contributed to the risks taken by all parties. Each partner assumed financial responsibilities during the initial phases of the project through to the signing of the partnership agreement. The city of Nijmegen invested time and manpower in the preparation of the bid documents as did the private partners in the preparation of the bid documents for submittal. The servicing of land can be deemed as risk assumed by the city but not included in the project. Without further study of the extent to which these costs were covered and shared (and, therefore, the risk) in the partnership agreement, along with the distribution of concessions made by all as a part of that contract, it would be impossible to conclusively determine the spread of risk.

One other 'internal' objective of the local government, that of making a profit, is not one that one would normally be attributed to a public body. However, the municipality is not against financial gain which could be put to use elsewhere. Therefore, profits are important to them. In addition, Nijmegen's commitment to the partnership also comes from an interest in certain long term financial gains which are not directly reflected in the direct profits from the project. On the long term, the spatial quality and the attractiveness of the project will influence the city's ability to attract business and hold onto it, to attract more residents and shoppers to the area and to the two adjacent city parts, Dukenburg and Lindenholt. Positive local economic and physical development will in the long run add to the health of the area and to local revenues. If the project is a success, businesses remain in the area and property values rise, revenues from the related taxes (income, business and property taxes) will also increase. In addition, economic growth spurred on by the development through contacts with businesses within the region and in the EU will also contribute to long term financial and economic gain. These factors can be seen as positive 'externalities' directly attributable to the project and the partnership.

6.4 An Additional Comment

Even though the financial position of the local land agency servicing and selling the land to the BV does not show up on the balance sheet of the partnership, (officially this is outside of the partnership) it is still important to mention what the outcome is. The experiences the agency has had with this project, particularly in this area, have led them to see the construction of future projects a little differently.

In fact, even though the city expected to be able to cover a good portion of the cost of preparing the land with the funds from the sale of the land, this has not been the case. Revenues from the sale of land have only covered approximately 50% of the costs of servicing the land. The difference is being covered partially by funds available in the reserves of the local land agency. To date, the remainder has been filled in by funds issued by the City Council and national government grants and subsidies. From this experience, the local government has decided, in future partnership projects, to try to incorporate this stage of land servicing in the overall project scope (Sweens, 1994).

6.5 The Last Question

Did the PPP respond in a more effective way than the 'typical' methodology for instituting land development projects in Nijmegen to the objectives, internal and external, of the partners? The response to this is a mixed one and, in many cases, supposition. A complete analysis is outside of the scope of this paper. The following table shows, in outline, whether the objectives of both partners were met and whether they were met more effectively by the partnership.

Table 4: An analysis of whether the objectives were met more effectively by the Partnership

Local Government				Private Partners			
External Objectives	Met	Not met	Met better by the PPP	External Objectives	Met	Not met	Met better by the PPP
Implement a project in Nijmegen	x		x	Implement a project in the area	x		?
Reduce housing shortage	x		?	Make a profit	x		?
Stimulate local economic activities	x		?				
Bring outside business to the area	x		?				
Improve social and spatial qualities of the local surroundings	x		?				
Establish a PPP	x		NA				

Local Government				Private Partners			
Internal Objectives	Met	Not met	Met better by the PPP	Internal Objectives	Met	Not met	Met better by the PPP
Safeguard public interest (also external)	x		?	Safeguard private interests	x		?
Acquire knowledge about private approach to business	x		x	Develop a good reputation with the local government	x		x
Mobilise private funding for the project	x		x	Mobilise public funding	x		x
Establish a clear and fair distribution of risk	?		?	Establish a clear and fair distribution of risk	?		?
Make a profit	x		?	Make a profit	x		?
Improve project management skills	x		x	Maintain efficient project management	x		?

First, in keeping with the changes in government thinking about the role of the local government in land development, the municipality chose to institute this project as a PPP. It was already their 'external' objective to build the project and to develop a project of this size and complexity. If the project had not been implemented as a PPP, it probably still would have been realised but in a very different manner. It can be argued that the project might not have been executed in its entirety: the municipal government would have sold or leased plots of land in a piecemeal fashion and each individual site would have been developed according to the objectives of the individual developers. It can be argued that there might have been less integration of the components of the project, that the project would have taken much longer to implement and that the costs related to the provision of the infrastructure, particularly for the local government, in treating each site separately, would have been higher. In other words, it is possible that there were economies of scale to be realised from the project being implemented as a PPP and that the goal of the municipality to implement a project of this size and nature were better met by the PPP.

However, one must consider the 'external' objective of the private partners to implement a project in the area. Chances are that this objective would have been met without the PPP. In fact, it can be argued that this objective was met at an additional cost to the individual developers. Dealing with the development of an individual site would have made the project for each developer less complex and would have reduced the costs related to time committed to overall co-ordination, the amount of funding necessary and the risk (measured in financial terms) connected to implementing a project of this size. In other words, there may have been a reduction of profits to the developers stemming from the partnership.

These cost may have been balanced in some way by the fact that the developers satisfied one 'internal' objective, that of developing a reputation with the local government by working closely beside them in the project and partnership. Let's call it at 'long term investment in their future'. The fact that the private partners agreed to involve themselves in a project of this size, and were willing to take the additional risks related to the project, cannot have hurt their reputation much. Perhaps this compromise was one worth making.

Next comes the 'external' objectives of the municipality to reduce the housing shortage, stimulate local economic activities, reduce unemployment, bring large businesses to the area and improve the spatial and social quality of the area. It is possible to assume that these objectives would have been met just as well if the project had not been implemented as a PPP. It is hard to know for sure whether the market analysis performed by the municipality targeted the needs of the area better than if the project had been left purely to the demands of the market for each individual function. However, the reasoning of the local government behind having private partners in the project was to use their access to outside firms to encourage the location of these firms to the area. This approach to the project was successful and it is possible to argue that the partnership was instrumental in this success. In addition, it was the strategic objective of the project to provide to potential clients (businesses and residents) a location of a mixed-use nature with access to other firms (service firms, etc.), shops, housing and recreational facilities. The project programming as established by the partners and the final scope of the partnership ensured that this project be implemented with the desired integration of functions and within a certain period of time.

Next, the 'internal' objectives of the partners must be considered. It is unknown whether the partnership protected the public and private interests of the partners or the distribution of risk better than if the project had been implemented in a 'typical' manner. In typical circumstances the private sector would not have wanted to accept the additional financial burden of adopting certain public requirements related to parking, the renovation of the train and bus stations and environmental concerns. These are responsibilities which would probably have been undertaken by the municipality. The benefit of the partnership in this circumstance is that the objectives of each party were well represented during the negotiation period. The commitment of both sectors to the partnership probably, on one hand, added to the commitment of the public sector to invest public funds in the project and make certain concession (financial and physical) to the private sector and, on the other hand, to the commitment of the private sector to accept the conditions of the partnership with its attendant concessions and promote the investment of private funds in the project. In the end, the partnership contributed to a compromise of these objectives. One could say that, given the circumstances of the partnership, the best possible solution was reached for the partners and for the clients for which the project was being built.

In considering the potential profit to be made from the project for both partners it is, again, difficult to judge whether the PPP affected this outcome positively or negatively. Frankly, this is something which would have to be determined at the conclusion of the project and with the backup of a great deal of additional information not yet available.

Finally, it is time to refer to the 'internal' objectives of the local government to acquire an insight into the manner in which the private sector approaches business and by doing this to acquire knowledge in the field of project management. It goes without saying that these objectives were met in a way by the partnership that would not have occurred if the project had not been implemented as a partnership. The municipality was, at the outset of the project, at the time of the original proposal to the City Council, concerned about its capacity to deal with the private sector due to its inexperience in these areas. Suffice it say that the municipality's relationship with its private partners helped to bridge this gap. Again, having to manage the project in partnership with the public sector may not have been of direct benefit to the private partners in terms of maintaining efficient project management techniques. The involvement of the public sector and the size of the project most likely added an extra burden to their performance. However, it is also possible to argue that the combination of the two inputs added significantly to the efficiency of the project management. The settling of issues was done under one roof and within the confines of the one group of managers. There may have been value-added benefits to the process of making decisions.

The comments made above can only be adequately developed further in a more extensive body of research. They have been a preliminary consideration of the possible benefits (or costs) to be realised from a PPP and must be further pursued to get a better insight into these.

7 Where will Nijmegen go from here?

The municipality of Nijmegen feels that the lessons learned from the Brabantse Poort have been positive. Though it is still a step away from the manner in which they typically implement their urban land projects, the municipality feels encouraged to involve themselves in additional public-private partnerships in projects of this type and scale.

7.1 The Lessons Learned

Of the lessons they have learned, the following are being incorporated into the projects now being implemented as PPPs by the municipality:

- Maintain the approach developed during the Brabantse Poort to use a joint venture PPP as a mechanism for implementing future projects. The nature of the relationship established through the process of setting up the partnerships and the commitment derived from the contractual obligations act as a system of testing out the potential for failure;
- encourage the involvement of the private sector at an even earlier stage of the process of programming. This reduces the amount of initial preparation which the municipality must undertake and possibly the number of changes which will occur over the period of negotiation. This is also a methodology for responding more quickly to the demands of the market and for determining the viability of the project from the early stages;
- include the stage of infrastructure provision within the scope of the project. This reduces the responsibilities of the municipality in this part of the project, may potentially improve the overall co-ordination of the components of the project, as well as reduce the potential losses which could be experienced by doing it separately. In this area, the municipality may take a greater share of the risk as a means of maintaining its commitment to the responsibilities related to the provision of the infrastructure; and
- refine the structure of the project and the partnership to be more responsive to the needs of the partners and the components of the project. Depending on the project, separate the stages and components of the project into separate partnerships with different partners each with a different distribution of risk. This set-up is more responsive to the objectives of each type of partner, the nature and structure of each component of the project and the financial needs that go with all the components.

The following sections describes two partnership projects in which the municipality of Nijmegen is presently involved and which incorporate the elements of the lessons just described.

7.2 PPP Marienburg

This project is the biggest inner city revitalisation project since World War II. The municipality, after careful consideration of its goals, and at the very early stages of the project, invited three private sector firms to develop their vision for the area. On the basis of the reactions given, a private partner was chosen. The Letter of Intent and the partnership agreement have been signed. This is in spite of an estimated shortage of Nfl. 5 million for the project. The partners are looking for ways to eliminate this shortage of funds.

The partnership agreement will include land production as well as the realisation of the project. The municipality and its private partner will each take 50% of the risk in this venture. The municipality has agreed to take on a greater portion of the risk if the land production is included in the scope of the project. The project programme includes:

- 12,500 m² shops
- 80 housing units
- the relocation of three municipal services
- the change in function of a special historical building
- the implementation of all infrastructure for the area.

7.3 PPP Waalsprong

This project stems from national policy to push Nijmegen as a growing urban focal area. The area to be developed lies on the north side of the river Waal. This project is a tricky one because it involves the land of another municipality. The national government has decided to transfer the land to the municipality of Nijmegen, thereby increasing the jurisdiction of the city.

Between 1997 and 2015, 12,000 housing units and all ancillary functions must be constructed in the area, as well as:

- offices
- additional industrial sites
- large scale recreational areas

In the first phase, from 1995 to 2005, the first 6,500 housing units and local shops, etc. will be built by 5 local construction companies and 2 local housing corporations. The partnership includes the provision of infrastructure, the construction and sale of all buildings.

For the infrastructure stage of the project, a development company will be established in which the municipality will participate with a 50% share and the developers/housing corporation with 50%.

For the realisation of the housing and the commercial properties, other partnership companies will be established. The legal structure of these companies is not yet known, though the decision will once again be made based on certain fiscal considerations. The municipality will participate marginally in the provision of the housing; for the commercial portion of the project, the municipality will participate with a 10% share of the risk. Hopefully the terms of the partnership agreement will be settled in the first part of 1997.

8 Conclusion

This review of the Brabantse Poort project has highlighted the elements of the process of a PPP and factors which play a role in establishing the preconditions for implementation and sound criteria for success. Since few cases of this sort have been studied in depth, this analysis reinforces the necessity for further in-depth investigation of a variety of PPPs to establish a better working methodology.

What this case points to is the need for and importance of a good methodology for: one, determining the issues which must be taken into account when setting up a partnership and, two, assessing a partnership. Developing a methodology for both would help in establishing a system for comparing partnerships and, in the case of the latter, for measuring the value of partnerships in relation to the more characteristic methods used in land and property development. This descriptive study is a first step in the process: a study of this sort shows what can be learned from 'a partnership' (the context, the process and the project) and leads to some additional questions about partnerships, in general, and this partnership, in particular. The relevance of this study is then determining what lessons can be learned, what questions can then be asked and what part these can take in application to other contexts.

First one can ask what issues must be taken into account in setting up a partnership? The (external) context is certainly crucial - political, economic and legal uncertainty play a role and add to the constraints in the smooth realisation of a partnership relationship. It is striking, in this case, in fact, how quickly all the necessary proposals, negotiations, agreements and approvals were handled by the local apparatus, the city council and the partners (see Annex II). This included steps such as applying for and getting commitments on national government subsidies for the project, conducting an interpretation of the legal framework to make a relationship of this sort possible and legally binding for all parties, and getting sound (public and private) financial commitments. The legal and economic stability in which the parties found themselves helped to simplify the situation as did the political commitment of the local council to see the project succeed. This is not the case in many countries which are confronted by uncertainty, constraints and delays, thereby, an affected project (and a loss of funds). In these countries the question would then be: what are the implication of these issues particularly for the choices that have to be made?

Given this (external) contextual situation, certain issues must be accounted for in the steps taken by the various parties involved. This case demonstrates the extent to which the strength of a partnership relationship stems from the period of preparation, and the contacts and grounds rules established during this period. Also, a variety of different factors (which surface during this period of preparation) contribute to the final form chosen, something for which there is no simple recipe. For instance, the scale and, therefore, the length of the project are important factors influencing the decision-making process: the bigger the project, the more multi-functional in nature, the longer the implementation, the more parties that may potentially be involved and the greater the risk of changes in market conditions over time.

One could then ask: what elements and capacities are crucial to these initial phases? And how are decisions made? Many authors point to capacity in negotiation as a crucial element in reaching a successful end product. Also, absolute clarity in what all parties want to achieve, a clear division of authority, an action-oriented and explicit process of determining desires and needs, strength in management and the capacity to properly assess the projected costs and benefits to each party and what these imply (Kohnstamm, 1993 and Levitt, 1985). The city of Nijmegen cited 'a good basis of trust' as one important precondition in the set up of the partnership as well as list of other preconditions. All this collection of ingredients, imply a myriad of options regarding the approach to ultimately selecting a legal form for the partnership. For instance, if partners are looking for establishing a system for settling cultural differences, can this be resolved through negotiations or through a contract which binds those involved or is there a certain institutional structure required to accompany the necessary legal arrangements?

There is also a need for developing methodology for assessing a partnership. One approach to analysis was taken in this paper and that was to simply look at whether the objectives of the partners were met or not. However, taking this a step further would be to look to see if there were gained benefits, short and long term, from the realisation of this partnership. What were the benefits and losses of the project for the stakeholders involved in the process (including the end user)?

Though establishing the structure for a methodology of this sort was beyond the scope of this paper, a first attempt was made. Further development of a methodology would require setting up a framework for measuring the qualitative and quantitative elements of the project/partnership. For one, it is clear that the financial (most obvious quantitative measures) benefits and losses from the project warrant further scrutiny. What were the real costs of the project? What additional factors translate into financial revenues or costs and contributed to the over all cost of the project? Also required would be system for measuring the benefits of non-qualitative aspects and the short and long term social returns on the project. Only by looking further could one ascertain the real allocation of benefits or losses to the partners.

Annex I : Physical Planning Policy and Land Use Legislation in The Netherlands

1.

The Netherlands has a long range urban development programme which introduces a classification scheme for different parts of the country according to the land use, future land use (reserves for development), recreation areas, and agricultural land. The aim of this classification is to prevent the establishment of fixed land uses which may be contrary to future planning. Also the aim of this policy is the full utilisation of land within the boundaries of the urban land.

2.

The Netherlands has a very strong system of land use legislation. The system of legislation is divided between the levels of government: national, regional and local. Furthermore, the system is highly decentralised, giving maximum authority to the municipal and provincial levels of government with co-ordination being the task of national government.

The national government lays down the physical planning policy in a rough outline in the form of government reports published periodically. These reports cover aspects of urbanisation, planning of rural areas, transport of energy, housing, recreation, industry, etc. The central government also takes the initiative regarding the National Physical Planning Decisions- a procedure introduced to ensure that main policy outlines penetrate to the lower levels of administration.

The regional level, following guidelines issued by the central government, draws up the regional plans for their territory, indicating in outline form the future development of the area.

The local level draws up two different plan models with which to express its spatial policy: the structure plan and the land use plan. The structure plan shows the future development of the municipality or part of it. Neighbouring municipalities can join together to draw up collective structure plans. The contents of the structure plan must be submitted to the provincial level but need not be approved.

A structure plan consists of a descriptive portion, which indicates the most desirable development for the plan area and the phasing of that development, maps and explanatory notes laying out the strategic ideas of the local government.

The land use plan indicates the utilisation of the land in the municipality and the objectives of that land use. The plan includes a descriptive portion which comprises the objectives of the land use, maps and explanatory notes. It also includes instructions for the use of the land and the laws binding the municipality in the revision of the plan or in the granting of exemptions.

Approval is required for this municipal land use plan; it must be submitted for review to the provincial administrative body. The plans constitute the basis for granting building and construction permits. With this municipal land-use plan, tight control is exercised over the actual land use: by law permits may only be granted if the building to be erected or the projects to be carried out are in agreement with the land-use plan. This system provides a high degree of legal security and administrative control.

3.

Close attention is given to the participation of the general public during the planning stage, particularly at the local level but also at the two other levels of the government. Giving information to the public regarding the contents and objectives of the plans is regarded as essential. Decisions concerning the plans are taken by publicly elected bodies- the Municipal Council, the Provincial States, and the National Parliament. Members of the public who consider that their individual interests are harmed by the plans are allowed by law to lodge an appeal during the course of the decision-making process. An attempt is made during the planning to involve the public so as to avoid appeals being lodged in later planning phases.

4.

The Land Consolidation Act empowers authorities to consolidate farm land in large areas to improve on the dispersed ownership of agrarian land throughout the country and to improve management of farms.

5.

In the area of development planning, the government plays an active role in such things as measures concerned with the spreading of the population. Policy concentrates on deliberately bringing certain settlements to development - the so-called growth cities or growth centres (i.e. Almere and Lelystad) which are chosen because their location within a region is considered particularly suitable for absorbing population growth. Financial assistance from the Central Government is given to these areas, both residential and industrial, to aid in the improvement and provision of infrastructure and to maintain a certain balance in the spread of development in the country (and the economy).

Local government is also a major actor in the area of development planning and in the land market. The intricacies of co-ordinating infrastructure provision, due to bad soil conditions, necessitates large tracts of land being brought into one hand. The local government often acts as primary owner of land, and exercises influence over the direction and implementation of plans. Municipal land agencies have the authority to purchase, service, manage, set land prices and sell/lease land. They sell or lease the land to developers and housing corporations.

Continuous planned rural areas near the city frontiers have restricted urban sprawl into these areas and have eliminated speculative investment in land. This planning procedure, by controlling the direction and location of growth, has kept some land in agricultural areas outside the building market. The net result has been the creation of a situation where the municipalities themselves have become the biggest land purchasers and developers.

6.

Expropriation is common in the Netherlands. There are extensive statutory facilities available to the authorities for the compulsory purchase of land on the behalf of town planning and infrastructural projects. The process takes about 3-4 years.

It is stipulated by law that the indemnity to be given to the owners of the land covers the total value of the land at the date of the initiation of the procedure and that the indemnity comprises both the capital and the revenue. Many times, since this procedure is now widely accepted, the compulsory purchase procedure is broken off and the conveyance of property to the authorities is arranged by private treaty. This avoids the delays and costs of the formal legal proceedings.

7.

This control of development and system of expropriation mentioned in the two points above, imply that the authorities strongly influence the price trend of raw and developed building sites. Serviced building sites are sold or leased to developers at cost-price, the greater part of the price representing the cost of making the land ready for building. Hence the prices of building sites in the Netherlands are no so much due to the cost of land acquisition but rather to the costs of servicing the land. Costs assignable include: acquisition, compensation, laying infrastructure and services, the costs of preparing the plan, professional fees and the interest of invested capital from the time of acquisition till the date of supplying the land for construction.

The calculations of disposal prices are fairly complex. In calculating the freehold or lease prices, the general costs of individual sites are charged according to different land uses (i.e. residential, commercial or industrial) as well as different types of dwellings (one-family, multi-story houses, shops and offices in multi-stories). The income to be derived from commercial, industrial and non-commercial uses is subtracted from the total income that must be raised. Then all housing plots are weighted by type (social-rented, subsidised owner occupied, unsubsidised, etc.), by location and by plot size. The income to be acquired from these plots is divided according to the weights, thus determining the land prices for housing.

The financial statement (exploitatiekening) which accompanies the land use plan sets out the parameters for price setting in the Netherlands. Though this statement is not required by law, it functions in two specific ways. One, in preparing the plan, the municipality must also research the financial feasibility of implementing the plan. The results, shown in the financial statement, are used as tool in the approval of the land use plan at the provincial level. Second, when the local government must apply to the central government for a subsidy the statement provides the justification for that subsidy.

In principle Dutch municipalities do not exhibit profit seeking behaviour though the income derived from the sale or lease of land must cover the cost of providing that land. Losses are not encouraged. The planning policy (as a means for guiding development) of the local authorities is to keep the prices as low as possible, many times below market levels (thus attracting the desired development). Some severe losses, experienced in the early 1980s, have made the municipalities more cautious. The principle is now: as low as possible for non-marketable uses and as close to market prices (the residual value) as possible for marketable uses.

8.

Private developers or individual principals may purchase unserviced land if they can demonstrate that they can develop the land according to the requirements of the land use plan. Those wishing to buy land for development or individual building projects must make available to the local authorities the necessary land for public areas and must bear the costs of laying public works. Again, development ordinances contain conditions under which private builders are permitted to the develop land.

9.

In 1992, the national government released the *Vierde Nota Ruimtelijke Ordening*, one of the government reports mentioned in point 2 of this annex. This report established the government policy towards spatial and economic development in the Netherlands.

It included the strategic approach to development in the country, taking the relationship of the Netherlands to the other countries in the European Union (EU) into account. The report specified the new urban growth areas around the country. Since this report was released, the private sector, now equipped with better information about the direction and concentration of development, has begun to buy up tracks of land for speculative purposes. This has produced a more difficult situation for the municipalities, who must now purchase land at more competitive prices and must compete with the private sector in the servicing and development of land

Sources: Ministry of Housing and Physical Planning, 1981, 1987 and Needham, 1993

Annex II : Schedule of Activities in Setting up the Partnership

Dec. 1988	submittal proposal re partnership to council by municipality
Spring 1989	orientation interviews with potential candidates (developers)
July 1989	release bid documents to developers
Oct. 1989	pre-selection developers
Nov. 1989	start contribution (by developers) to ideas concerning urban plan
Dec. 1989	selection developers
Jan. 1989	rounding off of co-operation related to urban plan
March 1990	final determination of urban plan and financing by the municipal council
July 1990	concept Letter of Intent for project area
Aug. 1990	council decision on Letter of Intent for project area
Oct. 1990	national government commitment to Brabantse Poort as a potential 'key project'
Dec. 1990	start construction first office building
Dec. 1990	revision of land use plan
May 1991	approval altered land use plan
May 1991	start construction second office building
June 1991	decision municipal council on partnership agreement for project area
Aug. 1991	start reconstruction phase of roundabout
Sept. 1991	council decision re participation of municipality in partnership
Oct. 1991	approval of partnership agreement by Provincial States
Oct. 1991	signing of the partnership agreement
Dec. 1991	approval of land use plan by Provincial States

Annex III : Outline of The Letter Of Intent

1. Partners:

- The Municipality of Nijmegen
- Heijmans Project Developers
- Hendriks Project Developers
- National Investment Bank

2. Specification of two phases to be dealt with under this contract:

- Preliminary phase: to be discussed in greater detail below.
- Realisation phase: this phase will only be reached if the previous phase is successful. To go onto the realisation phase, during which the land and buildings will be developed by the partners, an agreement to set up a partnership and sign a partnership agreement must be reached. This will also depend on whether the project is considered viable or not.

3. Goal of the preliminary phase:

The research and determination of the urban, economic, financial and other criteria for the project under the conditions of a partnership.

4. Activities during this phase: the following items are to be determined:

- the commercial concept, the target groups to be reached, the quality requirements of the shops, housing and office spaces,
- the urban and architectural quality,
- the final plan layout,
- the major issues and objectives to be translated in the land use plan, and thereafter, the phasing thereof,
- the needs for subsidies from
 - the Ministry of Finance
 - the Ministry of Housing, Physical Planning and Environment
 - the Ministry of Transport and Water,
- additional needs of surrounding areas (public spaces, public transport, and other developments),
- the methodology for acquisition, preparation and issues of the land by the city,
- the possibility for the implementation of the infrastructure by a private party,
- whether the quality of the infrastructure to be implemented may have to be higher than what is normally required by municipal regulations,
- an estimation of the partnership costs, including an analysis of the costs, revenues and the spread of risk,
- a schedule of the planned approach to the project, including a long and short term scenario and a list of social and economic objectives,

- juridical and financial aspects of the PPP (statutes, project organisation, partnership agreement) as decided upon by all the partners, and
- set up of the management structure for the PPP which will guarantee the quality of the project.

4. Organisation of the partners during this phase:

- A steering group of four members, one from each party, which will have the responsibility to develop the policy for the project and oversee the project.
- The project team, comprised of four members, one from each party which will have the responsibility for the daily management of the project. Depending on the personnel needs of the project, additional people can be taken on from the various organisations.

Note:

- the tasks of the project team will be decided upon by the steering group.
- all decisions in both groups will be made by unanimous vote.
- the steering group may appoint a project manager to lead the project team.

5. The decision-making process

- The decisions of these groups must be made by 7 January 1991 at which time the steering group will meet to take a final vote on the decisions made.
- Decisions must be unanimously agreed upon.
- With a negative decision, negotiations must resume until which time another vote will be taken.
- If this procedure does not work, the PPP will be terminated

6. Costs of the preliminary period

- Each partner pays for 25% of the external group costs.
- Each partner will contribute equally to a mutual bank account.
- If costs run over, the parties will consult to decide on the additional funding to be made available.
- Payment for any work done must be approved unanimously by the project team.
- Internal costs will be borne by each individual party unless the steering group judges that there has been some unacceptable inequality.
- If the partnership ends, personal costs will be borne by each individual party unless unanimously voted otherwise.
- If legal recourse must be taken, compensation will never exceed 1 million Fl.

6. Third parties in the preliminary phase:

- All partners will decide as a group about the involvement of a third party in the work of the group.
- If any of the project group is against the involvement of a third party, the steering group will make a decision in writing.
- Partner will not make contact with a third party individually. With the provision of information to a third party, the interests of all must be taken into account and be decided upon mutually.
- In public the partners will present themselves as a PPP.

7. The structure of the PPP

- This will be decided upon at the conclusion of this phase.
- This must be determined based on the legal and financial structure of partnership and the limitation by contract of a partnership agreement.

8. Financing of the realisation phase

- Each partner will decide on the amount of its own contribution.
- Additional funding will be acquired by NIB from outside investors.
- Construction will be performed by a combination of construction firms chosen by the developers under market conditions, which will be determined in the partnership agreement.

9. Settling of differences in this stage:

- With differences which might have to be solved in court, there should be attempt made to solve these differences through a process of negotiation. If within three months the differences are not resolved, the matter will be taken to the Netherlands Arbitrage Institute.
- All differences will be subject to decisions by this institution.
- Three arbiters will decide, two of which must a be registered counsel.

10. Approvals

Approval of this agreement is required from the City Council.

(Intenticovereenkomst, 1990)¹¹

¹¹ This contract was incorporated into the partnership contract. The partnership contract contained a more specific delineation of tasks as set forward in 7.2.

Annex IV : Outline of the Partnership Agreement

Heijmans Project Development b.v., Hendriks Project Development b.v. (these two parties are termed the ‘developers’), Projectum Beheer b.v (called ‘Projectum’), a 100% daughter company of the National Investment Bank (NIB), and the Municipality of Nijmegen (called ‘the municipality’).

Contents of the Partnership Agreement

0. Introduction
1. Definitions and General Conditions
2. Goal and duration of the partnership
3. Additional obligations
4. Plan development
5. Finances
6. Phasing schedule
7. Implementation
8. Purchase of land for building
9. Archaeology
10. ‘Segmentation’ policy
11. Transfer, laws and obligations
12. Personnel and know-how
13. New laws
14. The partnership and the involvement of the municipality
15. Reservations
16. Premature termination
17. Consequences of premature or intermediate termination
18. Differences
19. Dissolution of the partnership
20. Choice of legal framework
21. List of Attachments

0. Introduction:

1-4. Description of the history of the project, process of acquiring the partners.

5. Statement of the starting points of the different partners:

- “for the municipality: the increase in the municipality’s contribution to the responsible and timely build up of the central area through which the financial, employment and housing aspects will be served in as optimal a manner as possible;
- for the developers: the generation of profitable and saleable products for the construction companies with which they are allied, by means of the project development. In connection with this, ‘project development’ should be understood as: the initiation, realisation and turnover of the real property; and
- the Projectum: the financing through the National Investment Bank n.v. (NIB) of the partnership with respect to the realisation and turnover of the real property in the central area, with risk bearing capital as well as outside capital; it should be attempted to obtain as optimal a profit as possible on the risk bearing capital made available.”

6-8. A determination of the phases, the role of the Letter of Intent, a statement that the parties find the mutual realisation and sale of the project viable as a consequence of the previous phase and the work performed after the signing of the Letter of Intent.

1. Definitions and General Conditions:

Definitions:

- Real property: involves the real estate which is included in the project;
- central area: in the contract one is referred to an attachment, a map showing the boundaries of the project;
- project: includes the realisation and sale of the real property in the central area;
- building ready: this definition explains precisely the scope of the work to be performed by the municipality, the point where the responsibilities of the municipality end and those of the partnership begin. This refers to demolition work, excavation and landfill, road work, sewerage work, other utilities such as telephone lines, and art work;
- own capital: the contract refers to a legal definition;
- gross floor area calculations: gross floor area must be calculated in keeping with the ‘Neprom’ method; and
- building team: here those responsible and involved in the execution of the construction work are enumerated.

2. Goal and duration of the partnership:

Goal:

Statement of the obligation of the partners and any third parties contracted to them to undertake the realisation and sale of the properties in the project area, taking into account the ‘starting points’ of the parties and the legal obligation of the municipality to the public.

Duration:

Statement that the contract being signed is in effect for the time required to execute the aforementioned goal.

3. Additional obligations of the parties:

- obligation of the Projectum: to provide access to outside capital;
- obligation of the developers: to bring to the partnership their professional know-how in the set-up and realisation of a high quality and market-oriented project; and
- obligation of the municipality: to make the necessary changes to the land use plan and to get the necessary approvals, exemptions and permits, to provide the necessary infrastructure in a timely fashion, all this with consideration of the requirements of the law and the municipality's obligations to the citizens.
Note: this is a particularly long passage covering the legal obligations of the municipality in the event that unforeseen circumstances make the acquisition of the necessary approvals, exemptions and permits impossible. Conditions are set for what should happen in this eventuality, what each party is required to do, the manner in which the parties is required to attempt to resolve differences and come to a solution. The passage also refers to the procedures which must be undertaken if a resolution is not reached (dealt with later in the contract). In addition, the municipality is also obligated to manage and maintain all public spaces in the project area in keeping with the laws binding the city apparatus.

4. Plan development

Conditions and starting points for the plan development:

These sections cover most of the standards established for the project as a result of the negotiations between all the partners. These are listed in Chapter 7, Section 2.

5. Finances:

General:

In the partnership, the municipality has the responsibility to apply for and co-ordinate the acquisition of all national government funds and subsidies.

The costs incurred from changing the land use plan are to be shouldered by the municipality. After these changes are made and approved by the local council, further changes must be shouldered by the partnership.

Finances of the B.V.

Own capital

Projectum:	Nfl.	1,200,000
Heijmans	Nfl.	750,000
Hendriks	Nfl.	750,000
Municipality	Nfl.	300,000
<i>Total</i>	<i>Nfl.</i>	<i>3,000,000</i>

Subordinate Capital

The parties are required to loan to the B.V. additional capital. This totalled:

Projectum:	Nfl.	300,000
Heijmans:	Nfl.	187,500
Hendriks:	Nfl.	187,500
Municipality	Nfl.	75,000
<i>Total</i>	<i>Nfl.</i>	<i>750,000</i>

Outside capital

For additional capital, the NIB is prepared to provide a standby roll-over fund of Nfl. 12,500,000. In the event that more is necessary, the NIB will be approached first to provide finance according to the standards (interest rates) of the market.

Other than the initial investment of Nfl. 3000,000 and Nfl. 75,000 listed above. The municipality is not liable for any further investment in the shares of the partnership, for any additional loans, for offering any guarantees of finance for the project or for any further risk sharing in the partnership.

6. Phasing schedule

The contract refers to a phasing schedule attached to the contract. The parties are required to meet every three months to discuss the progress of the project in relation to the schedule.

7. Implementation

This section of the contract outlines the conditions of giving first bidding rights to the construction company, Bouwcombinatie Heijmans-Hendriks Nijmegen V.O.F., allied to the developers. The contractors are allowed a 9% mark-up. In the event that an agreement can not be reached through a negotiation process on the open budget provided by the contractors, an independent consultant must be brought in. If the budget produced by this consultant comes within a 5% margin of the budget of the partnership, the parties must attempt to settle on a contract. In the case of a difference greater than 5%, the partnership is free to take bids from other contractors.

8. Purchase of the land for construction

This section deals with the circumstances surrounding the sale of land by the municipality to the B.V. The contract sets the conditions for setting the price of land in the event there are changes to the scheduling of the sale of this land. Negotiations between all parties are required to satisfy the loss to the municipality from these delays. With a delay of two years, the municipality is to be compensated for the loss in interest according to standards already established during preliminary negotiations and as stated in the phasing schedule. With longer delays, compensation is to be decided upon on the basis of negotiations between the municipality and the BV.

A separate sale agreement is required for each construction location, subject to the legal parameters laid down the general conditions established for the sale of land.

The municipality is obligated, in a timely manner, to service land which is outside of the project area but which still has a direct affect on the area itself.

The testing of the soil has revealed no need for further cleaning of the soil. In the event that any cleaning is necessary, the responsibilities for the cleaning rest with the BV. The municipality is not liable for any delays in the servicing of land stemming from unforeseen cleaning.

9. Archaeology

If during the construction or during activities prior to construction, the need for archaeological works is detected, the municipality must be notified and the city archaeologist consulted on how to proceed with construction. Any possible delays in the construction process will not be added to the costs of the municipality.

10. 'Segmentation' policy

This section refers to the strategic approach to the office building development in the city and refers for guidance to the results of the market research performed on the demand for office space.

In the case of submittals to the city of plans for the development of offices outside the project area and not included in the market research, the municipality must inform the BV. After consideration of the interests of the municipality to implement any additional projects, discussions with the BV must ensue to discuss the affects of the proposed project on the Brabantse Poort.

11. Transference of rights and obligations

The contracted parties do not have the right to transfer their rights or obligations to a third party without the consent of all the parties in the BV.

12. Personnel and know-how

The board of the BV must decide about the hiring of any additional personnel. The section then goes on to determine the conditions under which additional personnel can be taken on. The section establishes the level of salaries (to be based on the function of the employee on the project), the flow of payments of salaries, the schedule of payments, and the liability of the BV in the event of 'damages' of any kind.

13. New laws

This section deals with the eventuality that the project is subject to new laws and, therefore to a new agreement under the terms of the partnership agreement.

14. The BV and the involvement of the municipality

Participation of the municipality

This section discusses the history of the project in relation to the construction of the first office building. Because the construction of the office building was started early, this was undertaken by the consortium before the signing of the partnership agreement. For the execution of this, the consortium formed their own partnership (each holding a third of the shares) and signed their own agreement on 21 January 1991. This effectively meant that the municipality had to join an already established BV to become part of the partnership. The final paragraph then again spells out the determination of the municipality to undertake a 10% share in the partnership.

Say in the partnership

The Board

These paragraphs determine the number of representatives from each party which will take part on the board (a total of three). These representatives and the chairman must be elected during a general meeting of the stockholders. It is also during the general meeting that a vote is taken on whether to fire a director or take on a new one.

Commissioners (Advisory Board)

Again, these paragraphs determine the number of representative from each party which will sit on the Advisory Board (total of five). These representatives and the chair are voted in at the shareholders meeting. Decisions to replace a chair is also voted upon during this meeting.

15. Reservations

The partnership agreement is only effective if the municipality can obtain the required approvals and if the appropriate finance can be obtained by the Projectum.

16. Premature termination of the contract

Premature termination of the contract is not possible unless due to unforeseen and excessive circumstances. The contract explains how the outstanding financial obligations will have to be fulfilled. In the case of differences, settlement must be made by the Dutch Arbitrage Institute (NAI).

17. Consequences of premature termination

In the case of premature termination, the municipality has the right to contract with other partners, with no compensation to the BV, and the right to access and use all information concerning the project developed to date.

18. Differences

Differences must be settled by negotiation. If difference can not be settled in three months time, the case must be taken to the NAI (and handled by three arbiters, two of them lawyers). Differences must not put the project in danger in any way.

19. Dissolution of the BV

At the completion of the project as outlined in the contract, the dismantling of the BV will be voted on at the general meeting of the shareholders. This is to be decided upon unanimously.

20. Choice of legal framework

This contract and any other contracts stemming from it are subject to Dutch law.

Source: Samenwerkingsovereenkomst, inzake de ontwikkeling van het Centrumgebied van de Brabantse Poort te Nijmegen, 1991.

Annex V : Schedule of Construction and Investment

To Date:

<i>Building</i>	<i>Size</i>	<i>Starting Date</i>	<i>Land Price (Nfl. without BTW)</i>	<i>Volume of Investment (Nfl. without BTW)</i>
O-1: Office Bldg.	5400m ²	Dec. 1990	970.000	12.900.000
O-2: Office Bldg.	6000m ²	May 1991	1.100.000	12.900.000
A-1: Office Bldg.	3200m ²	March 1992	600.000	7.800.000
A-2: Office Bldg.	2300m ²	March 1992	430.000	5.900.000
O-3: Office Bldg.*	6500m ²	May 1993	1.700.000	16.300.000
Shops	3000m ²	May 1994	2.500.000	21.300.000
A5/A6 (rental)	36 Residences	May 1994	450.000	3.900.000
A8/A9 (rental)	36 Residences	Nov. 1994	560.000	5.900.000
<i>Subtotal</i>			3015.3 0	86.9 0

Prognosis for Coming Years:

<i>Building</i>	<i>Size</i>	<i>Starting Date</i>	<i>Land Price (Nfl. without BTW)</i>	<i>Volume of Investment (Nfl. without BTW)</i>
O-4: Office Bldg.*	7000m ²	January 1998	1.600.000	17.000.000
A-3: Office Bldg.	2000m ²	March 1997	420.000	5.200.000
A-4: Office Bldg.	3000m ²	April 1997	600.000	7.500.000
C-1 Office Bldg.	2000m ²	June 1998	410.000	5.200.000
C-2 Office Bldg.	3000m ²	January 1999	630.000	7.800.000
A7a/A7b (rental)	44 Residences	March 1997	1.000.000	8.000.000
Shops West	550m ²	January 1999	520.000	2.500.000
B 2-4	121 Residences	January 1999	3.600.000	28.000.000
<i>Subtotal</i>			2586.2 0	81.2 0
<i>Grand Total</i>			17.090.000	168.100.000

* Two additional office buildings
Source: Heijmans Projectum, 1995

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