

Summary

Assignment and investigation

On the 4th of October 2022, the State Secretary of Infrastructure and Water Management (IenW) requested the Human Environment and Transport Inspectorate (Inspectie Leefomgeving en Transport), hereinafter ILT, to conduct an investigation into permits, supervision and enforcement (VTH) on Bonaire, St. Eustatius and Saba. The State Secretary also requested recommendations for improving the system and introducing 'checks and balances'. The investigation was conducted in coordination with the Minister for Nature and Nitrogen of the Ministry of Agriculture, Nature and Food Quality (Ministerie van Landbouw, Natuur en Voedselkwaliteit) hereinafter LNV.

On the 10th of October 2022, the Island Governor of Bonaire asked if the ILT could conduct an assessment of the internal improvement process ongoing within the Public Entity Bonaire (OLB) and draw conclusions from it regarding supervision and enforcement in respect of the natural environment and the human environment.

This report presents the outcome of both investigations and focuses specifically on the execution of the VTH tasks relating to construction, the environment and nature on Bonaire. The project team formed by ILT and LNV visited twice Bonaire for the purposes of the investigation. In addition, interviews were conducted and documents and reports were studied. OLB employees cooperated fully in providing information for the investigation and ensured that the project team could interview the desired individuals.

Results of the VTH investigation

The ILT concludes that the execution of VTH tasks relating to construction, the environment and nature on Bonaire does not comply with legal requirements and local regulations. This conclusion is based on the following observations.

General

- The Executive Council has adopted the Implementation Programme for Supervision and Enforcement (Uitvoeringsprogramma Toezicht en Handhaving), however an associated inspection programme is lacking.
- The Directorate of Spatial Planning and Development (directie Ruimte & Ontwikkeling), hereinafter DR&O, is responsible for permit issue among other things. The Directorate of Supervision & Enforcement (directie Toezicht & Handhaving), hereinafter DR&O, is responsible for supervision and enforcement. Within these Directorates, the necessary checks and balances such as concrete and approved scheduling, documented work processes and peer review are lacking.
- The VTH process is not transparent. The OLB does not adequately use digital systems for verifiable permit issue and verifiable implementation of supervision and enforcement. Document registration is incomplete and performed in different ways.
- DR&O and DT&H do not manage execution of the VTH tasks in a targeted manner.
- DR&O and DT&H do not structurally coordinate the work among themselves. As a result, an integrated approach to complex cases is lacking.

Permits

- DR&O does not have an up-to-date list of businesses required to have a nuisance permit.
- Legally required advisers, including the Bonaire Nature Management Commission (Commissie Natuurbeheer Bonaire), the fire department and internal departments, are either not involved in a permit process at all, or are not involved in a timely manner.
- (Preliminary) permits are either not published, or not published in a timely manner, so stakeholders are not informed or not informed in time. This has implications for their legal position.
- There are permit issue backlogs. Statutory deadlines are not monitored.

Example

A shed, roofed outside storage area and factory under construction appear not to have construction permits. The construction work was completed after several months and OLB then issued a building permit for the shed and roofed outside storage area. No construction permit was issued for the factory.

Supervision

- Supervision is not carried out in a planned manner and only on the basis of complaints and incidents.
- DT&H claims that the total available supervision capacity is deployed for this.

Example:

A waste processing company commissioned an investigation on its own initiative after persistent complaints from local residents about nuisance. Based on the results, the company decided to shut down the incinerator. There is no evidence that OLB actually inspected this company.

Enforcement

- The enforcement applied in the case of infringements is not consistent.
- Enforcement is not seamlessly followed through up to and including the collection of penalty payments, resulting in infringements not being corrected.

Example:

Two coastal development projects are being realised without all required ecological and building permits having been issued. As a result, the appropriate measures to protect the coast and coral were not implemented during construction. Enforcement action on the part of the OLB is not resulting in measures to reverse the impact of the infringements.

Underlying causes

The OLB faces several bottlenecks that prevent correct execution of VTH. The ILT has identified a number of causes in this regard.

Staff and organisation

- The demands placed on staff have increased, however training and coordination when executing the tasks are lagging behind.
- Vacant positions, including management positions, are difficult to fill and remain open for long periods of time. Appointments are regularly not renewed after the initial 3-year period. This is detrimental to continuity and the development of a sense of responsibility.
- Multiple improvement programmes run side by side for long periods of time with no identified end date. This leads to a lack of clarity about responsibilities within the organisational structure.

Resources and processes

- Support systems for VTH and document registration are not adequately used.
- Policies, programmes and project plans are regularly submitted to the Executive Council for adoption without them actually being considered or adopted by the Executive Council.

Culture and managerial influence

- The OLB does not provide a safe working environment where employees feel supported by the civil servants in leadership positions when they have to make decisions that do not automatically qualify for administrative approval.
- Employees of the OLB are instructed to issue permits. They are also subjected to intimidation to ensure that they do not start or pursue enforcement actions.

- The cases that were examined indicate that illegal situations are subsequently legalised. This may be acceptable in exceptional cases; on Bonaire, however, it is a regular occurrence.

Involvement of the Kingdom of the Netherlands (Dutch government)

- The Kingdom of the Netherlands exercises administrative control through policy and programmes, but actual implementation is not adequately tracked.
- The date of entry into force of the BES Environmental Management (Establishment and Activities) Decree (Inrichtingen- en Activiteitenbesluit BES), hereinafter IAB BES, has been postponed several times. This has led to business owners and the OLB adopting a wait-and-see attitude regarding applications for and the issue of nuisance permits.
- The Kingdom Representative has the authority to apply intergovernmental supervision (Interbestuurlijk Toezicht), hereinafter IBT, but a policy framework for applying IBT is lacking and no supervisors have been designated to support this task.
- The OLB has its hands full with working visits, steering groups and task forces with a level of ambition that does not match their implementation capacity. This makes normal work less of a priority.

Conclusion

The OLB's execution of the VTH tasks is not in order. The process lacks legal certainty, which can lead to arbitrariness. The interests that laws relating to construction, the environment and nature are intended to protect are either not being protected at all, or not being protected adequately. Efforts on the part of the OLB and the Kingdom of the Netherlands to improve this have not been sufficiently effective. Due to this multiplicity of sometimes strongly interdependent causes, a fundamental change in the execution of VTH tasks is needed in order to improve the situation.

The OLB does not have the knowledge and experience required to adequately execute the VTH tasks. Permits have not been issued for several businesses and activities. Legally required advisers are not involved (consistently and in a timely manner) in the permit issue process. Decisions are not published (in the proper manner) and the processes are not transparent. Supervision takes place on an ad hoc basis and enforcement does not lead to remediation of the infringement.

Bonaire's size as a small community and the Executive Council's proximity to that community make professional and impartial execution of the VTH process more difficult. This is compounded by the lack of adequate 'checks and balances' within the organisation. The Kingdom Representative, in his role as the final 'check and balance' in the VTH process, is limited in his ability to act in accordance with this responsibility. He has powers but no supervisors to support the execution of his duties.

Recommendations

The ILT recommends the following action to improve execution of the VTH tasks relating to construction, the environment and nature.

Recommendation 1 (Kingdom of the Netherlands)

Rapidly transfer the execution of the entire VTH task package relating to construction, the environment and nature to a single existing environment agency in the Netherlands in Europe. This ensures retention of knowledge and experience, and guarantees continuity, while at the same time distancing the activities from the Executive Council.

- In line with the situation in the Netherlands in Europe, the public entity retains its powers and continues to have final responsibility. Actual execution of the tasks is assigned to the environment agency. The public entity gives the director of this environment agency a mandate to sign permits and enforcement orders.
- Immediately start to identify and eliminate permit issue backlogs within the OLB, under the management and with the support of the environment agency.

- Due to the significant physical distance to Bonaire, special attention is needed for the practical aspects of executing the VTH tasks. This can be achieved by closely involving the current OLB permit issue officers and supervisors in the execution of the tasks under the environment agency's control.

Recommendation 2 (OLB)

Address the identified bottlenecks within the administrative organisation of the OLB quickly and in a focused manner, in close cooperation with the environment agency referred to in 1. Part of the VTH process will continue to be executed by the OLB despite recommendation 1.

- Organisation structure: Clarify progress in ongoing improvement projects through the DR&O/DT&H Improvement Plans Steering Committee and complete these projects as soon as possible.
- Staff and Organisation: Prioritise recruitment for vacancies within the VTH process and completion of ongoing projects, including the 'OLB Revitalisation' project ('Revitalising OLB').
- Management: Set priorities on an annual basis and link them to a concrete schedule of work. Perform the work and monitor progress.
- Use of ICT: Make an unequivocal choice for support systems. Arrange training for the employees and focus management attention on consistent use of these systems.

Recommendation 3 (Kingdom of the Netherlands and OLB)

In close coordination with the OLB, ensure up-to-date and adequate laws and regulations for construction, the environment and nature.

- Specifically for construction: Evaluate the current building regulations and clarify the validity of old building regulations (OLB and Kingdom of the Netherlands). Use the BES code to implement the functional requirements of the Buildings Decree and anchor this code by means of a Ministerial Decree.
- Specifically for the environment: Ensure rapid entry into force of the IAB BES to regulate the businesses with the greatest potential environmental impact. The IAB BES sets out the required framework for programming and execution of the permit issue and supervision activities.
- Specifically for nature: Evaluate whether all categories requiring an ecological permit should go through an extended procedure with an advisory requirement (OLB). Assess whether sensitive areas and buffer zones should be designated (Kingdom of the Netherlands).

Recommendation 4 (Kingdom of the Netherlands)

Strengthen the position of the Kingdom Representative to achieve effective intergovernmental supervision.

- Establish a policy framework for the use of intergovernmental supervision instruments.
- Provide administrative support for fulfilling this intergovernmental supervision task by appointing supervisors.