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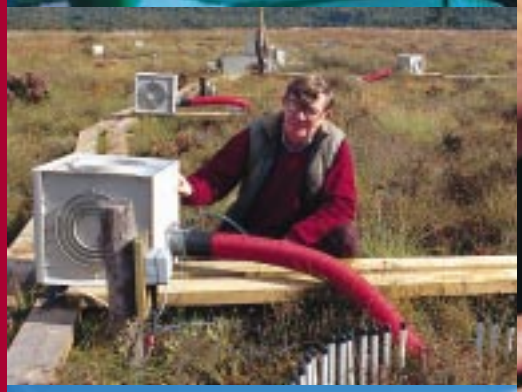

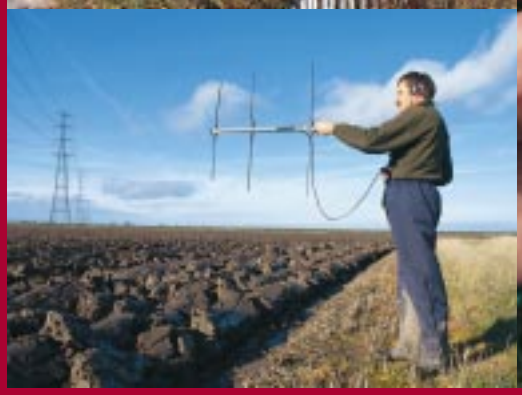

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English Nature Research Reports

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Review of how the Land Use Planning System could Influence the Development of a Marine Spatial Planning System for England

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1. Introduction

1.1 Scope of the review

The objective of this review is to produce a short report providing a brief assessment of the relevance and lessons to be learnt from land use planning (LUP) for marine spatial planning (MSP). It is prepared in the context of English Nature's developing Maritime Strategy. Whilst the focus of the review is on MSP, this explicitly includes a 'regional' dimension and inevitably overlaps with the development of Integrated Coastal Zone Management (ICZM).

The project is not intended to be a comprehensive review of the LUP system but concentrates on those aspects of it that are potentially relevant to the development of a MSP system in the seas around England, and particularly relevant to nature conservation. The project Brief also emphasised that this work should build on and not merely repeat previous reviews and assessments.

Whilst the review relates primarily to the LUP system in England, it draws on relevant research and comparisons with the LUP system in Scotland, Wales and Ireland which are similar in their general structure, purpose and operation.

The project brief set a series of specific questions for the report to address. These are listed in Appendix 1. All are addressed in this report but not necessarily in the order that they appear in the Appendix. Before analysing the systems it is necessary briefly to define and outline the scope of the land use planning system in the context of this paper.

1.2 Definition and scope of land use planning in England

The LUP or "Town and Country Planning" system in England is based on legislation and principles established in the mid 1940s, and which came into operation on 1st July 1948 (Anon 1947). It was intended to help the post-war rebuilding of Britain's towns and cities and was brought forward as part of a package of radical social and environmental reforms, other examples of which include the establishment of National Parks, National Nature Reserves (NNRs) and Sites of Special Scientific Interest (SSSI) (Anon 1949).

The principal purpose of the LUP system in England is to regulate the development and use of land in the public interest(Department of Environment Transport and the Regions 1997 para 3). It operates only above Mean Low Water Mark (Department of Environment 1992 para 1.6). To understand the LUP system, it is essential to understand the statutory definition of "development" (Anon 1990 S.55). This is divided into:

a) operations - building, engineering, mining and other operations which have a physical manifestation and alter the land: a wall or building is built; or a track or pipe-line is laid; or minerals are extracted or processed; and

b) material changes of use - not necessarily involving physical operations but changes in the use of land or buildings, (which will usually, but may not always, result in a change in the activities taking place there), that are material to planning considerations.

Despite the title of "Town and Country Planning", in practice the majority of land use planning activity relates to urban areas. Development in the countryside has generally, and increasingly, been constrained by policy but in any event, **the use of land for the two most extensive land uses in England - agriculture and forestry - was and remains excluded from the legal definition of 'development'** (Anon 1990 S.55(2)(e)). Thus, Local Planning Authorities (LPAs) have had no control over the use of land for agriculture or forestry (including afforestation), only for operations, such as building or engineering operations, related to agriculture and forestry.

There seems to be no current statutory or single, widely recognised, definition of "spatial plan" or "spatial planning". However, the use of the expression indicates that it is wider than land use, or town and country, planning (European Commission 1999, Council of Europe 2000 and Wong et al 2000). It appears to be intended to embrace all aspects of public policy that have a spatial dimension whether or not it includes physical development of land or change of use of land. Thus, for example, spatial planning can include policy development for the spatial dimensions of transport and communications, social cohesion, economic competitiveness, environmental protection and the management of natural and cultural resources. It implies that there must be a "plan" or Aplans≅. These might be expected to be based on a vision, aims or objectives and to incorporate principles designed to help the planning process achieve the aims that created the need for the plan. Self-evidently, the plans must have a spatial dimension - a map or diagram - so that they can express the spatial dimensions of the policy areas that they cover.

2. A brief history and overview of land use planning in England

Table 1 at the end of this section, provides a summary of key events in the evolution of the LUP system relevant to nature conservation and this paper. Essentially, the LUP system that came into force on 1st July 1948 imposed a prohibition on new development, as defined by the Act, unless it had the benefit of planning permission. It comprised a statutory power for LPAs to draw up development plans and charged them with the responsibility of determining the applications for planning permission, having regard to the provisions of any development plan. Ministers were given concurrent and default powers but the system was and remains one that is administered predominantly by local government. Planning permission was granted either generally by a "Development Order" made by the relevant Minister or on an application to the LPA. That principle remains today. There has been a steady flow of Government guidance to the local planning authorities since the inception of the system, in 1948, mainly in the form of Circulars, but subsequently in Development Control Policy Notes and Codes of Practice and, since 1988, Planning Policy Guidance Notes (PPGs), and other types of policy guidance explained more fully below.

It is important to note that **there is a range of infrastructure development projects that are not directly subject to the Town and Country Planning system**, in terms of their planning and regulatory controls. These are determined at national level by Ministers. They include, large power stations and electricity power-lines, oil and gas installations and pipe-lines, railways and bridges and most harbour or port developments (Anon 1962, 1964, 1989, 1992). The Crown has also been exempt from the Town and Country Planning system (Anon

1990 Part XIII) including for example, military development and land use. However, since 1984, a 'shadow' development control system has been in operation, as a matter of policy (Anon 1984) and Crown exemption is proposed to be terminated in the Planning and Compulsory Purchase Bill currently before Parliament.

2.1 Development Plans

Originally, development plans comprised "County Development Plans" and "Town Maps". There was no target date for their preparation and adoption but County Development Plans were in place for most Counties by the end of the 1950s; but the adoption of Town Maps was slow and incomplete, especially at the local level, and maps became increasingly out of date as development pressure changed and intensified. **The old development plans were seen as rather inflexible, sometimes with few proposals for change, rigid zonation of existing land use, and extensive areas of "white land" where no policy or proposal applied and land use was expected to remain largely unchanged.**

By the mid 1960s proposals for a new style of plan were being tested for the Government in trials by the "Planning Advisory Group" and **in 1968 a new system of two tier plans was introduced comprising**:

a) Structure Plans which formed the strategic policy framework and indicated, on a key diagram, the general location and distribution of development at county-wide level; and

b) Local Plans which provided a detailed policy framework, with specific proposals in the form of development allocations, land use zones and designations constraining development, all on an ordnance survey base map (Anon 1968).

Initially, County Councils were the only, or the main, planning authorities, but in the reorganisation of local government in 1974, the newly created **Metropolitan Borough Councils and District Councils** (in the non-metropolitan 'shire' Counties) **took planning powers in respect of Local Plans and most forms of development control**. **Mineral and waste planning functions, however, were retained by the County Councils, reflecting the need for a more strategic view of these developments, and the more complex, controversial and specialist nature of minerals and waste planning.** Mineral and Waste Local Plans were added to the suite of development plans with the County Councils responsible for their production.

Upon the abolition of the Metropolitan (and Greater London) County Councils in the mid 1980s, all London and Metropolitan Borough Councils were required to produce Unitary Development Plans (UDPs) for their areas. UDPs comprise the strategic element in Part I, equivalent to the structure plan, and the local plan element in Part II together with mineral and waste policies and proposals. These new structure and local plans and UDPs were all intended to be more flexible and responsive and to be prepared and adopted more quickly.

By the end of the 1980s however, development plans were generally still out of date and incomplete in their coverage. Although there was complete structure plan cover, many District Councils had divided their area into several local plan areas and **the production of several local plans was a time consuming process**. The high levels of development

pressure then being experienced were forcing many LPAs to determine planning applications on an individual, case-by-case basis, often without the context and guidance of an up-to-date development plan. This application-led (and often appeal-led) system became as much the concern of developers and business interests as of local communities. Most stakeholders lost confidence in an increasingly ineffective and discredited local planning system. **The application-led system meant that more resources had to be devoted to development control rather than plan making**, exacerbating an already seriously inadequate development plan context. It also led to more inconsistency in planning decisions, especially between decisions taken by District Councils in the same County, operating under the same structure plan, and between the decisions of LPAs and Inspectors determining the increasing number of appeals against refusal of planning permission (see below) without the benefit of a comprehensive, up-to-date local plan.

The Planning and Compensation Act 1991 introduced section 54A into the recently consolidated Town and Country Planning Act 1990, requiring that all planning decisions should be made in accordance with the development plan unless 'material considerations' indicate otherwise. The age and relevance of a development plan is a material consideration and, with some modest assistance from changes in procedural regulations, most notably the requirement for all LPAs to produce a single, District-wide Local Plan, the preparation and adoption of development plans was expedited and an essentially "plan-led" system was established, that remains in place today.

Further, quite radical, change to the development plan system is now proposed in the Planning and Compulsory Purchase Bill. In another attempt to expedite the plan making system, LPAs would be required to produce a Local Development Framework which would comprise a portfolio of Local Development Documents (development plan documents and supplementary planning documents) which collectively should deliver the spatial planning strategy for the LPA's area. These will include a Core Strategy, a Proposals Map and Area Action Plans focusing on areas of greatest pressure for change. More Master Plans and Development Briefs prepared by the LPAs to more directly shape development proposals may also be seen in the future.

2.2 Government Guidance

Government guidance in England takes four forms:

a) Planning Policy Guidance Notes (PPGs) of which there are 25 giving Statements of Government Policy;

b) Mineral Planning Guidance Notes of which there are 15 giving policy and guidance on mineral planning (there is also a Marine Minerals Guidance Note);

c) circulars generally dealing with advice on administrative and procedural matters; and

d) Regional Planning Guidance (RPGs) for each of the 8 Government Office regions plus London.

Given that most planning activity is undertaken by some 400+ LPAs in England, the main purposes of Government guidance are to provide consistency between LPAs, guidance on

how to implement planning legislation and to steer decisions, policies and proposals in directions compatible with Government policy. **The volume and scope of Government guidance has grown fairly consistently over the years as a result of a continuous process of LPAs wanting more of a steer on particular issues and Government wanting to exert more policy influence over decisions.** None of the guidance has a statutory basis but it is a material consideration in preparing development plans and deciding planning applications. If LPAs include a policy or proposals in new plans, or are minded to grant planning permission for developments that are contrary to Government policy, the First Secretary of State has the power to intervene and direct the LPA to act in specific ways. **Government policy and guidance is, therefore, a strong, albeit not necessarily prevailing, influence on the LUP system at local level**. It is particularly influential when the First Secretary of State, or an Inspector on his behalf, is determining an appeal or application when, as might be expected, the Minister's policies will be applied.

The Government is currently reviewing and re-issuing guidance in the form of new Planning Policy Statements (PPS) to replace the suite of PPGs, where necessary accompanied by new Circulars and Good Practice Guides to more clearly distinguish the nature of the guidance and to reduce the volume of Government policy.

2.3 Regional planning

For many years, the LUP system in England was limited to the national, county and district levels, with an absence of a regional tier of planning. Regional Planning Guidance was first produced in the mid 1980's and has been reviewed regularly since. It has been drafted by various regional fora but always adapted, and adopted, by the Secretary of State. Thus, although the constituent local authorities of each region had a major hand in drafting the RPGs, **ultimately central Government determined the final guidance in the RPGs**. The RPG process, especially its influence on difficult and controversial issues, such as the level and distribution of housing to be accommodated in structure plans, has caused tensions between Government Offices and planning authorities. RPGs have no statutory basis but are a material consideration in the making of development plans and planning decisions. **Each RPG review has tended to produce more comprehensive guidance and a stronger spatial dimension to the policies.** Until recently, nature conservation has not figured strongly in RPGs but a determined effort from the nature conservation bodies, especially in the East, East Midlands and South West Regions has significantly improved coverage.

Since 1997 the Government has raised the profile of regional planning further and the latest round of draft RPGs has begun to reflect the Government's aspirations to achieve a **series of more integrated regional spatial strategies embracing conventional LUP issues together with transport and wider socio-economic and environmental issues** prepared and adopted by elected regional assemblies. The wider scope of regional spatial strategies could provide opportunities to embrace land uses that have been largely outside the planning system, such as agriculture and forestry, into the spatial planning process

2.4 Development control

The development control system is the process of deciding applications for planning permission, Listed Building, Conservation Area, Tree Preservation Order and Advertisement consents (amongst others), this is the primary way in which the development plan is

implemented. It has been **characterised by an increasingly complex body of legislation imposing generally more detailed and rigorous control** (changes relaxing development control have been outweighed over the years, by changes that increase it). Reflecting the fact that the 1947 Act denied people the right to develop land in their interests, as opposed to the public interest, **the system is endowed with rights of appeal for landowners and developers who are aggrieved by planning decisions** of LPAs restricting or denying their development aspirations. There is no 'third-party' right of appeal for those aggrieved by a LPA decision to grant a planning permission (as there has been in Ireland) but there is a system whereby, in exceptional cases where national policy may be at stake, people interested in the outcome of a planning decision can request the Minister, currently the First Secretary of State, to call-in the application for his own determination (a mechanism used comparatively regularly by English Nature and the former Nature Conservancy Council in the past, but less so by other statutory consultees such as the Environment Agency and Countryside Agency).

In practice, almost all appeals to the First Secretary of State are delegated for decision to an Inspector employed by the Planning Inspectorate. When a planning application is called in, a planning Inspector is appointed to hold a public inquiry and report the case to the First Secretary of State with a recommendation as to the decision that should be made.

2.5 Public participation and influence

Planning decisions can have important direct and indirect effects on people, as individuals and communities, both beneficially and adversely. People regard planning decisions as important and seek to influence them. Since a major review published in the late 1960's (Ministry of Housing and Local Government, the Scottish Office and the Welsh Office 1969) **changes to the LUP system has increased opportunities for the public to influence development plans and planning decisions** even though they are determined by LPAs, which are controlled by elected representatives of the community. Transparency, openness and accountability are important characteristics of the LUP system and the degree of public involvement seems to be a reflection of the degree to which planning decisions are perceived by the public as potentially affecting people locally. Although the town and country planning system has been held to be consistent with the Human Rights Act 1998, the Government continues to look for ways of increasing public engagement in the LUP process but, paradoxically, **it is almost certainly the extensive processes of public consultation that have slowed the preparation and adoption of development plans and the expeditious determination of planning applications**. The parallel Government objectives of speeding up the planning process whilst increasing public involvement appear to be incompatible.

2.6 Interpretation and the courts

In a system of increasingly complex and rigorous regulation, involving matters that can have profound consequences to people and business, and in the context of escalating land values (especially where property has the benefit of development consent) it is not surprising to find considerable activity in the form of legal challenges. The flow of court decisions quashing or upholding the decisions of LPAs, Planning Inspectors and Ministers is a very significant resource cost to the LUP system. On the other hand, Court decisions have been, and still are very influential in the interpretation and application of planning law. In many areas it seems to be an inevitable and necessary part of the process of clarifying the implications of new or

changing legislation. Despite the widespread concern about intervention by the courts, some areas of planning law remain uncertain because they have not yet been "tested" by judicial scrutiny.

Legislative change has tried to ease the difficulty of interpretation, especially in the vexed question of whether any particular activity requires an express planning permission, granted on an application, but the LUP system still keeps the High Court busy examining the legality and reasonableness (but not the merits) of innumerable planning decisions. Court cases sometimes become embodied in Government guidance (e.g. Circulars on the use of conditions in planning permissions) and lead to changes in the law where the law is found wanting.

2.7 Enforcement

The complexity of the LUP system means that many people can undertake unauthorised development, which is a breach of planning control, unintentionally. Others are determined to flout the law and attempt to carry out development without going through the proper processes. It is not an offence, initially, to breach planning control. An offence is only committed where a person fails to comply with mechanisms, such as an enforcement notice, intended to remedy a breach of control. Enforcement is discretionary and planning permissions can be granted retrospectively. LPAs do not generally have the resources to police every part of their area for breaches of planning control. **Developments, other than mineral and waste operations, are not always systematically monitored and most breaches of planning control are revealed via public complaint**. The Planning and Compensation Act of 1991 increased the powers and effectiveness of enforcement and, in practice, **most breaches of planning control that are identified or reported in a reasonable time scale, and which are or would cause serious public nuisance, or a breach of important policy, are effectively remedied in time, if not necessarily promptly and to everyone's complete satisfaction**

2.8 Current proposals for change in the town and country planning system

Current proposed changes to the planning system, in the Planning and Compensation Bill, will see a new cascade of policy frameworks:

a) non-statutory national Planning Policy Statements (PPS), accompanied by Circulars where legal interpretation is required and Good Practice Guides;

b) statutory Regional Spatial Strategies (RSS) embracing spatial issues across a wider range of sectors than town and country planning;

c) sub-regional Spatial Strategies (SRSS) where necessary to provide more strategic guidance, especially in the absence of structure plans, which will be removed from the planning framework; and

d) local Development Frameworks comprising a portfolio of Local Development Documents (development plan documents, supplementary planning documents and a

Statement of Community Involvement) which collectively should deliver the spatial planning strategy for the LPA's area.

There is a drive to avoid duplication of policy at different tiers in the system, deleting the reiteration of national policy in RSS, and regional policy in LDFs. RSS should only contain matters with a clear regional dimension. LDFs will deepen the distinctiveness of place locally and should be a local expression of how national and regional policies will be applied, not a reiteration of them.

Changes are also proposed to the development control regime of the LUP system but these are more in the way of administrative changes to facilitate the new development plan system, expedite the decision making processes and reduce the resource effort of development control.

Minerals and waste planning will be subject to less change in the immediate future with minerals and waste local plans and the County planning units all being retained for minerals and waste planning purposes. Proposed changes are related to further encouraging the industry to use recycled, secondary aggregates and encouraging alternatives to aggregates, by taxing primary aggregate extraction, and introducing fees for mineral planning monitoring and inspections. However, it is not possible to say whether this is because mineral and waste planning is perceived by Government to be more successful than the aspects of planning that will see more substantial change.

Table 1 A Summary of Key Events in the Evolution of the Land Use Planning System Relevant to Nature Conservation

Date	Change
1947	Town and Country Planning Act receives royal assent heralding the establishment of the present-day LUP system
1948	1st July, the appointed day when the planning system came into force
1949	The National Parks and Access to the Countryside Act introduces the notification of SSSI to planning authorities and the establishment of National and Local Nature Reserves, the latter created by local authorities
1950-68	Development plans are slowly produced in the form of County Development Plans and Town Maps
1950-77	Generally, only statutory sites of nature conservation importance (SSSI) are taken into account in development control decisions
1968	New system of development plans introduced - Structure Plans and Local Plans
1968	Countryside Act duty requires planning authorities to have regard to the conservation of flora, fauna and geological and physiographical features
1974	Most development control and Local Plan-making functions pass to the District Councils
1977	First lists of non-statutory sites of nature conservation importance (SINCs) are published for planning authorities to help to protect a wider range of wildlife sites
1977	First Government Circular on nature conservation and planning

Table 1 A Summary of Key Events in the Evolution of the Land Use Planning System Relevant to Nature Conservation	
Date	**Change**
1981	Protection of SSSI from operations likely to damage their interest features is extended to operations not requiring planning permission and owners and occupiers have to be notified.
1986	Metropolitan County Councils abolished and all planning powers in London and metropolitan counties pass to the Borough Councils who are required to produce a Unitary Development Plan
1987	Circular 27/87 raises the profile of nature conservation in local authorities generally
1988	First Planning Policy Guidance Notes (PPGs), Regional Planning Guidance Notes (RPGs) and Mineral Planning Guidance Notes (MPGs) begin to replace former Development Control Policy Notes
1980s	Lack of up-to-date development plans brings planning system into disrepute, taking the form of an application-led system
1991	The Planning and Compensation Act introduces the duty to make planning decisions in accordance with the development plan unless material considerations indicate otherwise, the plan-led system is founded. Enforcement powers are improved.
1994	The Habitats Regulations introduced to transpose the requirements of the Birds and Habitats Directive into planning and related processes
1994	Planning Policy Guidance Note 9 Nature Conservation is published which proved to be very influential
1997-99	Government increases the role of regional planning, seeks to further integrate planning and transport and promotes the idea of wider spatial planning strategies
2001	Countryside and Rights of Way Act 2000 comes into force amongst other things, improving protection and management of SSSI and increasing duties on all public bodies to conserve and enhance SSSI interest features and setting out more stringent consultation requirements for them, including planning authorities
2003	Planning and Compulsory Purchase Bill introduces a range of changes to development plans and development control procedures

3. How land use planning has contributed to nature conservation

3.1 Overview of evidence available

The LUP system has undoubtedly made a significant contribution to nature conservation but there has been no comprehensive research project to establish the real scope and depth of that contribution. Rather, occasional research projects have analysed specific aspects of the planning system, for example, the local authority contribution (Tyldesley 1986), planning and urban wildlife (Smyth 1987), surveys of development plans (Tyldesley 1995 and 2000, McGee 2003 and Postan & Simms 2003); assessments of the effectiveness of specific planning mechanisms such as conditions and agreements (Tyldesley 1996 and Hunt and Tyldesley 1998), or the effectiveness of nature conservation bodies in influencing the planning system (Beynon and Wetton 1978, Raemakers et al 2000)

Perhaps it would be impossible to fully assess the contribution of the LUP system simply because it amounts to the cumulative effect of literally hundreds of development plans and many thousands of planning decisions over 55 years. What can be asserted from what little research there is, and the empirical evidence of known decisions and plan content, is that the LUP system has contributed to site and species protection, habitat translocation, creation and enhancement and to improved site management. It has protected individual geological features and helped to sustain functioning natural systems and processes.

The most detailed survey of LPA contributions to nature conservation was carried out in 1985 (Tyldesley 1986). It recorded the following facts:

a) over three quarters of LPAs in England, Scotland and Wales had published a development plan with at least one nature conservation policy, usually relating to site protection;

b) almost half the District Councils in England had published a development plan with both a policy and a proposal relating to nature conservation;

c) the extent of consultation between the Nature Conservancy Council and local planning authorities on development plans was increasing;

d) 90% of mineral planning authorities checked the nature conservation interest of a site before granting planning permission for extraction;

e) 31% of all district councils in England, Scotland and Wales had refused planning permission on nature conservation grounds (possibly amongst others) and this proportion rose to about half the LPAs in some regions;

f) 90% of those LPAs that had refused permission considered that the need to refuse planning permission on nature conservation grounds was increasing.

More recent research (Tyldesley 1995 and 2000, McGee 2003 and Postan & Simms 2003) indicates that whilst the quality of nature conservation policy wording is variable and often poor, all development plans now contain nature conservation policies and the range of policies relevant to nature conservation is increasing. This is no doubt a reflection of stronger government policy in Circular 27/87 (Department of Environment and Welsh Office 1987) and then in PPG9 (Department of Environment 1994) and the influence of English Nature as a statutory consultee (Hunt 2000 and Tyldesley 2002).

3.2 Links between planning and nature conservation

Planning and nature conservation have been linked since 1949 (for example see Stamp 1969 and Reid 2002). Sites of Special Scientific Interest notified under the provisions of the 1949 Act alerted LPAs to the location and interest features of areas considered by the then Nature Conservancy to be of special interest. At that time, no one other than the LPA had to be notified of a SSSI (not even the owner). This link generated the duties of a LPA firstly to consult the Nature Conservancy about applications in a SSSI and from 1977 onwards

(Department of Environment 1977) to consult NCC/EN on planning applications likely to affect SSSI, whether within the SSSI boundaries or not.

Recognising that there were many sites of nature conservation interest that did not merit notification as SSSI, systems identifying locally designated Sites of Importance for Nature Conservation (SINCs) were published from 1977 onwards (Collis and Tyldesley 1993). These still have no statutory protection so it is primarily the LUP system that protects them, at least from development subject to planning control.

LPAs were charged with a general duty by the Countryside Act of 1968 (Scotland of 1967) that "in the exercise of their functions relating to land under any enactment, every Minister, Government department and public body shall have regard to the desirability of conserving the natural beauty and amenity of the countryside". This was defined so as to include the conservation of its flora, fauna, geological and physiographical features.

The first Government Circular containing detailed nature conservation policy and guidance came in 1977 and emphasised that "nature conservation interest is by no means confined to traditionally beautiful areas and occurs in towns as well as in the countryside".

The protection of SSSI only via the planning system was clearly not enough and the 1981 Act extended controls over operations likely to damage the interests of a SSSI that did not require express planning permission granted on an application under Part III of the Town and Country Planning Act. That relationship, whereby **development requiring express planning permission is exempt from needing the consent of English Nature**, under section 28 of the Wildlife and Countryside Act 1981, (as amended by Countryside and Rights of Way Act 2000) is still in place, now largely to avoid unnecessary duplication.

If a LPA were minded to grant planning permission for development likely adversely to affect a SSSI, against its advice, then NCC or English Nature could require that the Secretary of State issue a Direction firstly prohibiting the grant of planning permission (Anon 1995 Article 14) and, if the application was not refused by the LPA, then referring the application to the Secretary of State for his own determination (Anon 1990 S.77). **This call-in, or Ministerial referral, system is essential in a system devolved to local government but which nevertheless is an important tool in implementing national policies and protecting nationally and internationally important nature conservation sites**. It has been very successful for NCC and EN with only a very small number of planning permissions granted by the Minister that could damage such a site compared to many dozens known to have been refused. However, again, we can find no reference to a detailed analysis and this conclusion is necessarily based on the authors' empirical knowledge of case work from 1987 to 2003.

In 1994, PPG9 confirmed that the presence of a protected species, which could be harmed by development, is a material consideration in planning decisions (Department of Environment 1994 para 47) and a significant proportion of development plans, in a random sample, contained a species protection policy (Tyldesley 1994a). The proportion has further increased but not all plans will contain such a policy today. PPG9 also set out the rigorous controls associated with the Conservation (Natural Habitats &c) Regulations, 1994 and required LPAs to distinguish between international, national and local designations in policies and in the weight they attached to the designations in planning decisions. Nature conservation has a sophisticated system of designations at international, national and local

levels. In its totality it is probably unequaled by any other topic, although the national coverage of landscape designations is comprehensive and archaeological designations are probably at least as sophisticated at national and local level, if not at international level.

Overall, the evidence tends to indicate that PPG9 has been a considerable influence on development plans and planning decisions in relation to nature conservation.

3.3 The influence of the nature conservation bodies

The role of the statutory nature conservation bodies in England, Scotland and Wales in shaping the LUP system to be more effective for nature conservation should not be underestimated. Research shows that the effort put into responding to development plan and development control consultations by natural heritage bodies is generally effective and the nature conservation bodies, both statutory and non-governmental organisations, are influential on the planning system at all levels from national, regional, strategic and local levels (Collis 1993, Tyldesley 1999, Lavis and Tyldesley 2000).

3.4 Management and enhancement

The LUP system, however, has been less effective in delivering enhancement of nature conservation interest and improved site management. The reasons are probably clear. They relate to the limitations of policy and the scope of planning. Since 1953 the principle was that development should be encouraged unless it was demonstrably harmful (Ministry of Housing and Local Government 1953). Thus, in order to refuse planning permission the planning authority had to show "demonstrable harm to interests of acknowledged importance" (Department of Environment, Transport and the Regions 1997); lack of any benefit for nature conservation, or any other interest, has not been a reason for refusing planning permission. **The policy approach in LUP has tended to be aimed at striking a balance between development benefits and harm to nature conservation or, at best, an expectation for developers to remedy or offset the negative impacts of their development**, if necessary by measures such as translocation, habitat creation or restoration. There is no obligation to improve wildlife or geological interest. Any new benefit has been largely as a result of developers offering such enhancement in the hope that it will be a 'carrot' to help to persuade a planning authority to grant a planning permission; LPAs have not generally been able to wield a 'stick' to require enhancement.

As described above, **the focus of LUP is on proposals for change, not the management or control of ongoing activities**. LPAs do have some limited powers to discontinue ongoing land uses and to revoke or modify permissions given for developments, but the liability to compensate those who would lose financially by such action has meant that discontinuance, modification and revocation orders have rarely been used. Equally, the on-going management of land, as opposed to change of use, is not within the planning remit, so there has always been a reluctance of LPAs to try to regulate on-going site management, except in the period of restoration and after-care in respect of mineral and waste development or the period for establishing landscaping schemes, in most cases a maximum of five years.

However, recent changes in policy and practice have begun to affect the way in which LPAs approach the questions of both enhancement and management. We have recently detected a greater willingness to use the planning system in a proactive way to positively

generate enhancement of the natural heritage. For present purposes we cite three examples in the box below.

Box 1 Examples of Planning for Nature Conservation Enhancement and Management

Paragraph 2.3 draft Regional Planning Guidance for the East Midlands sets out ten priorities to guide the spatial development of the region, three of which clearly imply enhancement of biodiversity and this has been incorporated into the policy framework, with the RPG clearly recognising that because of the particularly serious depletion of biodiversity in the East Midlands it is a particular challenge to enhance it, this may be pointing to the potential for the new spatial planning system to be a better vehicle for delivering biodiversity enhancement.

In 1999, the Royal Town Planning Institute published guidance which promoted a five point approach to planning decisions for biodiversity indicating that:

1. there should be adequate information to inform the decision;
2. adverse effects should be avoided wherever possible;
3. where adverse effects are unavoidable they should be minimised by mitigation;
4. where, despite mitigation, there could be residual adverse effects that mitigation cannot reduce further, these effects should be compensated by measures that try at least to off-set the harm;
5. where there would be no significant harm to wildlife species or habitats are there opportunities to provide new benefits for wildlife, for example by habitat creation or enhancement and can these new benefits be guaranteed by planning obligations/ agreements? (Royal Town Planning Institute 1999).

Regulation 37 of the Conservation (Natural Habitats &c) Regulations, require all development plans to include policies encouraging the management of features of the landscape of major importance for wild flora and fauna. PPG 9 (Department of Environment 1994) and English Nature (Tyldesley 1994b) provided some advice on how this may be implemented via conditions and planning agreements linked to planning permissions but research showed that compliance with the requirements of the regulations was uneven and LPAs clearly had some difficulty in implementing the intention of regulation 37 (Tyldesley 2000), which itself derives from Article 10 of the Habitats Directive (Council of the European Community 1992).

The door is beginning to open for the LUP system to achieve more in respect of enhancement for biodiversity and geological conservation and to extend, in appropriate circumstances, to on-going land management where such control will continue to off-set harm to nature conservation interests from the construction and operation of development projects. Furthermore, we detect a growing willingness, of those operating the LUP system, to move away from the conventional adherence to traditional designations, within strict administrative planning boundaries, towards a more ecosystem approach based on such initiatives as the Natural Areas of English Nature and the countryside character areas of the Countryside Agency. **Spatial planning could help to increase the emphasis on 'place', improve recognition of natural and physical systems** and processes and explore more thoroughly their relationship with settlement pattern and land use. The changes to the LUP system listed at the end of section 2 above, are capable of accommodating a more 'ecosystem approach' to planning, but they are not specifically designed for that purpose and **nature conservation bodies will need to continue to develop ways of demonstrating how natural heritage conservation and enhancement can and should be an integral part of the spatial planning system**.

3.5 Sustainable development

Finally, in this broad analysis, we would note two further matters. Firstly, since the Rio conference of 1992 and the first UK Sustainable Development Strategy (Anon 1994), the

way in which the concept, ideals and principles of "sustainable development" have penetrated the planning system and become embedded in all plan making activity as an aspirational goal. Encouraged by the 'Local Agenda 21', process flowing from the Rio conference, sustainable development is increasingly stated to be underpinning local policy frameworks. Every new development plan now declares that it is firmly based on the principles of sustainable development, though having flagged this up as a plank of a plan's strategy it is not always as transparently incorporated into detailed policies and proposals. Nevertheless, the concepts of sustainable development are firmly embedded as a primary goal of the planning system. **The Government is looking to introduce, for the first time, a statutory purpose for planning, in the Planning and Compulsory Purchase Bill, that will refer to sustainable development.**

Secondly**, there has been an important shift in policy approach to planning over the last few years from one of "predict and provide" to one of 'plan, monitor, manage and review'**. Under the former approach, forecasts of development requirements tended to be unconstrained and maximised to ensure there was no limit to the amount of land available to meet market demands for housing, industry, retailing, mineral extraction etc. 'Plan, monitor, manage and review' is a more measured approach to land availability, that reflects environmental constraints and the principles of sustainable development. There is an increasing tendency in regional and local plans to more explicitly adopt a precautionary approach and to at least try to manage demand and assess development and / or environmental capacity.

Table 2 Summary of Principal Benefits and Limitations of the Town and Country Planning System for Nature Conservation

Principal Benefits	**Principal Limitations**
The requirement of planning authorities to take account of all material considerations, and not to take account of immaterial ones, which means that decision makers can never ignore nature conservation interests, even if they did not always place great weight on them when making decisions	As yet, no prescribed statutory purpose for planning No requirement that it should seek to achieve sustainable development No indication as to which, if any, interest should prevail, social, economic or environmental, except in very specific circumstances
Providing a deterrent effect for development likely adversely to affect designated areas and a degree of certainty about what forms of development will be acceptable without harming nature conservation interests.	Slow evolution of development plan policies relating to nature conservation. Problems of local plans being out-of-date and synchronisation and of timing and consistency within the cascade of planning policy e.g. local plans delayed awaiting key elements to be directed from higher tier plans which can be reviewed more quickly. Complex web of inter-plan links, made more complex by the plethora of statutory and non-statutory, non-land-use-planning strategies and plans (e.g Waste Plans, Shoreline Management Plans, River Basin Management Plans, Local Environment Agency Plans, Community Strategies, Biodiversity Action Plans and many others) which it is clearly desirable for the development plans to accord with, and vice-versa.

Table 2 Summary of Principal Benefits and Limitations of the Town and Country Planning System for Nature Conservation	
Principal Benefits	**Principal Limitations**
The protection of sites of nature conservation value. The protection of species from the effects of development. The restoration of habitats following development. The protection and retention and improved accessibility of geological features. Some creation of new habitat of value for nature conservation;	Uncertain scope of planning in respect of on-going land management and limited scope for regulating ongoing activities on land. Exemption of the use of land for agriculture and forestry from any form of planning control.
Ensuring compatibility of land use distribution and adjoining land uses with nature conservation interests;	It is only the planning decision-maker (LPA, Inspector or Secretary of State) that is required to have regard to the development plan and to make decisions that accord with it; no other regulator or stakeholder has that duty. The need for the planning authority to demonstrate harm before refusing planning permission has made the application of the precautionary principle very difficult. The planning authority has a very limited ability to require net, or new, benefit or other enhancement.
	Lack of integration in development control. A project requiring several consents submitted in parts and/or sequentially to LPA first impeding thorough and holistic project assessment, where all relevant information is available and different regulators can fully assess implications of a project together, in an integrated way. LPA limited to considering planning matters and full information at planning application stage may not be available limiting the value of consultation with other regulators. Many Environmental Statements and other forms of submissions incomplete and inadequate, sometimes because full design or information on potential effects may not be available. Difficulties in refusing planning permission on grounds of prematurity, precedence and cumulative effects.
The openness, inclusion and transparency of the LUP system which enables members of the public, including nature conservation organisations to influence development plans and planning decisions and to see how their representations have been taken into account.	There is a limited understanding (owing to lack of training) of most planners of the basic principles underlying both biological and geological conservation. The LUP system is implemented largely at a very local level in LPAs that have limited financial and staff resources and nature conservation is not seen as a priority issue, especially compared with the economy and employment.
	Lack of adequate resources allocated to planning departments to meet increasing workloads; so planning largely reactive Sometimes lack of 'vertical' integration between national, regional and local planning tiers, again often because of limited resources and lack of 'horizontal' integration between sectors, caused by the narrow remit of the planning system in relation to economic development, transport, social exclusion and environmental regulation and enhancement.

Finally, in respect of the limitations, there are a series of inherent tensions between objectives in the planning system. For example:

i. the need to expedite the preparation of development plans and the determination of planning applications - v - the importance of consultation, thoroughness and quality control in decision taking;
ii. avoiding plans being too rigid and prescriptive so they are inflexible and stifle enterprise - v - lack of clarity, detail and vagueness that means they are weak and fail to adequately steer decisions;
iii. allowing for innovation, evolving designs, new uses and types of development, unforeseen circumstances - v - the desire for greater certainty and confidence in the system;
iv. the desirability of local decision making - v - the need for consistency and compliance with Government policy.

4. Some key differences between terrestrial and marine planning relevant to nature conservation that may influence a marine spatial planning system

There are obviously differences between the land and the sea, but they are intimately connected, especially at the coast, and economically, socially and environmentally inter-dependent. In the context of how a marine spatial planning system may need to differ from a land based spatial planning system, we see the key relevant differences between terrestrial and marine planning as follows.

Ownership of the seabed is vested in the Crown, which seeks economic benefit in different ways to those of the complex economic interests of a multitude of private landowners.

Land acquisition similarly, the questions of land assembly and compulsory purchase that may be needed to achieve planning objectives, such as the assembly of land for regeneration schemes, do not arise below mean high water mark.

Common rights and interests, for example fishing, access and navigation limit the potential for the Crown to attempt to restrict activity on the sea in ways that are commonplace on land to protect private interests. Equally, it gives a wider public a stakeholder interest in the use and management of all the sea, not just parts that are open to the public as on land.

Population and communities are very different. On land one of the greatest influences on the town and country planning system is that of the public acting individually or in communities, to further their interests. The sea has business and recreation, but at least away from the coast, not residential, communities. Business and recreation communities at sea can sometimes operate in narrow sectoral interests, rather detached from other stakeholders and can operate at relatively low densities, compared to the intensity of land based recreation and business. On the other hand, in the absence of influential residential community voices, industry voices have the potential to dominate some debates.

Local ownership and accountability on land local authorities provide a focus as a common body of 'ownership' of an area, with an interest in its well-being and accountability to its people; at sea there is no body of local ownership and there is a lack of transparency and little direct accountability in some sectors and regulators.

Information and appreciation although improving, generally, there is relatively less known about the use of the sea and the marine environment than there is in respect of the use of the land and the terrestrial environment. As on land, there is no repository of marine environmental information. However, the extent to which information is currently dispersed is probably a more significant impediment to effective planning than on land, although there are emerging initiatives to address this problem (see, for example, Cowling 2003). There may have been a culture of out-of-sight out-of-mind in respect of the sea's environmental problems and to a degree this remains the case. Despite the efforts of a range of bodies the sea has been the poor relative of terrestrial conservation, planning and environmental understanding over many years.

Mapping although there is comprehensive and detailed mapping in the form of charts, there is no single GIS or other mapping system to collate, interpret and use information or to form a basis for spatial planning at sea.

Expertise the sectoral approach to regulating the use of marine areas and resources has tended to create pockets of expertise in respect of particular activities or resources but a lack of a coordinated overview of the marine environment.

Environmental depletion, and ecosystem fragility and vulnerability it seems increasingly clear that the environmental condition of the sea is seriously depleted and, whilst it can be fairly argued that the biodiversity of the land is also seriously depleted, the implications of the state of the marine environment are far less clear. The land and the sea are both key resources. Land is essentially a resource providing space and location for development and activities, some uses, such as farming, forestry and mineral working, rely on its characteristics, but most other uses have tenuous and diminishing relationships with the character of the land they occupy. The sea itself is the key resource of common currency for most of its users. But this may be changing. Despite the hostile nature and often remote, isolated location of the marine environment for construction projects, there is an increase in developments that do not directly rely on the sea, but are utilising its space and locational advantages, perceived to be less constraining than the land. Nevertheless, the sustainable use of the sea still relies more on healthily functioning ecosystems than does the use of land and it always will do. There is, prima facie, a case for considering whether the protection and restoration of marine ecosystems should prevail in respect of sea use planning decisions over other interests in a way that they do not in respect of land use planning decisions.

Multiple Use and Activities land use tends to be largely exclusive. Most land is used for one purpose, or for a primary and perhaps one or two ancillary or temporary uses. Multiple use areas on land are relatively few (though not necessarily small in area e.g. forests). Areas of sea tend to be more in multiple use than land, partly because different uses can be carried out at sea on its surface, in the water column and on or beneath the seabed. Whilst the sea is not free of competition for space, especially in-shore waters, the competition for space on land is more intensive especially where the density of use and the need for sole occupation or mutually exclusive activities means the single highest bidder often determines land use.

Buildings and infrastructure land use is frequently determined by the nature of fixed assets such as buildings or land quality and characteristics which do not change significantly from year to year. Land use is also strongly influenced by the distribution and capacity of infrastructure. These factors are generally less influential at sea.

Transport / communication - on land linear routes tend to be set aside exclusively for transport (roads and railways are not used for anything else). At sea they tend not to be so exclusively defined though we accept there are shipping lanes and approach channels etc where other uses are restricted, but there is the common and international rights of passage or fishing which means that with some limitations, vessels can travel widely across the surface of the sea for many different purposes.

Mobility of Activities many activities on sea are highly mobile and move from area to area on a seasonal or more random basis according to prevailing conditions and circumstances. Land use is more static and permanent; seasonal variation may change intensity of use rather than the use itself. Indeed some sea uses and activities are highly mobile and can occur regularly, seasonally, cyclically or intermittently over extensive areas.

Regulatory Processes and their Jurisdiction Whilst there is a multiplicity of regulatory controls at sea, there is on land too. The main differences appear to be:

a) regulation at sea has been more strongly based on sectoral controls, regulation on land involves a range of controls through local authorities which undertake quite comprehensive inter-departmental and external consultations to try to achieve more integrated decisions;

b) regulatory processes at sea are less well understood by the public than the land use planning system, because the public is less familiar with and involved in them;

c) the need to have a legal interest in the land (for example, by ownership or lease) is a pre-requisite for development or implementing change on land, but not necessarily at sea.

d) jurisdiction of maritime regulatory processes vary: seaward of mean high water mark to 3, 6 or 12 nautical miles or to 200 nautical miles or the limits of UK marine competency;

e) most change at sea that is subject to regulation is regulated by Central Government, on land change is largely regulated by local authorities; and

f) there is overlap of jurisdiction of land and sea based regulatory regimes, on the intertidal and for projects that span the marine and terrestrial environments (offshore windfarm with grid connection, pipelines, etc.).

Monitoring and enforcement the sectoral approach to regulation has tended to reduce and dissipate the effect of enforcement that, in any event, is more difficult at sea owing to the scale and geographic area involved and the environmental conditions in which monitoring and enforcement have to operate. In sharp contrast to the land, there is little "public policing"

of development or activities because there are no, or very few, (residential) communities that would report nuisance or other concerns.

International Dimensions Some activities at sea are subject to international regulation or rights endowed by international law and convention. International conventions and directives have also influenced regulatory controls (for example water quality or habitat and species protection) and the assessment of environmental effects on land as well as sea. However, international influence over land-based activity primarily relates to the regulatory processes (such as EIA) not to the activities themselves.

Designations and Zoning A feature of the land use planning system has been a strong influence of spatial designations. Marine areas are likely to become more subject to designations. For example, the OSPAR Commission is pursuing the application of Marine Protection Areas and the Special Protection Areas and Special Areas of Conservation, required under the EC Birds and Habitats Directives respectively, will need to be classified in wholly sub-tidal areas. However, at present, designations are relatively few, small and of limited effect compared to those on land. Whether spatial designations at sea become as extensive as land based designations remains to be seen. PG TO AMEND THIS PARA

Mobile fauna are not protected by geographic designations and the species themselves need protection from adverse effects of changes. On land the distribution of appropriate habitat tends to mean that identifying areas where protected species might reasonably be encountered is relatively straightforward for most species. At sea, adverse effects on mobile fauna will be more difficult to anticipate and noise can be a particular problem in the water column.

Three-dimensional aspects of the sea 3D zoning is also a potential feature of the marine environment. The town and country planning system applies to development in, on, over or under land but even in lochs and rivers (defined in the Act as land covered by water) zoning and designation is two-dimensional.

Physical dynamics Unlike the land, the water column of the sea is itself highly mobile through wave and tidal actions, currents and streams. Pollution can therefore spread much quicker than on land. Some physical features in the sea such as sand-banks, reefs and other seabed topographical features are also potentially more dynamic than equivalent land-based features away from the coast.

5. Mechanisms from the planners toolkit of potential value to nature conservation

Bearing in mind the above analysis we consider that the following mechanisms or instruments have generally been of benefit for nature conservation, albeit dependent upon their rigorous and consistent application (that is, they are not effective if mis-applied). We consider how these might be adapted to a MSP.

Table 3 Plan-making	
Useful aspects of the LUP system	**How it might be adapted to a MSP system**
The high status of Government policy and guidance which is an influential consideration in planning decisions, provides greater consistency and also defines the scope and application of planning;	A national Marine Spatial Planning Policy Statement could define the objectives, scope and principles of the MSP system and enlarge on its statutory purpose, it would be a material consideration in the preparation of all plans in the marine environment and all marine regulatory controls
Government policy and guidance setting high expectations of LPAs to adopt nature conservation policies and take nature conservation into account in planning decisions	A national Marine Spatial Planning Policy Statement would set out the need for the precautionary principle and when environmental considerations should prevail
The Development Plan being the principal consideration in a planning decision - the plan-led system - which creates a strong link between forward planning and development control, one without the other would be far less effective	The marine spatial plan would prevail in a plan-led system, and all decisions would be in accordance with it unless exceptional material considerations indicated otherwise.
The requirement to carry out surveys of their area, including the environment, in preparation of development plans	A requirement for the plan making body to take steps to adequately inform the plan-making process
Consultation and participation in the plan-making process	Consultation and participation in the plan-making process would be mandatory
The process of strategic environmental / sustainability appraisal	Environmental / sustainability appraisal of all marine spatial plans in accordance with the EC Directive
The ability of the planning system to regulate the form and scale of development and the intensity of use of land, as well as its location (ie not merely a zoning of uses)	MSP system should be able to control the form and scale of change as well as its location
The use of designations that define areas of interest to nature conservation at differing levels (international, national and local) and the delineation of these areas on maps in development plans linked to policies that deter development from affecting such areas.	MSP system should map areas of international, national and sub-national environmental sensitivity / importance
The facility for LPAs to produce non-statutory supplementary planning guidance to complement the policies in the development plan;	Provision for statutory MSP system to be supported by non-statutory supplementary guidance, good practice, codes of conduct and BET and BAT

Table 4 Implementing the MSP	
Useful aspects of the LUP system	**How it might be adapted to a MSP**
The ability of the LPA to require submission of further information to enable them to determine a planning application	Regulators should be able to require submission of further information reasonably necessary to determine applications for consents in accordance with the MSP or plans
The statutory consultation processes with English Nature	Provision for statutory consultations with statutory advisers
The wider non-statutory processes and the relationship	Discretion to encourage consultations with non-

Table 4 Implementing the MSP	
Useful aspects of the LUP system	**How it might be adapted to a MSP**
of the RSPB / CWT with LPAs	statutory advisers
The Environmental Impact Assessment process	Would apply to Schedule 1 and relevant Schedule 2 projects as a matter of law
The discretion of the LPA to encourage and accept amendments during the consideration of planning applications	Explicit provisions to invite and accept revisions to proposals during the consideration of applications
The threat of call-in or other Secretary of State intervention	Requirement to notify Minister if regulator minded to give consent contrary to MSP or national policy statements
The ability of a LPA to refuse planning permission where it can demonstrate harm or the prospect of harm to nature conservation.	Provision for refusal of consent without compensation but subject to right of appeal
The use of conditions to regulate development, that is granted planning permission including an automatic time limit on the commencement of development	Provision for imposing conditions on consents
The use of planning agreements or obligations that extend regulation and deliver positive measures including the increasing use of developer contributions to public infrastructure and environmental improvement	Provision for proposers of change or those undertaking activities to enter into legally binding agreements to help to regulate the change or activities
The appeal system that provides an independent, fair and impartial scrutiny of refusals and restrictions on planning permission in which nature conservation bodies are able to fully engage	Provision for right of appeal against refusal of consent or non-standard conditions
The provisions for LPAs to restrict developments otherwise granted planning permission via the Town and Country Planning (General Permitted Development) Order - permitted development	Provision for general grants of consent for activities or changes but capable of review and modification or revocation if required
Some limited use of Discontinuance Orders	Provision for control of ongoing activities as well as proposals for change

Table 5 Monitoring and review	
Useful aspects of the LUP system	**How it might be adapted to a MSP**
Requirement to keep plans up-to-date triggering a regular cycle of review that enables nature conservation coverage to be improved and emerging issues to be addressed	Requirement to keep plans up-to-date, a regular cycle of review and modification of plans
The imposition of time limits on commencement of development so allowing LPAs to review the desirability of renewing consents which have not been started	Time limits on commencement of development so allowing review of consents which have not been started
The review of mineral planning consents	Review of all outstanding permissions and renewable consents on a regular basis
The review of all outstanding consents under the Habitats Regulations	
Some limited use of conditions and agreements to require validation or other types of monitoring	Explicit provision for imposition of conditions requiring validation monitoring and remedial action if shown to be required

6. What a marine spatial planning system might be and what it might need

6.1 The definition and scope of marine spatial planning

As we explain at paragraph 1.8 above, there is no definition of spatial planning, so it follows that there is no current statutory or single, widely recognised definition of "marine spatial planning". Indeed, this and other recent and concurrent research and debate is intended to help to create a universal definition and define the scope of MSP.

The United Nations has considered Integrated Coastal Area Management (ICAM) to be Aa continuous and dynamic process by which decisions are taken for sustainable use, development and protection of the coastal and marine areas and resources≅. ICAM acknowledges the interrelationships that exist among coastal and ocean uses and the environments they potentially affect, and is designed to overcome the fragmentation inherent in the sectoral management approach.

The Department of Environment, Food and Rural Affairs (Defra) has suggested a definition of a marine spatial plan as "a strategic plan for regulating, managing and protecting the marine environment that addresses the multiple, cumulative and potentially conflicting uses of the sea." (Canning 2003). It would be reasonable to assume that this should be a forward looking and proactive system of planning. Defra went on to identify elements required to underpin a MSP, principles on which it should be based and strategic and practical objectives that it should embrace. The above definition appears to assume that marine spatial "planning" will include the "management" of ongoing uses or activities. However, other papers that address the potential scope of MSP prefer to express the scope as "marine spatial planning and management" (Birdlife International 2003). The definition and scope of MSP was further explored in a Coastnet conference in October 2003 (in press).

The Scottish Coastal Forum has defined the purpose of MSP as "two fold: (a) to secure sustainable and integrated development which balances and, where appropriate advances, economic, social and environmental objectives, and considers the implications of the ecosystem approach; and (b) to allocate space in inshore waters in a rational manner which minimises conflicts of interest and maximises synergistic relations."

In all that we have researched, it is clear to us that in order to fulfil the aspirations of the stakeholders urging that a MSP system be introduced, it will be necessary for that system to embrace the management of ongoing activities as well as the regulation of proposals for change. In that way it would be markedly different from the LUP system and so the debate about MSP must continue to include whether the system should regulate ongoing activities as well as proposed changes. This is one of the main options and, if adopted, it would be necessary to be clear as to why it should be all-embracing and whether it should be all-embracing from the outset, or perhaps the regulation of ongoing activities could follow the introduction of the regulation of proposed changes.

Furthermore, a marine spatial planning system does not necessarily have to lead to a single system of planning, producing a single plan, or single set of plans. It could be established more as a discipline, or a process, that may result in several plans - expressions of proposals and policies B but which are better integrated and their spatial implications are better understood and coordinated. So marine spatial planning does not necessarily have to lead to a marine spatial plan.

Respecting these different visions for a marine spatial planning system, for the purposes of this paper, we **define marine spatial planning as comprising three ongoing processes:**

a) **plan-making** - generating and adopting one or more integrated plans or policy frameworks, which have strong spatial dimensions, for the protection, enhancement and sustainable use and development of the sea and its resources; and

b) **implementing** the plan B including through execution of programmed works or investments, enabling change, encouraging improvement and through regulation, management and enforcement of proposed changes and ongoing activities in, on, over and under the sea, in accordance with the plans;

c) **monitoring and reviewing** - assessing the effectiveness of the plans, their time scales and implementation mechanisms, considering ways in which they need to be improved and establishing review and adaptation procedures.

We believe the process of **plan making** should involve:

Stocktaking	Information gathering, including surveying and mapping, better understanding the interaction of activities with each other and with the environment, identifying and filling gaps in information;
Forecasting	Analysing trends and changes, identifying issues and what needs to be done, or not done, and what needs to be resolved, potential conflicts, opportunities for multiple use and developments;
Assessing options	Considering the merits and disadvantages of possible alternatives and options;
Consulting	Including the meaningful involvement of stakeholders, at a time when they can be genuinely influential on the plan, for example in the selection of options or alternative strategies, and where necessary, possibly involving mediation to resolve any more deeply embedded conflicts of interest.
Sustainability appraisal	As an iterative process to improve the plan and including assessing the likely significant effects of the plan on the environment in accordance with the EC Directive
Publicising	Making the draft plan available to the public, along with supporting reports such as the environmental report, issues papers, surveys etc and providing meaningful opportunities for interested members of the public to express their views in a reasonably informal, open and non-adversarial setting;
Adopting	An open and transparent process for adopting the plan with an explanation as to why particular representations or options were selected in favour of others, summarising the likely effects of the plan in the short, medium and long-terms, how the plan will be monitored and resource implications for its implementation.
Compliance	A statutory duty on all competent authorities to implement the plan in the exercise of all of their functions and to generate their own plans and programmes in accordance with the plan.

The process of **implementing** the plan should involve:

a) the five step approach to decision making promoted by the RTPI see Box 1 above;

b) assessing and determining proposals for change in accordance with the plan unless exceptional material considerations indicate otherwise, this process would include environmental impact assessment, powers to require submission of further information, the power to refuse an application on the grounds of inadequate information;

c) the application of the precautionary principle and, where there was a potential for significant irreversible environmental harm or economic impact on otherwise sustainable uses and activities, a requirement for the applicant to demonstrate how the harm could be avoided, or why the harm would be acceptable and how it was to be minimised and compensated for, rather than the regulator having to show how likely the harm would be and why it was unacceptable;

d) meaningful and timely consultation processes that influence decisions and add benefit to the proposals;

e) restricting consents by imposing conditions which, inter alia, limit the time in which the development or change shall begin and which could require validation monitoring;

f) the use of legal agreements, including provision of financial incentives to help implement the plan and to encourage any activity, or restraint of activity, expedient in the public interest and conducive to helping to achieve the principles of sustainable development;

g) regular reviews of consents with power of modification and revocation where necessary;

h) managing and, where necessary, regulating ongoing activities e.g. by the use of bylaws or statutory and enforceable Codes of Practice, embracing Best Available Techniques and Best Environmental Practice;

I) publicising decisions made and specifying the reasons for consents as well as refusals and how the decision fitted with the policy framework.

The process of **monitoring** and review will involve

a) rigorous and effective enforcement of consents, regulations, codes of practice and bylaws;

b) systematic environmental monitoring generally, with particular regard to cumulative effects and long term changes;

c) validation monitoring of consents;

d) procedures for reviewing the results of monitoring and further restricting or revoking consents without compensation;

e) assessing the effectiveness of the plan and implementation mechanisms (including monitoring itself), considering ways in which they need to be improved and establishing review and adaptation procedures.

6.2 Other requirements for a MSP system

Further, we believe a MSP system will be likely to need:

i. A **statutory basis and purpose** - this could be explicitly to contribute to sustainable development, in the public interest and explicitly for the protection, enhancement and sustainable development and use of the sea and its resources, including the statutory application of the precautionary principle and the principle that where there is a conflict of interest, the conservation and restoration of the sea's biodiversity and natural physical and ecological systems shall prevail;

ii. A clear definition of its **scope**, defining what is and is not included, - it could include all forms of physical and spatial development, changes of use and all ongoing or proposed activities, because it is vital to have cross-sectoral integration; if it is proposed to exclude anything, it should be subject to scrutiny with a justification for its exclusion from the system in the public interest.

iii. A **geographical jurisdiction** with defined boundaries landward and seaward - which could be seaward of Mean High Water Mark and extend out to 200nm / the Continental Shelf, with a statutory modification to the LUP system that avoids duplication of control over the intertidal areas and ends the Town and Country Planning jurisdiction at MHWM, but with provision for both the LUP and MSP systems to embrace ICZM and to allow the MSP system to treat different areas in different ways, recognising both spatial variations in the nature and intensity of marine developments and activities and the sensitivity of the marine environment.

iv **Plan-makers** - a body or bodies that make plans - which could include a UK-wide expression of marine and coastal planning principles and objectives, national (England, Northern Ireland, Scotland and Wales) policy frameworks either embedded into an existing or modified national planning framework or in a marine policy framework, and then sub-national plan making bodies providing a policy framework appropriate to the administrative scale adopted for sub-national planning.

v Planning **administrative scales** which, in England, might be a regional (or sea-region) scale (not necessarily based on the Government Office regions which do not fit well with any physical or ecological sub-division at sea-regional level). The sea-region approach is probably the most appropriate. It can be sufficiently locally accountable and have local knowledge whilst operating a planning system of manageable scale. However, we do not here have the time or space to explore the implications for the devolved administrations. The sea-regions could be based on an ecosystem approach and there could be about 10 - 12 around the UK, they could be the principal units of MSP and they would require cross border cooperation in the majority of cases. It need not necessarily follow, however, that each part of each sea-region must be 'planned' to the same extent. Some parts may have no more than a statement of policy, others, especially inshore waters, may need detailed planning perhaps in the form of a Maritime Action Plan (similar to the Area Action Plans envisaged for the new LUP system in England.

vi. **Regulators** - a body or bodies that determine proposals for change and manage and regulate ongoing activities - these could evolve over time, starting with the existing regulatory regimes and aiming to fit the sea-region dimension of the administrative scale of the MSP system.

vii. **Consultees** - advisers with relevant expertise in respect of all types of developments, uses, activities, resources and the natural and cultural heritage. The permutations of advisory / consultative bodies is considerable but should fit the administrative scale of the MSP system and encourage the accumulation of expertise and knowledge at that scale.

viii. A distinct and bespoke set of **principles** on which the MSP system should operate.

7. Moving towards a marine spatial planning system

It is difficult to predict how the establishment of a MSP system may progress, because it depends on so many variables and uncertainties. It could progress very quickly if Government (including the devolved Governments) introduced major new legislation and allocated substantial resources to the system in the short term. More realistically, we see a step-by-step approach being likely.

Nevertheless, it is worth bearing in mind how the fundamental shape of the town and country planning system has survived since it was first laid down in the 1947 Act. Governments have experimented with a few new ideas and the system has changed a great deal in detail, but not in its basic concept or broad scope. We also have the benefit of hindsight, and the lessons to be learned from the evolution of the terrestrial LUP system to help get more of the detail right first time. In theory, and if there is the political will to do so, we ought to be able to introduce a reasonably robust and sophisticated MSP in one step and relatively soon. However, the differences between land and sea planning and the messages from the review of the evolution of the planning system, that we have explored in this paper, together with the fact that it is difficult to anticipate future spatial planning requirements at sea, makes it seem unrealistic to assume that a MSP system will be established in one step. Furthermore, the likely time scales for considering new statutory provisions in the various legislatures at UK and devolved government levels, means that we probably have time to undertake a non-statutory trial of a model MSP system, or substantial elements of it. Such a project would help to test many of the requirements of a MSP system to inform the preparation of legislation. Consultation and the generation of a consensus of what a possible new MSP system might be, and then a trial to test it, would seem to be the most sensible next steps.

Further consideration needs to be given to ICZM. It can be incorporated into the kind of MSP system we envisage because it would be sufficiently flexible to allow prioritisation and concentration on pressure areas, such as the coast and inshore waters, it would also be capable of integration with terrestrial planning systems. ICZM could be the way in which the LUP system and the MSP system are meshed

Similarly the meshing of River Basin Management Plans required under the Water Framework Directive, with the terrestrial and marine spatial planning systems needs to be considered carefully.

Appendix 1 - Specific questions set by the project brief

1. What are the key benefits of land use planning for nature conservation? What features of the system are they derived from? To what degree can these features and associated benefits be anticipated in any marine spatial planning system?

2. What are the key differences between the terrestrial and marine environments that relate to spatial planning, including of relevance to nature conservation?

3. Land use planning uses a number of instruments, e.g. planning guidance, to help implement the overall planning system. Do any particular instruments obviously lend themselves to the marine environment even if the system as a whole cannot be expanded into the marine environment?

4. What are the key limitations of the land use planning system in relation to achieving nature conservation objectives that we should at least be aware of in considering marine spatial planning? For example, recent work suggests that nature conservation policies are not sufficiently reflected in development plans (McGee 2003; Postan & Simms 2003). To what degree are these likely to also apply to the marine environment? [For example, 3 major sectors where the key decisions are made not by the planning system but by the relevant Secretary of State, and therefore it could be argued that the sectors are not integrated either together or with the planning system, are energy, transport and food production (agriculture on land, fisheries at sea). If this is the case, and given the significance of these sectors in the marine environment, what prospects are there for integrating these significant marine sectors into any spatial planning system at sea?]

5. Land use planning is now well established however, this took many years to evolve. What are the key lessons about its evolution that should inform the development of a marine spatial planning system? Is it reasonable to expect marine spatial planning to evolve much more rapidly than on land? What would be a realistic model for marine spatial planning in the short term vs long term? Could marine spatial planning be delivered in a series of steps, and what might these be? E.g in the short term by much better provision and integration of information, such as what activities occur where, what natural features occur where, rather than a more prescriptive approach founded in legislation?

6. A regional approach to planning is considered by many to be logical and sensible for the marine environment. However, experience with moving towards a regional dimension to planning on land may help to indicate what prospects there are for achieving a regional dimension at sea. For example, in general regional bodies would appear to have been poor at recognising and addressing nature conservation. What are the key lessons thus far on land that are relevant to marine spatial planning at a regional level? For example, what is the view of particular government departments about the potential devolution of their decision-making powers to regional bodies and the likely view of this being extended to marine areas?

7. Marine spatial planning will inevitably have a national and international dimension. Are there lessons to be learnt from the land use planning system that would help tackle these dimensions in the marine environment? E.g. how do international or European agreements get transposed into regional and local planning, where in government and how might national co-ordination be carried out?

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Peter Wakely/English Nature 21,792
Bottom left: Radio tracking a hare on Pawlett Hams, Somerset.
Paul Glendell/English Nature 23,020
Main: Identifying moths caught in a moth trap at Ham Wall NNR, Somerset.
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