

# SCOTTISH ENVIRONMENT AUDITS

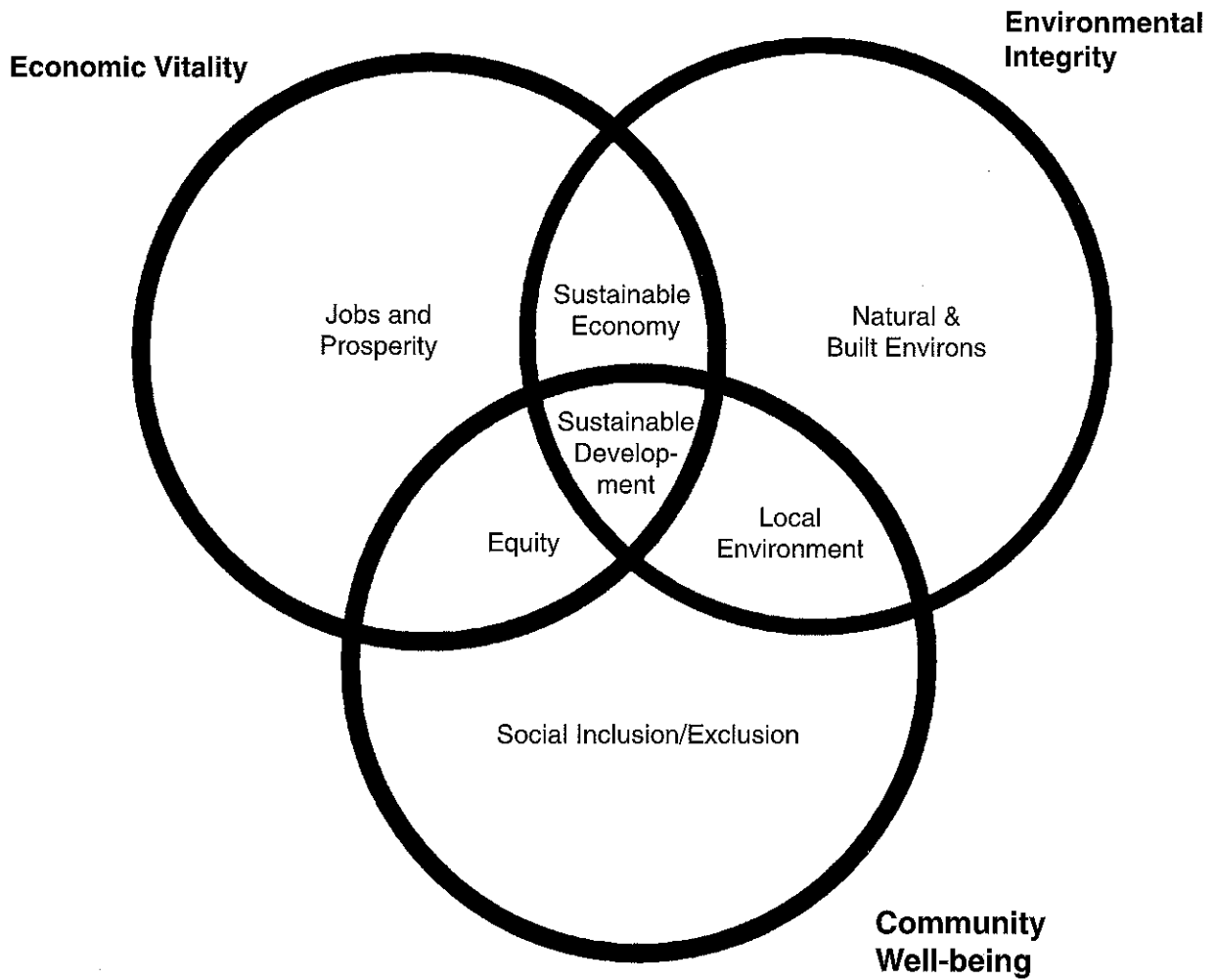
3: Planning & sustainable development

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Scottish Environment LINK

**Figure 1: The concept of sustainable development**



[Forward Scotland, 1998]

# SCOTTISH ENVIRONMENT AUDITS

## Paper 3: Planning and sustainable development

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## INTRODUCTION

This audit addresses the town and country planning regime as a tool for sustainable development. It is one of a series of audits which update *The state of the Scottish environment* report (Dargie and Briggs 1991), published by Scottish Environment LINK, (LINK), formerly Scottish Wildlife and Countryside Link. There are several ways to tackle such a wide brief; but space and resources have forced us to highlight selectively certain themes of interest to LINK members. Thus, while both planning and sustainable development are about the integration of economy, society and environment, the audit focuses on the environmental sustainability of planning's interface with the natural heritage. Hence it touches only lightly on some big planning questions, which are extensively covered elsewhere in accessible literature, such as land use/transport integration, settlement pattern, social exclusion, and the recycling of urban land.

The first section sets the context of sustainable development and the planning regime. Section 2 reviews national planning policy guidance. Section 3 reviews the status and performance of the statutory Development Plan. Section 4 considers two tools of development control, environmental assessment and environmental compensation. The audit of the system at large is completed in Section 5 by reviewing public participation. Sections 6, 7 and 8 audit the performance of planning in dealing with specific topics of interest to LINK members. Section 9 concludes by considering how to promote sustainable planning in the Scottish Parliament.

## GLOSSARY OF ACRONYMS

DETR	Department of the Environment, Transport and the Regions
DoE	Department of the Environment
LINK	Scottish Environment LINK
LPA	Local planning authority
NPPG	National Planning Policy Guideline
SEPA	Scottish Environmental Protection Agency
SNH	Scottish Natural Heritage
SO	The Scottish Office
SOEnvD	Scottish Office Environment Department
SODD	Scottish Office Development Department

## 1. SETTING THE CONTEXT

### 1.1 THE MEANING OF SUSTAINABLE DEVELOPMENT IN PLANNING

There are many definitions of sustainable development. At its heart lies an acceptance of the practical interconnectedness of economy, society and environment (see figure 1, inside front cover). The introduction explains our focus on the natural heritage within just one these three elements, environmental sustainability, but we acknowledge that the latter can be assured only by social acceptance and an economy which can afford to take a long term view.

It was suggested to us during this study that a conceptual hierarchy could be constructed for sustainable planning decisions:

1. Establish whether a proposed development is needed, within the planning horizon appropriate to the matter at hand (e.g. a Local Plan area and timescale).
2. If it passes that test, establish whether the proposed site is one which would minimise damage and maximise benefits to the environment. For example, the sequential test for retail outlets in towns, which prefers town centre sites over edge-of-centre ones, and edge-of-centre over out-of-town ones, on the grounds both of reducing vehicular travel and of retaining the vitality and viability of town centres; NPPG8, SODD, 1998). In particular, siting should ensure that natural assets considered to provide essential environmental services and/or not to be renewable within the timescale of planning (at least a human generation) are protected.
3. If the proposal passes this second test, then consider how any residual damage caused to the environment by the development could best be mitigated by planning conditions or agreements, and how it could be compensated through developer contributions.

Such a series of tests would implement four universal principles of sustainable development:

- ♦ **precautionary principle**, that we should hold back from actions for which there is good evidence that they would damage the environment, even if doing so carries an economic penalty, and even if we lack definite proof that damage would ensue. This is particularly the case where the asset at risk cannot be renewed.
- ♦ **protection of critical natural capital**, that which provides services which cannot be substituted by other natural, human or man-made assets.
- ♦ **polluter pays principle**, that whoever is ultimately responsible for or benefits from the damaging development should pay for it (this may involve the developer passing on costs to

the consumer of it, if they are not the same party).

- ♦ **The best practicable environmental option**, that which offers the best deal for the environment while meeting the purpose of the development at an acceptable cost.

The first test, that of need, does not fit the traditional ethos of British planning. The traditional ethos reverses the burden of proof: development should go ahead unless there is a good reason to refuse it. This is nearer a policy of meeting demand than one of meeting need. It is also often difficult to demonstrate need, and the burden of doing so would have to be placed on the applicant rather than the planning authority. However, as we discuss below in 1.3, recent legislation and policy have muddied the waters on this crucial point: the presumption in favour of development has been superseded by one in favour of conformity with the Development Plan, and the policy of managing rather than merely meeting demand is spreading into ever more areas of policy.

How do we know whether we are achieving more sustainable development? An approach widely adopted at all levels is to monitor a set of sustainability indicators. The UK Government recently produced a draft set of "headline" national indicators, intended to function in the same way as the economic indicators with which people are familiar, and on which government bases strategic economic decisions (DETR, 1998a). Indicators go hand in glove with performance targets: they tell you how you are performing against targets (it does not really matter whether the indicator or the target is identified first). An early example in Scotland of local indicators is that of the former Strathclyde Regional Council (1995), selected through a bottom-up consultation process.

Indicators also have the benefit of concretising the concept of sustainable development: it may be difficult to achieve a consensus definition of sustainable development, but easier to agree a set of indicators. At the same time, this very benefit warns of the danger of assuming that meeting readily understood and measured targets means we are doing everything right:

- ♦ Many important goals, such as countryside quality or local responsiveness of policy, are not easily measurable.
- ♦ What is measured may also distract from other important aspects. A pertinent example is the concern that the annual SODD audit of development control performance focuses on speed at the expense of quality.
- ♦ Moreover, while setting targets has great political appeal in its openness and accountability, to be useful the targets must be realistic. The UK Government's target of 60% of new housing to be built on brownfield sites in England by 2008 is realistic because it is only slightly above the

current performance of 55% (DETR, 1998a, land use indicator); but some of its waste management targets are not (see section 6). Targets must also be appropriately applied: the brownfield build performance in Scotland is 80% in Glasgow but only a third in Scotland as a whole (DETR, 1998a).

◆ Finally, does it make sense to produce an index of sustainable development which combines the indicators? This has been done at international level in the Human Development Index of the United Nations (United Nations Development Programme 1998), but is always open to attack for being unsound in construction and disguising what lies behind it.

## 1.2 THE PLANNING SYSTEM

The Scottish planning regime is separate from that of the rest of the UK. Moreover, the Scottish Parliament will have the ability to legislate for planning in Scotland. National planning policy is set by the Scottish Office. The Scottish Office states that the planning system's "principal purpose is to provide for homes and jobs, and to meet our desire for mobility, at the same time as conserving our heritage and protecting the environment", whence there follow three objectives:

- ◆ "to set the land use framework for promoting economic development.
- ◆ to encourage economic, environmental and social regeneration.
- ◆ to maintain and enhance the quality of the natural heritage and built environment."

NPPG1, (SOEnvD, 1994).

The planning system comprises four levels:

- ◆ national guidance on policy and occasionally location (subject to conformity with international agreements and law where these apply).
- ◆ strategic forward planning (in particular statutory Structure Plans).
- ◆ local forward planning (especially statutory Local Plans).
- ◆ development control.

Most planning is delivered by local authorities, through statutory Development Plans and development control, although the Scottish Office retains ultimate control. Local authority Structure Plans set out the strategic land use framework for ten to 15 years ahead. Local Plans must in turn conform with them, and set out the details for five to ten years ahead. Together they make up the Development Plan. Preparation of these Plans involves considerable consultation, and people may lodge objections. If they sustain these, a public inquiry is held (Local Plan), or examination in public (Structure Plan — but none have been held since 1979). Development control decisions must conform with the Plan unless material considerations indicate otherwise.

Applicants can appeal against refusal of permission to develop, and third parties can object to applications. Planning permissions often carry conditions to mitigate negative, and enhance positive, social and environmental impacts. 45,000 applications are made yearly in Scotland (43% by householders). 93% of these are approved (97% of householder ones) (SODD, Planning Bulletin, September 1998).

Planning interacts with the political process at central and local government levels. Central planning policy is issued by the Secretary of State for Scotland, but will in future be issued by the new Scottish Executive, and s/he acts as the final arbiter of planning disputes and approves Structure Plans. In local government elected councillors adopt Plans and make decisions on planning applications, except where they have been delegated to their planning officials for decision, or are called in for determination by the appropriate Minister.

## 1.3 THE SCOPE OF THE PLANNING SYSTEM

A fundamental constraint on the ability of the planning system to deliver sustainable development is that it concerns only the land use expression of economic, social and physical development. It does not make policy on social housing, energy sourcing, wildlife conservation, pollution abatement, *etc.* Yet these are manifested in, and affected by, land use decisions taken by the planning system, which, therefore, carries an uncomfortable responsibility for implementing policies which it does not make. This, however, also confers on it considerable power. That power combines with the openness of the system to attract much public attention to its decisions, particularly those decisions made on planning applications.

The scope of the planning system is further limited in a very tangible way by not even covering all types of land use change. Section 26 of the Town and Country Planning (Scotland) Act 1997 sets out the key types not covered as:

- ◆ work carried out by a local roads authority for maintenance or improvement of a road;
- ◆ local authority or statutory undertaker works, which include inspections, repairs or renewals in connection with sewers, mains, pipes or other cables or other apparatus;
- ◆ farming or forestry proposals.

Some of these other developments have major impacts — for example large power plants above 50 MW, trunk roads, forestry plantations, moorland reclamation.

*We recommend:*

- ◆ that the Scottish Executive adopt a target-led and indicator-monitored approach to sustainable

development, but recognise the limitations of targets and indicators;

- ◆ that SODD continue to promote the present shift towards a needs-led, capacity-led and demand managed ethos in planning;
- ◆ that SODD should keep under review the appropriateness of bringing under planning control built developments regulated by other means, in order better to meet sustainable development objectives;
- ◆ that, if such developments are not covered by the planning system, their regulation should at least be coordinated with it at the level of policy making appropriate to the case.

The scope of the planning system in addressing farming and forestry is addressed in section 7.

## **2. NATIONAL PLANNING GUIDANCE**

Scotland, like the rest of the UK, does not have a national physical development plan; nor does the SO deliver statutory planning policy directives. Instead, it issues a series of guidelines (NPPGs), which address matters as and when the government deems them worthy of needing guidance. It also issues technical advice in the form of Planning Advice Notes (PANs). In the 1990s guidance has been completely recast. This fulfils, in part, the pledge given in the White Paper on the Environment (UK Government, 1990) to rewrite guidance to reflect commitment to sustainable development. It also marks a major increase in SO intervention in planning policy, from addressing a few issues deemed of national importance, to expressing the central view on policies which apply all over the nation. Guidance is a statement of government policy, which may be a material consideration in planning decisions. Departure from it is likely to incur sanction, unless convincingly justified.

Strong central policy direction enables a strong steer to local authorities towards sustainable development, provided that the national guidance is itself thus oriented and coherent. On the other hand, it can equally be argued that too much top-down intervention stifles the development of sustainable policies locally. A review of guidance in 1994 found it somewhat tokenistic in its treatment of sustainable development, still uncoordinated, and with large gaps, e.g. energy supply, land use/transport integration and urban regeneration (Raemaekers *et al.*, 1994).

The views of local planners on the sustainable development content of guidance are reported in the Review of Development Planning (SODD, 1998). They make the following points:

- ◆ NPPG1 definition of sustainable development is not sufficient for Structure Plan making

(though the majority thought it so for Local Plan making);

- ◆ more consistent guidance on sustainable development is needed;
- ◆ more advice is needed on how to implement it;
- ◆ sustainable development needs to be related more specifically to strategic issues;
- ◆ the concept is still difficult to understand; some respondents cited a need to distinguish between sustainability and sustainable development; others considered the term meaningless or vague.

Those views were gathered in 1997 and there has, since then, been progress towards sustainable development thinking in the substance of policy, in plugging gaps, and in integration, particularly in the flurry of NPPGs issued in the last few months. NPPG8, *Retailing (revised)*, (SODD, 1998) sets a clear framework for sequential testing of retail applications. NPPG10, *Planning and Waste Management*, (SODD, 1996) introduces principles of regional self sufficiency and proximity. NPPG13, *Coastal Planning*, (SODD, 1997) states that only development which needs a coastal location should be permitted there, and that it should be confined to the already developed coast. NPPG14, *Natural Heritage*, (SODD, 1999) marks the first coherent policy statement on planning and the natural heritage by the Scottish Office (see section 9 below). NPPG16, *Opencast Coal and Related Minerals*, (SODD, 1999) goes much of the way towards implementing Labour's pre-election pledge on the tighter control of opencast coal mining (see section 8 below). NPPG17, *Transport and Planning*, (SODD, 1998) sets a much more sustainable framework for transport planning. There are signs in NPPG17, as well as in NPPG13 and 15, *Rural Development*, (SODD, 1999), of the emergence of the much touted "joined-up thinking" which is a requisite of more sustainable development.

On the other hand, gaps remain, e.g., a unified statement on energy sourcing and supply; and the recent SO review of guidance made no reference to sustainable development in its brief or its main findings (SO Central Research Unit, 1999). One contribution to securing a set of guidelines which pull together towards more sustainable development would be to subject them formally to at least an environmental appraisal, and ultimately a sustainability appraisal, and to build this into the more open and explicit guideline formulation process which has long been sought (Raemaekers *et al.*, 1994; SO Central Research Unit, 1999). The DoE in fact tried to implement something like this way back in the early 1990s (DoE 1991).

Our recommendations concerning planning guidance are deferred until the end of section 3.

### 3. DEVELOPMENT PLANS

We now descend a level to look at the statutory Development Plan, its changing status in law and how it could be strengthened to give a greater potential to deliver more sustainable development. We will then look at how the process of Plan-making and delivery could be improved to realise that potential.

Until recently there was a clear presumption in planning law in favour of granting permission to develop unless material considerations indicated otherwise. The Plan was one material consideration to be considered alongside others. Some hold this to be inherently incompatible with sustainable development.

The 1991 Planning and Compensation Act changed the ground rules by introducing the primacy of the Plan:

"Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise." (s58).

There has been considerable debate about the implications of this amongst academics and practitioners. The current key national planning guideline, NPPG1, *The Planning System* (SOEnvD 1994), was published after s58 of the 1991 Act inserted the primacy of the Plan into the Town and Country Planning (Scotland) Act 1972 s18A. It cites s18A of the 1972 Act, saying that:

"This retains the presumption in favour of proposals which accord with the development plan." (paragraph 38).

This indicates that the presumption in favour of development persists, but only where it accords with the Plan. Where the Plan is out of date or irrelevant, then it will weigh less heavily as a consideration:

"Where development plan policies are not directly relevant to a development proposal (e.g. because the proposal is novel or had not been anticipated at the time the plan was made), or where there is no conflict with declared policy objectives, other material considerations will be of particular importance." (paragraph 44).

Since NPPG1 was written, the Town and Country Planning (Scotland) Act 1997 has superseded the 1972 Act. S25 of the 1997 Act reiterates the primacy of the Plan, but the 1997 Act does not reiterate the presumption in favour of development, which would appear to have been superseded by that in favour of the Plan. In a perfect world, all possible developments would be covered by relevant and up-to-date Plans, which would also have been subject to a sustainability appraisal before being finalised; hence there would be no possible conflict between presumptions. Such perfection does not exist, in practice, especially

given the length of the Plan-making cycle (see below). There is therefore a need to revise NPPG1 in order to clarify whether or not the presumption in favour of development has been superseded.

Two other matters bearing on the inherent friendliness of the planning system to sustainable development merit flagging up. Firstly, the 1997 Act makes no reference to sustainable development. This is acknowledged in the consultation paper *Land use planning under a Scottish Parliament*, which suggests that "it may be that it would be helpful if it was now given recognition in the statutory planning framework." (SO, 1999, paragraph 10). The Scottish Parliament will be required to meet EU directives and international agreements on sustainable development, and enshrining the requirement for the planning system to take it into account would add legal weight to the policy guidance.

Second, there is still no clear and explicit statement in national planning guidance promoting the environmental appraisal of Plans (although it is mentioned in passing, e.g. paragraph 73 of NPPG17, *Transport and Planning*). Explicit guidance existed in England since 1992 (PPG12, DoE 1992). Planning advice on such appraisal was published in England in 1993 (DoE 1993), but it is not promoted in Scottish guidance, nor emulated in any Scottish planning advice, despite a demonstration exercise on the Gordon District Local Plan in 1995 (David Tyldesley and Associates, 1995). Environmental appraisal can be extended to a wider concept of sustainability appraisal. The traditional Plan pattern is one of separate sections on economic development, environment, etc., which is not propitious. A sustainability appraisal can help ensure that sustainability is addressed in the Plan strategy and that policy sections do not conflict. This is a key concern of LINK members.

The combination of clearer guidance on where the presumption lies in development, with a statutory requirement to plan for sustainable development, and a directive to undertake at least an environmental, and preferably a wider sustainability, appraisal of Development Plans would create a framework for more sustainable planning.

We have discussed so far the policy framework required for a Plan-led planning system to enable more sustainable development. To deliver it also requires a sound process of producing Plans. The most recent and systematic audit of Plan making is the *Review of Development Planning* (SODD, 1998). A key problem it identifies is the length of the Plan-making cycle, undermining the credibility of Plans as relevant and up to date. One source of delay in the Structure Plan process was the approval by the Secretary of State. There was, however, support for its continuation, as it was seen to confer

legitimacy and credibility on the Plan. There is an unavoidable Catch 22 in Plan-making generally: sound policies require spending time both on consultation and on thorough survey and analysis, but the more time thus spent, the more out of date is the resulting Plan. Moreover, the longer the cycle, the more slowly will new Plans appear reflecting new thinking and national guidance on sustainable development. The review shows that the current balance is widely held by planners to be wrong.

Up to a point, devoting more resources to Plan-making could shorten the cycle. But the truth is that councils attach a low priority to Plans (Review of Development Planning, SODD, 1998). This was echoed by comments from LINK members, and is visible in a second threat to the Plan-led system; development control decisions by local authorities which flout their own Plans, even where these are up-to-date and relevant. There is always political pressure to permit a development bringing jobs or prestige to the locality, even when that would breach Plan policy. This is exacerbated in remote rural areas by a tendency to vote in line with the local constituency councillor to preclude interference in each other's patches.

The coming of Community Plans could be seen as yet another threat to Development Plans. Their unrestricted scope, novelty and potential to capture the mood of the people could lead to councillors to view Development Plans as even less relevant. On the other hand, Development Plans might get a boost if the planning profession can seize the opportunity to promote their relevance by keying them into Community Plans as an important seat of policy and tool of implementation.

Delivery of the Plan is not solely the province of the planning authorities. Most of it is delivered by the private sector, regulated by the planning and other regimes. The Local Enterprise Companies and other agencies such as Scottish Homes are also instrumental in delivery. The Review of Development Planning recommended that stakeholders in Plans should be "informed from the outset about the Plan and their role in it," and that "the Secretary of State should use his powers to ensure that these agencies, which he oversees, demonstrate regard to the Development Plan." (SODD, 1998). In other words, joined-up government requires not only integration of national policies across sectors, but also central monitoring of their implementation by agents at all levels.

The recommendations below follow from sections 2 and 3.

### *We recommend:*

- ◆ that the Scottish Executive should carry out environmental appraisal in the preparation of all its policies, programmes and plans;
- ◆ that a statutory duty on planning authorities to promote sustainable development be inserted in the Planning Acts;
- ◆ that in approving Structure Plans the Minister give greater emphasis to the strategic context for sustainable development;
- ◆ that the Minister monitor the implementation of sustainable development policies in Development Plans by government departments and non-departmental public bodies;
- ◆ that a revised NPPG1 be issued with urgency, incorporating:
  - \* clearer guidance on the where the presumption now lies with regard to development, under the primacy of the Development Plan enshrined in the Town and Country Planning (Scotland) Act 1997;
  - \* an updated definition of sustainable development;
  - \* an immediate requirement for the universal application of environmental appraisal in Development Plan preparation and monitoring, with a view to extending this to a sustainability appraisal, once planning advice on the latter is published.
- ◆ that one or more PANs be produced to advise the planning authorities and developers on techniques and best practice to secure more sustainable development. These would include an evaluation of the environmental services supplied by natural assets, demand management and sustainability appraisal of Development Plans. Pending this last, advice on environmental appraisal of Plans, based on the Gordon pilot, should be published at once.
- ◆ that the planning profession seize the opportunity, and ward off the threat, provided by Community Plans to promote the relevance of Development Plans.

## 4. DEVELOPMENT CONTROL TOOLS

We now turn to the bottom tier of the system, development control. Since resources do not permit us to evaluate development control performance overall, we consider two specific tools, environmental assessment (EA) and environmental compensation, the former a familiar statutory process, the latter still mostly informal. Development control performance is covered in sections 5, 6 and 7 which review specific topics.

### 4.1 ENVIRONMENTAL ASSESSMENT

Environmental assessment (EA) is a procedure to identify the likely environmental impacts of proposed development, to eliminate or mitigate them, to involve the public and expert consultees in so doing, and to monitor and review the



impacts if the development goes ahead. Scottish regulations implement a European Directive (337/85/EEC), recently revised (97/11/EC). Over two thirds of proposals in Scotland subject to EA fall under the Planning Acts. Only 0.07% of an annual 45,000 Scottish planning applications receive an Environmental Statement (ES). Yet we highlight it because LINK members saw these few cases as the critical ones for sustainable development.

EA is a potentially powerful tool for promoting environmentally sustainable development. Does it deliver better development? This cannot be answered directly, because the populations of applications with and without EA differ. The question must be approached indirectly, by asking *e.g.* (i) how competent are ES, (ii) how competent are planning authorities to appraise incoming ES, (iii) how well are the findings in ES reflected in planning conditions, (iv) how tight is the monitoring of conditions, and (v) what is the quality control?

(i) The quality of ES has been much criticised in the literature; there has been improvement over time, but on average ES are still worse than considered desirable (DoE, 1996); specific research on the treatment of nature conservation aligned with this general finding (Royal Society for the Protection of Birds, 1996).

(ii) In Scotland most councils appraise ES in-house, and do so without using any systematic method, of which several are well publicised (DoE 1994). Hence gaps may be missed. (Scott, 1999). The Institute of Environmental Assessment offers an appraisal service, but it is a paper exercise not involving a site visit. Some councils do employ consultants themselves to appraise all or part of ES. It should be stressed that experience in most councils is very small or non-existent, because only 314 ES were submitted in Scotland since the regulations came into force in July 1988 up to the end of May 1998 (Scottish Office statistics cited in Scott, 1999).

(iii) There is seldom explicit interpretation of ES findings in conditions set on planning approvals. One explanation is that councils appear to take as much or more notice of statutory consultees' comments as they do of the ES (Scott, 1999).

(iv) LINK members complain that monitoring and enforcement of conditions is often unsatisfactory, with examples cited in housing and in opencast. Research on planning enforcement generally reveals big differences between councils in rigour, with a lot of reliance on public complaint to pick up breaches (SODD, 1997).

(v) Scotland lacks a quality control body and regime for ES, as exist in some other nations. This is the more significant because it is the applicant or his consultant who prepares the ES, unlike in California, where the authority hires a consultant and recharges the applicant. This calls into

question the overall "honesty" of ES (Nordhav, 1992).

Putting together these answers, there must be doubt about the usefulness of EA. If it is often of questionable quality, inadequately vetted, and not a principal consideration in the decision, it all confirms a view that it is in practice just another bureaucratic hurdle to be jumped in obtaining planning permission (Dingwall, 1998). Against this view, it can be said that at least the existence of the process focuses the attention of both developer and planner on environmental impacts in a depth that would not occur otherwise.

Amended regulations, implementing the revision of the EU directive, will soon be put into force to match the revised regulations in England and Wales (DETR 1999). These do address some of the detailed complaints about the existing procedures. The authority must do a scoping exercise with the applicant if the latter requests it, but there is still no mandatory and legally binding scoping agreement. The authority must state its reasons for approving an application requiring an EA, whereas normally only reasons for refusing a planning application need be given. This partially addresses issue three above and presumably opens the decision to legal challenge by third parties. The ES must outline the main options studied and why that applied for was chosen. The discretionary test of significance is retained for schedule two projects (*i.e.* those for which EA may be required), but new exclusive thresholds are introduced for them, below which EA will not normally be required. This offers more certainty, but risks developers repeatedly submitting applications just under the threshold, which cumulatively would mean less EA taking place than really ought to be. Mandatory post-implementation monitoring reports were rejected, which is disappointing, because this really is the ultimate test of effectiveness (*e.g.* ENDS Report, 1997).

## 4.2 ENVIRONMENTAL COMPENSATION

Environmental compensation is at present operated in Scotland mostly as a general concept, *e.g.* by seeking the creation of habitat in the restoration of a mine which destroys one. The statutory bases for it are the general instruments of the planning condition and the planning agreement, which were not designed specifically for environmental compensation, and carry no associated ecological methodology. It is also enshrined in the specific requirement imposed by the European Habitats Directive on the care of Natura 2000 sites, under which loss must be compensated (SOEnvD, 1995).

It is worth considering whether to refine this to a strict concept, targeted specifically at compensating

the ecological losses caused by greenfield development at a local level, as now exists in German planning law, (Wilding, 1999). The purpose is to protect against the incremental erosion of environmental stock by successive developments, each of which makes too little impact to trigger an EA. The attraction of the idea lies in the difficulty our planning and environmental protection regimes have with controlling cumulative impacts.

However, strict greenfield compensation would have to be operated alongside strong defence of valuable environmental assets, in order to prevent it leading to the exact opposite of its purpose by fostering the notion that all assets are tradeable. There are also many thorny issues about the detail of implementation, such as the valuation of natural assets, mechanisms of compensation, what types of compensation would be acceptable for a given type of asset lost, defining the area of search for compensation, and whether councils be allowed to devise their own implementation protocols. The German system is still experimental. An important point is that in Germany statutory strategic landscape plans exist, which will provide ecological guidance to steer decisions on compensation. Scotland lacks such plans, but an interim measure would be to require conformity with Local Biodiversity Plans where they exist.

Any regime would have to be designed to avoid inflation of land prices. Developers would not necessarily object to it, since it should introduce greater predictability about LPAs' treatment of applications (Wilding, 1999). It would certainly be a more accurately targeted tool for controlling greenfield development than would a blanket greenfield development tax, since it would match the cost of compensation to the ecological value of the land.

### *We recommend:*

- ◆ that, where permission is granted for planning applications requiring an EA, the decision letter must make explicit how the findings of the ES are represented in the planning conditions;
- ◆ that, for planning applications requiring an EA, post-implementation monitoring reports to the LPA be made mandatory, and firm planning guidance be issued to LPAs to take enforcement action where it is indicated;
- ◆ that the Scottish Executive give serious consideration to legislation requiring the LPA to commission the EA and to recharge the applicant;
- ◆ that steps be taken to improve the quality of LPAs' appraisal ("review") of submitted ES. Non-threatening and non-bureaucratic measures would include sharing of expertise among LPAs, e.g. by creating a rapid-response consultation service, and planning guidance to increase the uptake of formal appraisal procedures as

suggested by Lee and Colley (1990) and taken up by the DoE (1994), (see Scott, 1999);

- ◆ that the Scottish Executive should consider the introduction into planning law of a strict requirement to compensate for the ecological effects of greenfield development, as a site-sensitive means of controlling the development of greenfield land generally, and as a means of mitigating the cumulative effects in a locality of successive minor greenfield developments (see Wilding, 1999).

## 5. PUBLIC PARTICIPATION

Having considered the operation of the planning system at different levels, we now consider a more general feature of the system, public participation, which is a key sustainability principle. The statutory requirement to consult the public about Plans and planning applications is one of the defining features of the planning system. There are, however, criticisms of consultation in practice, and of participation beyond mere consultation.

A general criticism is that the planning process is hard to follow. The complexity of issues, technical arguments, cost and timescale can combine to make the planning system seem opaque to those not well briefed and versed in the process. Hence "the public will not usually become involved unless something controversial is going to occur" (Association for the Protection of Rural Scotland response). Even well-resourced and professional NGOs can find it hard to keep track of cases and reversals of decisions as they progress through the system (Royal Society for the Protection of Birds response). Contentious cases may go to a public inquiry, an adversarial process. Here the lay person is at a still greater disadvantage, although the recent Code of Practice for Inquiries does encourage pre-inquiry discussions which are intended to focus on conflict resolution.

Involvement in any part of the planning process costs time, as well as the cash cost of obtaining planning documents, committee minutes and reports such as ES. As the quality of Plans has improved, so has their purchase cost. LINK members noted increasing difficulties gaining access to documentation. The availability of Scottish Office planning literature on the Internet has made national planning policy and information about how the planning system operates more available to members of the public. Few Scottish local authorities have systematically attempted to do this, but Moray Council have won recognition from the Royal Town Planning Institute for their promotion of the Internet as a vehicle for responding to the challenge of Local Agenda 21 and for placing local planning documents on the web (Scottish Planner, 1999).

One participation issue frequently raised is that

of third party rights. An applicant who is refused planning permission has the right of appeal. However, if a development is approved, third parties, *i.e.* local community and interest groups, have no right of appeal (they do in the Republic of Ireland). There have been suggestions (John Wheatley Centre, 1997, and Labour Party pre-election statements on planning) that third parties should be allowed to appeal against decisions where there are strong community objections or where the local authority has not followed their development plan.

The argument for such a move is that this would alter the balance of advantage from the developer to the local community, and would enable a check on local authorities where they disregard their own Plan in the face of community opposition. However, it could create more delays as communities and individuals exercised their new rights.

**We recommend:**

- ◆ that LINK seek to improve understanding among its member organisations of how the planning system works;
- ◆ that SODD issue a PAN on public consultation, promoting best practice and drawing from those LPAs which have pioneered innovative techniques. The PAN should cover both Plan-making and development control;
- ◆ that SODD commission further research into the potential contribution that third party rights could make to the accountability and effectiveness of the planning process. Should SODD be unwilling, then LINK itself should consider commissioning it, perhaps in partnership with other interested organisations.

## 6. MINERALS AND WASTE

We have so far reviewed features of the planning system at large. We now turn to considering how the system deals with certain topics. The first of these are minerals and waste, which are linked, partly because so much waste is disposed of in holes created by mineral extraction, and companies tend to be involved in both. Mineral planning authorities are also waste planning authorities.

SEPA is preparing a waste strategy for Scotland through a clutch of working groups, one of which deals with planning and development, and the officer leading the strategy preparation is keen to have planning on board (SEPA, 1997). The strategy will seek to implement the European waste management hierarchy, which is also adopted in the UK sustainable development strategy (UK Government, 1994). It is an uphill struggle: 83% of controlled waste in Scotland is directly landfilled (Scottish Office Waste Collection, Disposal and Regulation Statistics, 1994, *in*: Greaves, 1998), and even SEPA (1997) admits that the UK Government target of recycling 25% of municipal solid waste by the year 2000 is way

beyond reality. No Scottish council reaches even 20%, most being in low single figures. (Accounts Commission for Scotland, 1998).

The potential contribution of the planning system lies firstly in identifying sites for treatment solutions that move waste up the hierarchy, and refusing applications that do not; and secondly, in facilitating reuse and recycling through design guidance and briefs, *e.g.* enabling use of multiple bins in residential developments to allow sorting of domestic waste at source. The waste hierarchy must however be interpreted flexibly at local level, because its logic is not watertight and not universally accepted (Coke, 1999; Allen, 1999). SODD will need to keep the LPAs advised of the received wisdom on best environmental options as this evolves.

In addition to universal sustainability principles, NPPG10, *Planning and Waste Management* sets out two specific principles to waste planning: proximity (dispose of it as close to source as possible) and self-sufficiency (dispose of it within the source territory, interpreted as Structure Plan area). There is some evidence of these principles being abused by unitary authorities. North Ayrshire Council wishes to landraise next to an estuary and SSSI on the grounds of self-sufficiency; while Dundee Council for the same reason is proposing to dispose of ash from its waste incinerator as landfill in the Tay estuary (Royal Society for the Protection of Birds response).

Scottish councils' performance has been poor. Ever since the Control of Pollution Act 1974 they have been required to produce waste disposal plans, but many have never produced one. The requirement will shortly disappear when the national waste strategy is adopted. Councils have historically also been lax about their duty under the Planning Acts to include waste planning policies in their Development Plans (Raemaekers, 1995), and none has taken up the opportunity of producing a Subject Local Plan on waste. Some councils have recently produced waste management strategies integrating disposal and planning (Greaves, 1998). These must surely be the way forward, in cooperation with local offices of SEPA.

Scottish councils admittedly do face obstacles not necessarily pertaining elsewhere. First, many have small and dispersed populations, which impose high transport costs and dis-economies of scale, although it is interesting that there is little correlation between recycling performance and population size and dispersion (Accounts Commission for Scotland, 1998). Second, the removal of waste regulation to SEPA is unlikely to help integration between waste management and planning functions. Third, the dissolution of the regional councils works against strategic solutions.

As with waste, the 1997 Planning Act requires

LPAs to include policies on minerals in Plans. A Subject Local Plan can be made, but only one has been adopted, in Fife, with another in draft in the Scottish Borders. Nevertheless, minerals receive more attention in Plans than waste.

NPPG4, (SOEnvD, 1994), puts forward an interpretation of sustainable development of minerals, which as non-renewable resources logically cannot be developed sustainably. Its next- best solution is to require that the environmental and social impacts of extraction are minimised, and that the demand for extraction is minimised by recycling and use of secondary aggregates. The planning system can ensure the former, but it can do little to promote the latter. Moreover, its ability to do so is undermined by NPPG4's dictum that the level of extraction is for the market to determine. Scottish guidance remains thin compared with the Mineral Planning Guidance notes issued in England, although arguably there is no point re-inventing the wheel.

The most dominant Scottish debates about sustainable development of minerals, since the consolidation of the oil and gas industry, have been about coastal hard rock superquarries opencast coal mining. One superquarry exists at Glensanda on Loch Linnhe. An application for another at Lingerbay on Harris went to public enquiry from October 1994 to June 1995 and the reporter's judgement is still awaited four years later.

Lingerbay exemplifies equity issues in the interpretation of sustainable development. From a Britain-wide viewpoint, supplying demand from fewer, bigger quarries should on average create less environmental damage and affect fewer people. But from a Scottish or still more local viewpoint, it is a case of the area which will most benefit, south east England, exporting the environmental costs to one with less clout, Harris. Another sustainability issue is the time dimension. After initially welcoming the jobs opportunity, local representatives in Harris shifted to a position that this would be a short-term gain that would endanger the longer-term tourism asset of scenic beauty and wildness. The case also raises a general issue about whether an adversarial inquiry process modelled on legal practice best serves the interest of less powerful parties and of the public.

LINK members raised opencasting of coal as the foremost example of unsustainable development and failure to meet planning conditions; problem sites lie in Ayrshire and Lanarkshire. The brand new NPPG16 is less draconian than the draft guidance, stopping short of the presumption against development which was proposed in Labour's pre-election manifesto, and is included in qualified form in the revised English guidance (DETR, 1998b). Section 2 states

"Where a proposal would cause demonstrable and material harm...permission should not be granted except where the benefits...to the [local] community would outweigh the potential harm." (The word "local" does not occur in this sentence, but is implied in the contextual discussion of "community"). Various detailed siting rules are tightened, and an important advance is that the new policy explicitly cites cumulative impact as a criterion for assessing proposals (s43). Sizeable proposals must be notified to the Secretary of State (s74). Structure Plans must be reviewed and must identify broad areas where opencasting may be acceptable, and there will be a presumption against it outwith those areas (s72). Action should be guaranteed because relevant councils have been directed to review their Development Plans (s73).

As in the case of waste and transport, the planning system can contribute most through "doing its bit" in a multi-sectoral effort involving other instruments such as green taxes. If the concept of environmental compensation as discussed in section 4 were formalised in the planning system, then it could be a powerful tool to manage applications for both minerals and waste developments, which might be expected to command a high price.

#### *We recommend:*

- ◆ that SODD keep under review means of ensuring strategic planning of waste management, particularly within joint Structure Plan areas;
- ◆ that SEPA and SODD keep a watch on abuse by LPAs of the principles of self-sufficiency and proximity in planning applications for waste facilities;
- ◆ that SODD commission research on, and publish a PAN on, examples of good practice in the role of planning in waste management. This advice should be updated as necessary to reflect the evolving received wisdom on the sustainability of the waste management hierarchy;
- ◆ that, as waste disposal plans cease to be effective, the Scottish Executive require local authorities to produce integrated waste management strategies, prepared in cooperation with SEPA. If this does not come about, SEPA should in any case seek to have produced such management strategies with all local authorities in five years;
- ◆ that the Scottish Executive consider imposing a requirement on LPAs to produce separate Minerals and Local Plans, as in English counties and National Parks, as a means of forcing them to focus more clearly on this matter;
- ◆ that, if National Parks are designated, they be afforded the same level of protection as Natura 2000 sites, in order to avoid the scenic impacts of continued mineral extraction notorious in some of the English National Parks.

## 7. CONSERVING THE NATURAL HERITAGE

NPPG14 (SODD 1999) defines the natural heritage as:

"the combination and interrelationship of landform, habitat, wildlife and landscape and their capacity to provide enjoyment and inspiration. It therefore encompasses both physical attributes and aesthetic values and, given the long interaction between human communities and the land in Scotland, has important cultural and economic dimensions."

There are severe limits to the scope of the planning regime to contribute to natural heritage conservation. The main one is the exclusion of land operations in farming, estate management and forestry, which have had by far the biggest developmental impacts on the natural heritage. Although government is keeping it under review (SO, 1997, s.33), the planning regime has little power to shape the direction of policy in these fields or to prevent specific detrimental actions.

The Land Reform Policy Group (1999) debated the extension of planning controls over farming and forestry. However, these proposals were thoroughly debated in the 1970s and 1980s respectively, in response to the subsidised intensification and expansion of farming and to subsidised conifer plantation. Since then, farm grants have become much more environmentally friendly. The process of whittling away at the main driver of farming change, price support, and its replacement by direct income support, has begun and should continue under the Agenda 2000 reform of the Common Agricultural Policy. Compulsory notification of proposed farm building developments to LPAs has also since been introduced. Likewise, the main tax break on forestry was abolished in 1988, and forestry grants are now subject to an array of environmental safeguards, while the planning regime has an input through consultations on planting grants and felling licences and through indicative forestry strategies.

A more specific limitation is the cessation of planning control at the low water mark, below which a very large part of our natural wealth lies (Gubbay, 1997). An example of a resulting anomaly is that a planning authority regulates the landing station for a fish farm, but not the farm itself floating just offshore in a sea loch (NPPG13, *Coastal Planning*, SODD, 1997). The government is already committed to transferring the control of marine fish farming, and the dredging of marine minerals, to local authorities (SO, 1997, s.33; SOAEFD, 1998, paragraph 2). This is the culmination of another long debate, given impetus by a Select Committee report (House of Commons, 1992).

A third limitation of the planning regime is that

it can do little about pollution. Attention is increasingly focused on this as a threat to the natural heritage. The regime may legitimately object on grounds of planning blight even to proposed developments which have been approved by SEPA. It can sometimes address pollution from local sources, an example being planning agreements reached to protect Loch Leven in Fife from eutrophication by phosphates in sewage (Loch Leven Catchment Management Project, 1996). It cannot however address pollution which is transported by air or water into the locality from elsewhere. The fourth limitation is the exclusion of major built developments which fall under legislation other than planning, for example trunk roads and large power stations.

The significance of such limitations is apparent if we look at the one of the most obvious indicators of protection of the natural heritage, the health of the network of Sites of Special Scientific Interest (SSSIs). According to the government the rate of damage is falling. Friends of the Earth, using the same data, do not agree.

**Table 7.1: Number of Sites of Special Scientific Interest damaged in Britain: government version.**

Year	Number of sites
1990-1	233
1991-2	183
1992-3	129
1993-4	117

**Table 7.2: Number of Sites of Special Scientific Interest damaged in Britain: Friends of the Earth version.**

	England	Wales	Scotland	Total
1991-2	272	41	no data	313
1992-3	200	165	18	383
1993-4	142	165	17	324
1994-5	134	171	28	333
1995-6	147	198	no data	345

[Friends of the Earth  
<http://www.foe.co.uk/wildplaces>]

Most of the damage to SSSIs is short-term and repairable, and is caused by farming operations. Most of the irreparable damage is however due to built development. The worst offenders are not everyday developments processed by LPAs, but big government-sponsored projects which are not, like the M3 at Twyford Down, the Newbury bypass or the Manchester Airport second runway. These also send the signal that central government is prepared to sacrifice critical natural assets where the price is right.

The European Habitats Directive 92/43/EEC should in future force the nation towards protecting critical assets. Like SSSIs, Natura 2000 sites are designated under natural heritage law, but do impinge directly on planners, both through consultations on site designation by SNH, and through LPA's duty to protect the sites

from development. This includes powers to remove the permitted development rights of statutory undertakers, and to revoke existing but unfulfilled planning permissions, with compensation for the permit holder. Also, the general duty under Article 10 requires planning authorities to include policies in their Plans which will give that duty force (SOEnvD,1995).

There has however been criticism of the identification of Natura 2000 sites, suggesting that, since they must be defended, government is avoiding designating them where it envisages an important development (as at Lappel Bank, Isle of Sheppey, Kent). An ironic danger of the introduction of Natura 2000 is that protection of the remaining SSSIs will be downgraded. Half the area of Scottish SSSIs is not in Natura 2000 sites (Egdell 1999,). This danger is emphasised by the current Scottish Office review of SSSIs, which seems to be aimed at abolishing some of the larger ones (speech by Secretary of State for Scotland 2/2/99). This move highlights the tensions between sustainable development goals: handing more decision making down to local level to satisfy social sustainability may threaten the survival of environmental assets of national value.

National planning guidance has incorporated strong policies to defend Natura 2000 sites, most clearly set out in NPPG14; these do appear to correspond to the requirements of the directive, within the remit of the planning system. NPPG14 (paragraphs 20, 47) makes it clear that the presence of a protected species or habitat is a material planning consideration, even if a designated site is not affected. Nevertheless, even with the Habitats Directive, we still lack explicit automatic protection for key habitats or species wherever they are found, as there is in Germany (Wilding, personal communication). This would overcome the problem of imperfect survey, and would avoid developers' frustration at sites being designated only after they have submitted an application to develop them. We are informed that some development plans south of the border include policies to protect species listed in the directive, which in practice fills this gap (Royal Society for the Protection of Birds response).

Article 10 of the Habitats Directive applies to areas outwith designated sites, in which the natural heritage agencies have been at pains to point out most wildlife lives. Here the planning system has limited scope, but the good news is:

- ♦ the attention paid to the wider countryside in NPPG14, including,

\*"planning authorities should seek to prevent further fragmentation or isolation [of habitats] and identify opportunities to restore links which have been broken" (paragraph 19), that is, implement Article 10 of the directive;

\*"the effect of a development proposal on the natural heritage can be a material consideration whether or not a designated area is likely to be affected" (paragraph 47);

- ♦ the production of nature conservation strategies for urban areas.

So long as the latter are adopted council policy, they are a material consideration in determining applications, and thus can have considerable force. NPPG14 states that Local Biodiversity Action Plans can act in a similar way. The force of such strategies and plans is increased where place-specific policies are written into the Local Plan, as in Edinburgh (City of Edinburgh District Council, 1992) or, as in Dundee, the strategy is itself a statutory Subject Local Plan (City of Dundee District Council, 1994).

We have focused above on national policy. Unfortunately, it was beyond our resources to survey Development Plans for their policy content, but our attention was drawn by a LINK member to the Ayrshire Structure Plan, which includes a policy to protect all directive Annex 1 (priority) habitats. As to development control, whatever their performance in protecting the natural heritage, Scottish councils are poor at enhancing it by securing benefits from planning applications which they receive. Some councils were unable to point to any such cases (SNH, 1998). This contrasts with the many positive environmental projects which these same councils carry out themselves.

The above discussion has mostly concerned nature conservation. The creation of SNH was a step toward integrating what many saw as an artificial division between landscape and wildlife conservation. However, there is also a risk that the voice of landscape has been numerically drowned by the merger. Research in the mid 1990s on planning consultations indicated that planning authorities found that the nature conservation advice was stronger than the landscape and recreation advice, reflecting the staffing levels of the donor agencies (SNH, 1995, 1996a).

As to performance in protecting the scenic heritage, the *causes celebres* of recent years have been the Lingerbay superquarry (see section 5) and the Cairn Gorm funicular. The latter case reveals the relative weakness of scenic protection, notwithstanding that special planning controls apply in NSAs: the funicular has been approved, impacting considerably on an NSA, but the adjacent Natura 2000 site/National Nature Reserve has been protected through the visitor management plan which will not allow visitors to go out of the top station, (Henderson and Raemaekers, 1997). There is no European law requiring scenic protection comparable to the Habitats Directive. The LPA (Highland) has always supported the development applications at Cairn Gorm, including a former Structure Plan

policy favouring the development of Lurcher's Gully, twice rejected by the Secretary of State.

*We recommend:*

- ◆ that LINK establish formal positions on the merits of extending planning control over respectively a) forestry operations, b) farming operations, and c) development below the low water mark;
- ◆ that NPPG14 should explicitly protect habitats and species listed in the Habitats Directive, wherever they may be found, even when this is in a site not enjoying statutory status before submission of a planning application affecting it;
- ❖ that LINK should lobby for the same level of protection being given to the scenic interest as to the natural history interest, and for this to be reflected in planning guidance. This suggests the creation of a tier of scenic sites equivalent to the Natura 2000 sites. National Parks should also receive the same level of protection as Natura 2000 sites, but this would not adequately address the protection of our finest scenery, since for the foreseeable future, only two parks are likely.

## 8. CONSERVING THE CULTURAL HERITAGE

We have seen in section 7 that, although the natural heritage is recognised by government to contain a cultural dimension, the scenic appeal of landscape is separated from the cultural heritage. The cultural heritage as manifested in the landscape is itself divided by the legal and policy framework into three main elements — archaeological (ancient monuments); architectural (listed buildings and conservation areas); and landscape architectural (historic gardens and designed landscapes). There is no overarching concept of a cultural landscape, which may not be designed with any aesthetic intent, and there is no express coverage of historic landscapes, such as battlefields or farmed landscapes, which are not aesthetically designed and do not necessarily qualify as ancient monuments. We are encouraged to learn that this is beginning to change, through a joint venture on historic land use assessments by Historic Scotland and the Royal Commission on the Ancient and Historic Monuments of Scotland (Robin Turner, The National Trust for Scotland, personal communication).

In this section we look at two of the three cultural elements: the archaeological and the landscape architectural. Because of shortage of space and the focus of LINK, we do not specifically address the architectural heritage in the form of listed buildings and conservation areas.

Dedicated planning guidance exists on archaeology (NPPG 5, *Archaeology and Planning* and PAN 42, *Archaeology, the Planning Process and Scheduled Monument Procedures*, SOEnvD, 1994). The guidance echoed that south of the border in

placing an explicit responsibility for the archaeological heritage on the planning system. The recent NPPG18, *Planning and the Historic Environment*, (SODD, 1999) adds nothing of substance on ancient monuments.

All councils have access to a council archaeologist, except West and East Lothian, which have only trigger maps commissioned from outside, and Dundee, East Dunbartonshire and Perth & Kinross, which lack any cover (Jewell and Raemaekers, 1999).

Although only 3% of Scottish applications have archaeological implications (Historic Scotland 1996), councils say they need at least one more member of staff to cope with the basic workload alone. Archaeologists' increased involvement in development control following the issue of planning guidance has been at the expense of promotion, interpretation and education (Jewell and Raemaekers, 1999).

All recent Plans have archaeological conservation policies. In most LPAs an archaeologist checks a weekly list of applications. S/he seldom has time to check in the field whether a proposal has archaeological implications, and therefore relies on personal knowledge and the Sites and Monument Record (SMR). Where, as in Perth & Kinross, the development control service lacks trigger maps, an SMR or archaeological advice, officers have found it difficult to take due account of the archaeological heritage.

Development is rarely refused on archaeological grounds alone. It is more usual to attach planning conditions to a consent (Historic Scotland, 1996). In 1996/7 the service covering the west of Scotland recommended refusal on archaeological grounds in only two of the 10,661 applications it processed (West of Scotland Archaeology Service, 1997). Where an LPA does require significant archaeological work, it usually provides quite specific conditions (and PAN42 provides advice).

The ultimate test of performance in development control is whether or not sites have been saved from damage or destruction. Unfortunately, it is by definition impossible to assess how many have been missed in the development control process. Many remains are discovered only when an application comes forward, or even when ground works reveal them - and thus only after conditions on the planning permission have already been set. Where there is no access to a local authority archaeological service, we may assume that sites are missed and damaged or wiped out. The common opinion amongst council archaeologists is that they are successful in conserving sites they do know about. This view however needs to be treated with some caution, since the effectiveness of monitoring and enforcement of conditions varies between authorities (cf Historic Scotland, 1996; SODD, 1997a).

Unlike ancient monuments (and listed buildings), historic gardens (HG) and designed landscapes (DL) are not statutory designations, and therefore do not enjoy statutory protection. They are not mentioned in the two 1997 Acts which emerged from the revision of the 1972 Planning Act; whereas south of the border the National Heritage Act assigned them to the Department of National Heritage. There is however an Inventory of Gardens and Designed Landscapes (Countryside Commission for Scotland, 1987), now run jointly by SNH and Historic Scotland, and the General Permitted Development Order (GPDO) requires planning authorities to refer to the Secretary of State applications which might affect sites listed in the Inventory (NPPG18, *Planning and the Historic Environment*, SODD, 1999).

To a degree, DL and HG may gain incidental protection from planning designations with more teeth: tree preservation orders (TPO), especially where these apply to whole woodlands, e.g. the Hen Poo at Duns Castle; conservation areas; and listed buildings (J Murray, personal communication.) However, these are themselves not infallible: one ten year old TPO site proved to be missing 75% of its trees, including large ones (N Rudd, personal communication.). The setting of a listed building is to be protected (NPPG18), but "setting" is open to interpretation, as is even the tighter term "curtilage", which is not defined in the Planning Acts or the GPDO (SO Central Research Unit, 1998, appendix 4).

Recent Development Plans include policies and identify Inventory sites on their maps (NTS, personal communication), but councils are reluctant to write strong protective policies, because the Inventory is not statutory (Garden History Society, personal communication). Fife Council has been the most proactive, including policies to protect some 300 non-Inventory gardens identified in a secondary listing survey. The effects of local government reorganisation linger. For example, Aberdeenshire Council has inherited Local Plans from three former districts, which differ in their policies.

Development control practice is very variable. The critical point is that, whereas in England and Wales, certain heritage and amenity societies are statutory consultees, they are not so in Scotland. Therefore NGOs must monitor planning applications and maintain positive liaison with councils in order to pick up cases on which they wish to comment. The Garden History Society is consulted on about 200 applications a year; some councils like East Ayrshire consult it automatically, but others have to be prompted. Informal advice to councils has been published by the voluntary sector (Garden History Society, 1998; Landscape Design Trust, 1997).

As with so much of the heritage, conservation

is partly implemented through the planning regime, but the legal and policy basis lies outwith planning. This is reflected in the following recommendations.

*We recommend:*

- ◆ NPPG5 be modified to give a strong steer to councils to devote enough resources to the archaeological service that development control work is not at the expense of its more positive functions;
- ◆ gardens and designed landscapes appearing in the Inventory should be accorded statutory status, to improve their support by the planning regime;
- ◆ NPPG18 be revised accordingly, as well as to include guidance to councils to undertake secondary listing of non-statutory sites, in the same way as ancient monuments are recorded on the SMR;
- ◆ SODD consider how guidance might more closely reflect the relationship between the archaeological heritage and the other elements of the cultural heritage, which are presently treated in separate NPPGs. There is a need for a more holistic view of cultural heritage to be taken, which recognises the existence of cultural landscapes and of historic landscapes, not necessarily picked up under the existing set of concepts and designations. SODD should keep itself informed about the historic land use assessment initiative referred to above.

## **9. THE SCOTTISH PARLIAMENT**

The Scottish Parliament and the local government elections in May 1999 have provided a window of opportunity for considering the role of elected members and the issue of their understanding of sustainable development and its application in the planning system.

The Constitutional Steering Group made a general recommendation for MSP training. A specific move would be to ensure that MSPs and councillors are trained in the operation of the planning system and the principles of sustainable development. Also relevant to the promotion of sustainable development would be training in the implications for planning of the Nolan Committee recommendations.

The RTPI and others interested in the planning system have suggested that national planning guidance should, in future, be discussed by a planning committee of the Scottish Parliament. A national commission could be established to review the operation of the planning system and suggest ways of improving the quality of decisions, including their sustainability.

There is also an issue of the extent to which priority is attached to sustainable development, not just by those directly responsible for the



operation of the planning system in the Scottish Office, but through every department and committee of the new Scottish Parliament. One of the suggestions of the John Wheatley Commission (1997) was that there should be a sustainable development audit of all spending policies of the Scottish Parliament; each committee should be monitored against sustainable development targets and criteria. The objective was to raise the political profile of sustainable development in the Scottish Parliament and to ensure an effective mechanism for monitoring progress.

In a more general way, the Parliament has the opportunity to lead by example in creating the climate of openness to participation which is part of sustainability.

*We recommend:*

- ◆ there should be training for all MSPs on
  - \*the international sustainable development obligations to which the Parliament must adhere;
  - \*the implications of the Nolan Committee's recommendations on planning;
  - \*the Constitutional Steering Group's suggested principles on participation and transparency for the operation of the Parliament;
- ◆ that LINK should consider their relations with MSPs and specifically whether they could play a role in the proposed training.

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The line drawing on the front cover is adapted from one by Dan Powell of RSPB.

## 11. REFERENCES

- Accounts Commission for Scotland (1998) *The Environment, 1996/7: Comparing the Performance of Scottish Councils*. Accounts Commission for Scotland.
- Allen, T. (1999) *Evaluation of the Landfill Tax and its implications in Scotland*. Unpublished dissertation, Diploma Town and Country Planning, Edinburgh College of Art/Heriot-Watt University.
- City of Dundee District Council (1994) *Urban Nature Conservation Subject Local Plan*. City of Dundee District Council.
- City of Edinburgh District Council (1992) *An Urban Nature Conservation Strategy for Edinburgh*. City of Edinburgh District Council.
- Coke, R. (1999) *A critique of the UK waste management strategy: problem areas and opinions from the industry*. Unpublished dissertation, M.A. Town Planning, Edinburgh College of Art/Heriot-Watt University.
- Countryside Commission for Scotland (1987) *An Inventory of Gardens and Designed Landscapes in Scotland*. Countryside Commission for Scotland, Perth.
- Countryside Commission for Scotland (1990) *The Mountain Areas of Scotland: Conservation and Management*. Countryside Commission for Scotland, Perth.
- Dargie, T.C.D. and Briggs D.J. (1991) *The State of the Scottish Environment 1991*. Scottish Wildlife and Countryside Link, Perth.
- David Tyldesley and Associates (1995) *Draft methodology for environmental appraisal of Scottish Development Plans*. Report to Gordon District Council, SNH and the SO.
- DETR (1998a) *Sustainability counts*. HMSO.
- DETR (1998b) *Mineral Planning Guidance 3 (revised) Coal mining and colliery spoil disposal*. HMSO.
- Dingwall, K. (1998) *The role of monitoring and audit in Scottish environmental assessment practice*. Unpublished dissertation, M.A. Town Planning, Edinburgh College of Art/Heriot-Watt University.
- DoE (1991) *Policy appraisal and the environment*. HMSO.
- DoE (1992) *PPG12 Development plans and regional planning guidance*. HMSO.
- DoE (1993) *Environmental appraisal of Development Plans. A good practice guide*. HMSO.
- DoE (1994) *Evaluation of environmental information for planning projects: a good practice guide*. HMSO.
- DoE (1996) *Changes in the quality of Environmental Statements for planning projects*. HMSO.
- Egdell, J. M. (1999) *Agriculture and the Environment*. Scottish Environment Audits No. 2. Scottish Wildlife and Countryside Link, Perth.
- ENDS Report (1997) *EC Directive forces major change to Environmental Assessment rules*. *ENDS Report 271*: August.
- Forward Scotland (1998) *Annual Review*:11
- Garden History Society (1998) *The protection of gardens and designed landscapes in development plans*. Garden History Society, Blairgowrie.
- Greaves, C. (1998) *Waste management in the Highlands*. Unpublished dissertation, M.A. Town Planning, Edinburgh College of Art/Heriot-Watt University.
- Gubbay, S. (1997) *The Marine Environment*. Scottish Environment Audits No. 1. Scottish Wildlife & Countryside Link, Perth.
- Henderson, J. and Raemaekers, J. (1997) *Does merger mean integration? Scottish Natural Heritage and the Cairn Gorm funicular application*. Edinburgh College of Art/Heriot-Watt University, School of Planning and Housing. *Research Paper 68*.

## Scottish Environment Audits

- Historic Scotland (1996) *Archaeology and Planning. Surveys of planning authorities and archaeological bodies. Archaeology Paper No. 6.*
- House of Commons (1992) *Coastal Zone Protection and Planning. Vol 1. Environment Select Committee Report.* HMSO.
- IUCN, WWF and UNEP (1980) *World Conservation Strategy.* IUCN, Morges.
- Jewell, D. & Raemaekers, J. (1999) Local authority archaeological services in Scotland two years after local government reorganisation. *Journal of Environmental Planning and Management*, 42(3):375-388
- John Wheatley Commission (1997) *Working for sustainability, an environmental agenda for a Scottish Parliament. Report of the JWC Commission on environmental policies for a Scottish Parliament.* The John Wheatley Centre, Edinburgh.
- Land Reform Policy Group (1999) *Recommendations for Action.* The Scottish Office.
- Landscape Design Trust (1997) *Historic parks and gardens in the planning system.* Landscape Design Trust, Reigate.
- Lee, N. and Colley, R. (1990) Reviewing the quality of environmental statements. *Town Planning Review*, 62(2):239-248.
- Loch Leven Catchment Management Project (1996) *Loch Leven catchment management project issues document.* Scottish Agricultural Colleges.
- Nordhav, Y. (1992) Americans look askance at assessment practices. *Planning*, 27. November:15.
- O'Malley, R. (1998) *Third party right of appeal: can it benefit planning in Scotland?* Unpublished dissertation, Diploma Town and Country Planning, Edinburgh College of Art/Heriot Watt University.
- Raemaekers, J. (1995) Scots have way to go on strategic waste planning. *Planning*, 17. February:1105-6.
- Raemaekers, J., Prior, A. & Boyack, S. (1994) *Planning guidance for Scotland. A review of the emerging new Scottish national planning guidelines series.* Royal Town Planning Institute in Scotland, Edinburgh.
- Royal Society for the Protection of Birds (1996) *Wildlife impact - the treatment of nature conservation in Environmental Assessment.* Royal Society for the Protection of Birds, Sandy.
- Royal Town Planning Institute (1998) *Planning and the Scottish Parliament.* Royal Town Planning Institute, London.
- Scott, A. (1999) *Environmental Assessment in Scotland: the forgotten stages.* Unpublished dissertation, M.A. Town Planning, Edinburgh College of Art/Heriot-Watt University.
- Scottish Planner (1999) Moray: WOW! *Scottish Planner.* April:4.
- SEPA (1997) *Draft national waste strategy: Scotland. A blueprint for progress 1997-2000.* SEPA.
- SNH (1995) *A study of the effectiveness of SNH planning consultation casework in South East Region.* School of Planning and Housing and School of Landscape Architecture, Edinburgh College of Art/Heriot-Watt University. Not published.
- SNH (1996a) *Perceptions of SNH's performance in relation to local authorities.* School of Planning and Housing and School of Landscape Architecture, Edinburgh College of Art/Heriot-Watt University. Not published.
- SNH (1996b) *Assessing the natural heritage resource. A guidance note for local authorities from Scottish Natural Heritage.* SNH. David Tyldesley and Associates, the School of Planning and Housing and the School of Landscape Architecture, Edinburgh College of Art/Heriot-Watt University.
- SNH (1998) *Best practice examples of planning for the natural heritage.* School of Planning and Housing and School of Landscape Architecture, Edinburgh College of Art/Heriot-Watt University. Not published.
- Scottish Office (1998) *Towards a development strategy for rural Scotland: the framework.* The Scottish Office.
- Scottish Office (1999a) *Land Use planning under a Scottish Parliament.* The Scottish Office.
- Scottish Office (1999b) *Local biodiversity action plans. A manual and guidance notes.* The Scottish Office.
- Scottish Office Central Research Unit (1998) *Research on the general permitted development order and related mechanisms.* School of Planning and Housing, Edinburgh College of Art/Heriot-Watt University, Brodies WS and Halliday Fraser Munro Planning.
- Scottish Office Central Research Unit (1999) *Review of National Planning Policy Guidelines.* Development Department Research Programme Research Findings No. 65. The Scottish Office.
- SOAEFD (1998) *Procedure guidance note. Interim scheme for the authorisation of marine fish farms in Scottish waters.* The Scottish Office.
- SODD (1996) *NPPG10, Planning and Waste Management.* The Scottish Office.
- SODD (1997a) *Review of planning enforcement.* Study commissioned from the School of Planning and Housing, Edinburgh College of Art/Heriot-Watt University and Brodies WS. The Scottish Office.
- SODD (1997b) *NPPG13, Coastal Planning.* The Scottish Office.
- SODD (1998a) *Review of development planning.* Hillier Parker, Dundas and Wilson and School of Planning and Housing, Edinburgh College of Art/Heriot-Watt University. The Scottish Office.
- SODD (1998b) *Planning Bulletin, September.* The Scottish Office.
- SODD (1999a) *NPPG14, Natural Heritage.* The Scottish Office.
- SODD (1999b) *NPPG16, Opencast Coal and Related Minerals.* The Scottish Office.
- SODD (1999c) *NPPG17, Transport and Planning.* The Scottish Office.
- SODD (1999d) *NPPG18, Planning and the Historic Environment.* The Scottish Office.
- SOEnvD (1994a) *NPPG1, The Planning System.* The Scottish Office.
- SOEnvD (1994b) *NPPG4, Land for Mineral Working.* The Scottish Office.
- SOEnvD (1994c) *NPPG5, Archaeology and Planning.* The Scottish Office.
- SOEnvD (1994d) *PAN42. Archaeology, the planning process and schedules monument procedures.* The Scottish Office.
- SOEnvD (1995) *Habitats and birds directives. Circular 6.* The Scottish Office.
- Strathclyde Regional Council (1995) *Strathclyde sustainability indicators.* Strathclyde Regional Council, Glasgow.
- UK Government (1994) *Sustainable development, the UK strategy.* HMSO.
- UK Government (1990) *This common inheritance. Britain's environmental strategy.* HMSO.
- United Nations Development Programme (1998) *Human Development Report.*
- WCED (1987) *Our common future.* Oxford University Press.
- Wilding, S. (1999) *Environmental Compensation.* Unpublished dissertation, Diploma Town and Country Planning. Edinburgh College of Art/Heriot-Watt University.
- West of Scotland Archaeology Service (1997) *Annual report of the Archaeology Service 1996/97.* West of Scotland Archaeology Service, Glasgow.

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