Can Planning Protect the Public Interest? The Challenge of Coastal Planning in Israel

Nurit Alfasi*
Ben Gurion University of the Negev

This paper challenges the capacity of the planning system to protect the public interest and to safeguard it for the sake of the common and future generations. The question underlying the discussion is this: once the public interest is defined and accepted, once it is backed by planning policies and plans – can the planning system still deliver its goal and really protect it? We examine this issue by looking at the performance of the Israeli planning system at the coastal arena. More specifically, we compare between three modes of planning and management that operated in Israel in connection with the coasts: the first is the statutory comprehensive plan represented by the National Outline Plan no. 13, authorized in 1983; the second is the strategic planning represented by the Coastal Waters Policy Paper, accepted 1999 and; the thirds is the primary legislation represented by the Coastal Conservation Law authorized in 2004. The paper exposes the operation of these planning tools and assesses their utility in terms of protecting the public interest at the coast. The limited capacity of the planning system to protect the public interest is thus discussed as well as the ways it could be improved.

Keywords: *Planning law, Coastal planning, Certainty-discretion dilemma, Public interest, Comprehensive planning, Strategic planning, Planning outcomes.*

At the backdrop of this research stands the everlasting tension underlying most of the theoretical debates in the field of planning: the tension between clear-cut private interests promoted by specific actors–usually developers backed by local governments–and the more general public interests supposedly protected by the public planning system. In a way, it is commonly accepted that the very existence of the public planning system is intended for the protection of public interests and public assets from endangering privately oriented initiations. Nevertheless, the planning system is often criticized for its failures in providing the right arena for discussing the public interest (Forester, 1993; Healey, 1997; Klosterman, 1980), ill-identification of the public interest (Campbell and Marshall, 2000), and tendency to promote the

* Department of Geography and Environmental Development, Ben Gurion University of the Negev, Beer Sheva, Israel. E-Mail: nurital@bgu.ac.il

interests of the hegemonic publics at the expense of the interests of others (Howe, 1992; Campbell and Marshall, 2002).

Israel is a coastal state, having about 70% of its population living within 15 km from the Mediterranean seashore. Israel's Mediterranean beaches face high risks of over development on one hand and uneven access of all citizens on the other hand. In effect, due to extensive development that occurred in the last two decades, a natural open coast is now becoming scarce while economic, social and environmental conflicts related to the coastal line intensify. As public debates concerning the building and the functioning of the coastline continue, the purpose of this paper is to challenge the commonly accepted wisdom concerning the role played by the planning system in protecting this publicly-owned asset.

The Israeli planning system preserves a long lasting interest in the coastal area. Bearing in mind both the fragility of the coastal environment and the scarcity of the shoreline, the planning system was especially interested in finding the right and effective framework for planning the coastline. Several different planning tools were operated, inviting a comparison between their utility and impact. Particularly, since the protection of the shoreline is acknowledged as a clear public interest issue, the efficacy of these planning tools could serve to challenge the relevance of planning in securing the public interests.

In the face of the growing economic pressures striving to develop residential and commercial uses at the coastal areas, and particularly in waterfront sites, the Israeli Planning Administration (IPA) initiated the preparation of a National Outline Plan 13 (NOP 13) dealing specifically with the protection of the Mediterranean seashore. The NOPs are statutory land use plans specifically detailing the permitted uses allowed to be developed and forbidding the construction of unwanted uses. However, NOP 13, authorized in 1983, was essentially obstructed during the late 1980s and the 1990s as it did not manage to protect the shoreline from the invasion of the unauthorized land uses (Fletcher, 2000). Public fury particularly related to the development of extravagant residential complexes originally advertised as hostelling units, and the construction of leisure and commercial centers originally presented as marinas.

In an attempt to enforce better planning decisions, the IPA initiated an extensive strategic planning endeavor and in 1999 produced a national policy paper regarding the shores and the sea area. Although it was not a statutory paper, the IPA wished to impose its' stated policy by inquiring detailed plans for the seashore to get the special permission of a new statutory commission, The Sea Water Commission, prior to authorization. Planners of both the IPA and environmental NGOs expected the new procedure to deliver better plans for the coastline. Nevertheless, the new strategy and procedure were soon discovered of limited abilities, as they related only to plans touching the sea waterline and in effect enabled entrepreneurs and local governments to obstruct the limiting development strategy.

Public criticism was soon renewed and environmental activists demanded the

legislation of a Coastal Conservation Law, stating clear rules and forbidding further development of the coast. By 2004, the new law was authorized promising a new era for coastal planning in Israel. In the last five years, a new set of planning tools was operated that was managed by the Coastal Conservation Commission–a new commission adjacent to the National Planning and Building Board, authorized to review, accept or reject plans within 300m from the shoreline.

In this paper we review the various planning tools operated for the protection of the coastal environment and expose its strengths and weaknesses. The major concern is examining the efficacy of the planning system in protecting public interest in these assets. As most studies concentrate on the politics of defining the public interest as well as acknowledging it, this paper wishes to take a step forwards and ask the following question: once public interest is defined and accepted, and once it is backed by planning policies, plans and laws–can the planning system still deliver its main goal and really protect it?

The paper starts with the background to the case at stake, with a description of Israel's Mediterranean coast and the problems that require special planning attention. We then review the Israeli planning system in light of the literature regarding the challenge of plan implementation and the related gaps between the formal structure of planning and the processes that take place in reality, and between what is planned and what is performed in the real world. The coastal planning frameworks, that of the National Outline Plan 13 (NOP13), the strategic paper of the Sea Water Commission, and the new Coastal Conservation Law, are then presented and discussed.

ISRAEL'S MEDITERRANEAN COAST

Located at the eastern end of the Mediterranean Sea, Israel's seashore stretches throughout 196 km from the Egyptian border in the South to the Lebanese border in the north. Most of it – about 150km south of Haifa bay–is a smooth bay-less coast with sandy beaches up to 50m wide, backed by gravel cliffs of 15-40m high. Haifa Bay forms the single natural harbor, besides Jaffa's small bay, and marks the transition from the wide sandy beach in the south to the narrow rocky beach in the north. The long, southern section of the coastline lies within the Nile Delta sediment cell. In effect, the reduction in the supply of sand from the Nile delta, resulting from the construction of the low Aswan dam in 1902 and the High Aswan Dam in 1964, forms a severe threat to the beach sediment budget. Currently, the deficit in sediment supply causes the gradual withdrawal of the coastal cliff, in a constant rate of 15-30 cm each year[1]. Long term conservation of the coastal zone and especially preventing construction that obstructs sand movement is hence extremely important.

As the majority of urban development as well as commercial and industrial ac-

tivity takes place at the Mediterranean coastal plain, large portions of the beach are practically developed: about 40km of the shoreline occupy urban uses, whereas 50km host infrastructures (harbors, power stations and military uses). Additional 55km are already dedicated by authorized plans to future urban and rural development. Thus, only 53km of free, natural beach are left undeveloped while various pressures exist that seek to build on this highly desired shore. These circumstances pose a challenge to the planning system that keeps seeking for the right frame for planning and developing the shoreline.

Environmental management as a whole and the sector of coastal zone management none the less, pose considerable challenge for planning systems. Particularly, the needs to integrate multiple stakeholders and diverse land uses, and to run decision-making systems that affect large districts with fuzzy boundaries, prove to be a difficult and demanding task. Several strategic frames were offered for the challenge, including viewpoints that stress the role of institutions and regulative activity (Buanes et.al., 2004; Huggett, 1998; Taussik, 1997), collaborative and meditative approaches (Treby and Clark, 2004), and implementation of monitoring techniques (Olsen, 2003). As part of this, the role of land-use planning in policy making and implementation was highlighted (Kay and Alder, 2005). In this paper, we focus on land-use planning and decision making in Israel and assess the outcome of the different modes of planning operated by the Israeli system.

THE ISRAELI PLANNING SYSTEM

Like many other planning systems established at the second half of the 20th century, the Israeli system is a regulatory system, employing statutory zoning as a comprehensive framework for development. According to the Planning and Building Law of 1965, planning in Israel is a top-to-bottom procedure having National Outline [Zoning] Plans as the principal policy setting plans, followed by District Outline Plans and Local Outline Plans, finally coming to Detailed Plans and planning applications. Both Outline and Detailed plans are zoning plans, which include zoning maps to define land use and ordinances to delineate building characteristics. A top-down string of statutory bodies headed by The National Planning and Building Board oversees the implementation of planning. Hence, at least officially, the Israeli planning system attempts to establish a hierarchy of powers leaving decision-making regarding local and detailed plans with only small room for maneuver. The facts that low-level plans are subordinated to the high-level plans and are relatively limited by the broader viewpoint should ensure the protection of the public interest from narrow, entrepreneurial interest.

In practice, though, in Israel as in many other regulatory planning systems, the formal top-to-bottom hierarchical structure became full of deviations. Various mechanisms of circumventing official planning policies were established, including

prevailing easements and temporary exemptions. The most common circumvention mechanism, though, is the use of local zoning amendment; that is, the submission of a local outline plan that practically amends the existing zoning ordinance or the zoning map. As these planning mechanisms are used by governmental agencies, local government officials, and private sector builders, the degree to which the public interest is effectively safeguarded by planning remains open (Alfasi, 2006).

The Certainty-discretion Dilemma

The tension between the wide-range planning policies, presented in national and district outline plans, and the practice of local deviations was highlighted by few theoreticians (Booth, 1995; Booth et.al., 1996; Newman and Thornley, 1996; Cullingworth, 1993; Tewdwr-Jones, 1999). Particularly, two basic forms of general policy setting and specific decision making were defined: the regulatory planning traditions and the discretionary ones.

In regulatory planning systems that operate in most US countries, many EU states and in Israel planning policy is determined by land use outline plans. Outline plans specify future development and allocate planning rights in advance, which explains the labeling of these systems as certainty-oriented. Conversely discretionary planning systems that function in the British Islands determine planning policy in a series of general guidelines and non-specified local plans and allocate planning rights subject to a case-by-case decision. These systems are thus labeled "flexibility-oriented systems". In practice, though, the notions of certainty and flexibility are often reversed. As noted above, the very option of flexibility in the regulatory planning system opens the door to massive circumventions of land use plans (Cullingworth, 1993), whereas it is the flexibility-oriented system that creates relatively high degree of certainty at the local level (Booth, 1996; Booth et.al., 2007).

The differences between certainty-oriented and discretion-oriented planning systems are well reflected through the development control dynamics. In the regulatory planning systems development control appears to be a simple, technical issue. Local planning officials are simply required to verify that detailed plans adhere to the outline plans they are subjected to. In contrast, the plan-led, discretionary development control is a matter for careful interpretation and judgment (Cullingworth, 1993, 1994; Booth, 1996; Newman and Thornley, 1996). In Britain, for example, planning applications are weighted in line with the stated policy appearing in the development plan and other material considerations, including Planning Policy Guidance notes/Statements (PPSs and PPGs) and Spatial Strategy plans. Research shows that the discretionary mechanism does not favor the developers' viewpoint over the official planning policy. In effect, the development plan and the PPGs/PPSs are sometimes "accused" for being too rigid and not sensitive enough to local developers' needs (Booth et.al., 2007; Claydon and Smith, 1997; Hull, 1998; Tewdwr-Jones, 1999). Thus, discretion-oriented planning often ends up producing high levels of certainty. This is not necessarily the case with certainty-oriented plan-

ning systems.

Paradoxically, the rigidity of certainty-oriented outline plans forms the backdrop to the certainty-discretion dilemma. Since it is impossible to predict in advance all the needs, fashions, technology developments and social changes that may impact spatial development, it is necessary to enable further changes and amendments of land use ordinances. The bothering fact is that it is practically impossible to regulate such unknown, albeit local, flexibilities in advance. Thus, on the one hand, strict detailed outline plans are soon covered with circumstantial amendments thus facing the gradual transformation of original planning policies. On the other hand, more general and vague land use ordinances prove to be ineffective in terms of setting planning policies. Particularly, frequent adjustments of the existing ordinance tend to blur the reasoning of the outline plan as well as its guidelines. Hence, as the use of local amendment procedures expands, official planning policies become worn out and a piecemeal mode of decision-making takes over. As noted by Cullingworth (1994), informality is the name of the game in many planning systems, including the Dutch system, the French system and most of US systems.

Likewise, planning for the coastal zone of Israel suffered from continuous erosion operated by these tools. In effect, the very option of amending the plan – and consequently evading and weakening the stated policy – created an opening that developers and local governments could not have ignored. And although the exploitation of this opening stands on the verge of illegal behavior, it is officially authorized and practically supported by local governments.

The next section expands on three phases of coastal planning operated by the Israeli system. The first is national outline planning, practically operated by NOP13 (authorizes 1983); the second is strategic policy represented by the policy paper of the Sea Water Commission and; the third is primary legislative tools represented by the Coastal Conservation Law.

PHASE I: COASTAL CONSERVATION VIA OUTLINE PLANNING

The outlining of the NOP 13 followed a thorough investigation of the coastal environment as well as methodological debates around the policy lines. The background data and planning rationale are detailed in a non-statutory planning report supplemented to the ordinance (IPA, 1983). According to this detailed document, NOP 13 developed an inclusive framework for protecting Israel's long and vulnerable shoreline. The framework constituted on two main principles: first, protecting the public's right to the shoreline that is, keeping the shore open and accessible to all, and second, preserving the natural resources of the coast by forbidding unnecessary development actions there. Based on these principles, a nine-point development policy was set (Table 1).

Table 1: A planning framework for protecting the shoreline, articulated in NOP13, 1982.

1. The coast will be preserved as an open public resource accessible to all.
2. Blocking the beaches with high-rise building is forbidden.
3. The public will take part in fundamental decision-making regarding the future development of the shoreline.
4. Planning the beach will be subjected to an inclusive planning viewpoint.
5. Sensitivity to environmental consideration will guide all future planning and building in the shoreline.
6. A free-from-building zone of 100 m will be preserved along the coastline.
7. Only uses that need the coastal location are allowed to be planned in the shoreline.
8. Decision-making must have a preference to renewal and rebuilding projects.
9. Existing construction will be redeveloped and adjusted to tourism, leisure and vacation uses.

In a way, this nine-point policy is defining the public interest in the shoreline. An important aspect of this interest is the creation of a 100 meters free-from-building strip (Point 6). In addition, the common, accessible nature of the shore (Point 1) and the dedication of the shoreline to marine uses (Point 7) are stressed.

As NOP13 is a statutory outline plan, it needed to transfer these principles of public interest into an outline map and articulate them in the zoning ordinance. In effect, once the outline plan is authorized, all background rationale has no legislative stand or practical meaning. Thus, the public interest was finally represented in four sheets of zoning-maps and a single eight-page document (including the cover-page and definitions section). This specification of land-use ordinance formed the planning law protecting the public interest throughout 196 km of highly desired, complicated, and multifaceted beach.

For several reasons, NOP13 could not–and did not–refuse all future construction near the shores, including within the 100 meters strip. Firstly, at that point large parts of the urban coasts were already developed and their occasional renovation seemed inevitable. Secondly, planning rights granted via a local plan that were approved before the legislation were not canceled out. As such a cancellation meant high compensations and long lasting legal combats, it was never seriously considered. And thirdly, the coastal location was indeed essential for several intentions

such as swimming and other marine sports, leisure, and tourism, in addition to the necessary military infrastructure. NOP 13, thus, aimed at limiting further development of public uses, as opposed to private building, and to specific purposes that needed the coastal location. Therefore, the plan statutorily defined nature and landscape reserves along the coastline, differing in the degree of flexibility to future development, and dedicated specific areas for landings, hostelling, and public leisure.

In line with the certainty-discretion dilemma and resulting from the accurate, detailed nature of the plan, a room for local maneuvering was needed. Section 5 (b) of the ordinance permits to change the border line of coastal zones, and section 12 allows consideration of local and district plans that "slightly and insignificantly" change the ordinances of NOP 13–both with the special permission of the Minister of the Environment or the recommendation of the District Planning and Building Commission, and according to the findings of an Environmental Impact Survey. In addition, like all other outline plans, NOP 13 remained open for local amendments, in the form of detailed plans, and to the approval of exemptions and easements.

Soon after the authorization of the plan, NOP 13 was challenged by developers and local governments aspiring to locate housing, commercial centers and private uses at the coast. As such initiatives clearly challenged the public interest, as defined by NOP 13, they needed to climb up the planning hierarchy, from the Local to the District Planning and Building Commission, and then to the National Planning Board, and receive the approval of these institutions. Despite the relative high effort, 60 easements and zoning amendments were considered by the National Planning and Building Board in 1987-2004[2], 54 of which were approved and granted authorization. Most of the amendments were neither slight nor insignificant. Easements and exemptions enabled the invasion of few dwelling and commercial uses into the coastal zone[3]. In addition, several landings were planned and authorized as easements to the NOP 13. Since occupancy of boats in the landings was usually low (Han, 1999), environmental bodies claimed that planning marinas was the means to justify construction within the forbidden 100 meters threshold. For example, the marina at Ashqelon was granted approval through the easement procedure in 1992; the marina occupies three kilometers of beach and the landing is backed by nearly 50,000 sqm of hotels, commercial uses and private dwellings. The marinas at Ashdod and Herzeliyah, authorized in 1994, are much larger and despite the national policy forbidding dwelling at the shore include numerous apartment buildings. Housing at the beaches was realized as buildings dedicated in the plan for hostelling were at later stages converted to dwelling. Thus, it required the appeal of a large environmental NGO—*Man, Nature and Law* (MNL) (Heb. *Adam Teva Vadin*) to the District Court in order to stop the selling of apartments in the back of Herzeliyah's marina[4]. The verdict written by Judge Uri Goren exposes the ease of circumventing the NOP13 with the help of planning commissions: the alleged hostelling was never coordinated with the Ministry of Tourism; units included several rooms and were bigger than average hotel rooms, and apartments were openly

publicized for dwelling. The public interest was effectively damaged as the policy defending it was systematically violated.

A projecting signpost to the abandoned public interest at the shoreline was the building of Carmel Beach Heights at Haifa. Although according to a plan authorized in 1977, prior to the approval of NOP 13, the first (and by far the last) two buildings of Carmel Beach Heights project were actually built and occupied in 1997. The original plan allocated about 100 dunams of coastal land to the construction of six buildings ranging from 7 to 24 floors high dedicated for hostelling, commercial uses and dwelling within the 100 meters range (Figure 1). The construction flamed public fury. The project was immediately labeled "the monster", "the wall" and initiated a widespread debate, carried by the two large environmental NGOs in Israel, *Man, Nature and Law* and *The Society for the Protection of Nature in Israel* (SPNI) (Heb. *HaChevra LeHaganat HaTeva*). Resulting from the campaign, the construction of the other buildings was cancelled and the two existing constructions became the symbol of the struggle for the conservation of the beach.

Figure 1: Carmel Beach Heights, built 1997 at the coastal strip of Haifa.

PHASE II: THE INTEGRATED COASTAL ZONE MANAGEMENT INITIAIVE

The notion of integrated management for coastal zone areas developed in numerous countries as a result of planning systems' weaknesses in protecting the coasts (Buanes et.al., 2004; Huggett, 1998; Taussik, 1997; Allmendinger, Barker and Stead, 2002). In Israel too, the evident debility of NOP13 and the continuous withering of the public interest led to the initiation of the Coastal Water Policy Paper (CWPP). This is an integrated policy paper relating to various aspects of the coast, attempting

to offer a multifaceted viewpoint of the coast and a wide-ranging set of tools.

Completed in 1997 and accepted by the national planning and building board in 1999, the CWPP is a non-statutory strategic paper. The paper's declared starting points are "seeing the coast and the territorial water as an important national and public asset", and "setting the frame for an integrated, sustainable management of the coast and the territorial water". This time, a six-point strategy was declared essentially resembling the NOP13 policy (Table 2). Similarly, the principles offered by the strategic paper related to keeping the coastline open and accessible to all, and developing the coast for uses that required the coastal or marine location. The paper divided the beach to cells and highlighted different types of development policy for each cell, in line with their specific attributes as ecological sensitivity, proximity to urban development and the length of the open beach. In addition, a thematic policy was set for dealing with subjects as commercial development, sand mining and closure of beaches.

Table 2: A planning framework for protecting the shoreline, articulated by the Coastal Water Commission, 1999.

1. The coast will be accessible to all and the development will encourage the active usage of the coast and the sea.
2. The development would preserve archeological and heritage culture at the coastline and preserve the richness of species and landscape for the next generations.
3. Leisure and touristic uses that specifically require the marine location would have a priority for coastal locations.
4. A careful usage of the economic potential of the water, including fishing, marine agriculture, mining, food and energy, is permitted.
5. Development of public infrastructure would be guided to locations that were violated by existing development.
6. A limited development of economic infrastructure is permitted, as long as the marine or coastal location is necessary and a proper environmental monitoring is operated.

Although the CWPP was a non-statutory paper it was accepted by the IPA and the National Planning and Building Board as representing their statement. A Coastal Water Commission was established that was adjacent to the National Planning and Building Board and authorized to review, accept or reject, all plans bordering the

beaches. The CWPP, with its detailed guidelines and wide-ranging view, formed the commissions' term of office.

Two leading issues stimulated NGOs' criticism against the frame constructed by the CWPP. The non-statutory status of the paper formed the first point of disapproval that is, in a regulatory planning system, land use rights stem from concrete statutory definitions whereas policy papers convey advisory, indefinite statements. Environmentalists' thus claimed that from the viewpoint of land-use planning, the strategic paper made no significant advance.

Second was the structure of the Coastal Water Commission. This relatively small commission included members of the national and district planning commissions with only one member belonging to public representative. Members of green organizations claimed that the commission would be biased towards economic development of the beaches and will not be able to protect the public interest at the shoreline. An even more bothering fact related to the commission's mandate. While the Coastal Water Commission was authorized to deal with plans that border the coastal water, plans referring to sites located at a small distance from the water did not need the commission's authorization. Thus although the CWPP wished to establish an integrated management mechanism for the coastal zone, the construction of the statutory bodies dealing with the coast appeared to conceal this aspiration.

PHASE III: THE COASTAL CONSERVATION LAW (CCL)

On August the 4th 2004 the Knesset, the Israeli parliament, authorized a new law for the coastal environment. For the Israeli environmental milieu, the passing of the law looked like a tribute to the Minister of the Environment, Professor Yehudit Naot, a persistent struggler for the environment and an avid supporter of this particular law. Naot, who suffered from an advanced illness, was at that point confined to her bed. Two months later she resigned from her position from office, and on December the 16th 2004 she passed away.

The authorization of the law marked an important milestone in the development of Israel's planning practice in general and with respect to environmental issues in particular. The new Coastal Conservation Law (CCL) was the first planning law in Israel that stated a specific planning policy. Up until the authorization of the law, planning policy was determined by outline plans and was occasionally amended by easements, exemptions and local zoning amendments. Through the authorization of the law Naot wished to make a mark on the Israeli planning system. Besides stressing the importance of restraining development at the shoreline, the CCL could serve as a case-study for a new planning tool, that of stating planning policy in primary legislation, making it unchangeable by local, discretionary plans yet authoritative and binding for local decision-making.

Coastal Planning Legislation: Between Two Alternatives

The legislation of the CCL included a minor debate regarding two opposing approaches to the law that hint at different ways to deal with the public interest in planning.

The first approach offered to produce clear, strict instructions regarding the construction at the shoreline that is, to decide on the specific locations of marinas, public-leisure sites, and tourism and to state in advance the ordinances for the future development. In this case, the law would operate similarly to an outline plan, but with greater validity and less options for local amendments. According to this approach, future development and land uses would be settled on in advance and their amendment needed to involve legislative action. Since this is an extremely limiting framework, it was suggested to confine legislation to small areas of a highly endangered coast. Hence, in this alternative the law would relate to a relatively narrow strip of 100 meters from the waterline and be confined to the unplanned areas along the shore. In other words, the law would omit about 103 kilometers of planned shore and another 49 kilometers of military and infrastructure uses and focus on scattered pieces of shore that sum up to 45 kilometers. Most of the shore, especially in and near the cities, would remain under the authorization of national outline plans.

The second approach and the one that was finally legislated looked at a wider belt defined as "the coastal environment". The coastal environment includes the sea, the shore and the back of the shore, up to 300 meters from the waterline, both within and outside the cities. The rationale for the wider view is that the coastal environment forms a unified, complex system of land uses, processes and opportunities that cannot be handled if torn to small pieces. In particular, this approach assumes that actions taken all around the coastal environment are significant and may affect parts of the shore. Planning decision-making thus needs to be tested and authorized in advance in line with the guiding principles.

The coastal development policy that formed the backdrop to the second approach related to a specific list of risks to the public interest at the shoreline. The wider viewpoint taken by this approach enabled to follow the lines of the CWPP and to relate to risks to ecological systems, prevention or lessening of sand flows, damage to the coastal cliff and violating antiquities located at and near the shore.

The appeal of the first alternative stemmed from the clear, strict policy of the law and the fact that it offered a straightforward tool for the protection of the remaining untouched beaches. In addition to the fact that this version of the law related to a relatively limited portion of the shoreline, there was a danger that the strictness of the law would require local circumventions which may lead to its gradual withering. The second alternative offered a more comprehensive frame enabling to consider occurrences at a wider coastal environment and to assess the impact of varied development processes on the shoreline, including inside the cities. Still, the power to protect the public interest needed to rely on the level of decisions' adherence to the

stated policy. As it was finally chosen, we are now able to assess whether this different way of action is more suitable for protecting the public interest.

The practical framework created by the CCL includes two basic features: the coastal policy defined by the new legislation and the Coastal Conservation Commission (CCC) that substituted the Coastal Water Commission and became the central node of planning decision-making regarding the shoreline. In the last part of this paper we describe these aspects and evaluate their efficacy in terms of protecting the public interest.

The Coastal Policy

The costal policy defined by the CCL was based on the principles of protecting the public interest at the shoreline developed earlier by the NOP13 and the CWPP. Since legislation is an inflexible frame, though, and resulting from the need to make the coastal policy relevant for the entire coastal environment, the policy included in the CCL is rather limited, in comparison to the NOP13 and the CWPP. In effect, the policy included in the CCL was reduced to include two main issues:

1. The prevention of harms to the coastal environment: Section 3 and 4 of the law guides the CCC to reject all plans that have the potential of harming the shore and approve only plans that "minimize the damage to the coastal environment". The related damages include damage to coastal ecological systems, to the natural flow of sand along the shoreline, and to antiquities and heritage sites along the beach.
2. Safeguarding the right to a public walk along the shore: Section 5 of the law demands that the length of the shore will be accessible and open to walking. The few exceptions defined in this section include military camps, infrastructure facilities, harbors, and permitted commercial bathing sites.

Many of the policy lines included earlier in NOP13 were in effect omitted from the CCL. The most bothering statements missing from the CCL are the needs to prohibit new construction from blocking the view to beaches and to restrict building at the coast exclusively for uses that need the coastal location. In addition, the principle of no-new-building within the 100m threshold, that formed the central pillar of the NOP13 and the CWPP, is not included directly in the legislated policy. The CCL's starting point, thus, views the public interest in the coastline in a rather restricted way while ignoring the aspects of this interest that were acknowledged in the past. We will now turn to the operational aspect of the CCL and see how it manages to protect this relatively restricted public interest.

The Coastal Conservation Commission (CCC)

The CCL required the creation of a control development body that would ensure that the authorization of the various plans is done in accordance with the policy statement. The CCC was thus created adjacent to the National Planning Board.

That is, it stands above the local and district planning commissions and is subjected to the legislated policy statement alone. All statutory outline plans, including national, district, local and detailed plans that include even a small part of the coastal environment need to receive the CCC's authorization. In addition, all easements and exemptions that relate to the coastal environment are subjected to the approval of the CCC. Hence, in the fragmented coastal environment, usually made of different municipal governments and district commissions, and subjected to an assortment of statutory land use plans, the CCC forms an integrated statutory level dedicated exclusively to the coastal environment. Particularly, unlike other statutory commissions that are often left with ad-hoc criteria and commonsense considerations while weighing plans that apply for zoning amendments, the CCC is bound to applying the coastal development policy alone. In a way, the CCC is committed first and foremost to the public interest at the coasts as defined by the law.

The CCC includes seventeen members, ten of which represent governmental bodies, with the representative of the Ministry of Interiors as chairman, and the rest representing local governments, NGOs and experts. In an attempt to make discussions of the CCC more efficient, a secondary commission reviews the submitted plans and applications and sorts them before they are brought to the larger forum. This secondary commission is unofficially called "the sorting commission" and it includes five members of the CCC.

It has been more than four years since the authorization of the CCL and the operation of the CCC. Members of the CCC, including representatives of environmental NGOs, believe that the commission has managed to put the public interest at the top priority. In a series of interviews with representatives of NGOs and the public, all interviewers agreed that the CCC is ready to stop the construction of large and unnecessary projects at the coastline, including marinas and housing, like those offered in the 1990s (Bresler, 2008; Papay, 2008; Lerman, 2008). Gladly, the applications submitted to the CCC in the last four years were not of that scale. Nevertheless, several of the findings of this research raise questions regarding the capacity of this tool to protect the public interest.

The first point relates to the structure of the CCC. More specifically, it relates to the fact that many of the commission members are representatives of governmental or environmental bodies and are thus committed to other interests beyond that of preserving the coastal environment. The law requires that CCC members would be commissioned by various interest bodies[5]. The fact is, however, that the majority of the members are associated in planning decision-making elsewhere. The head of the CCC also heads the IPA and The National Planning and Building Board, hence is personally obligated to the entire planning system. Other members assign district planning commissions, hence share the perception of facilitating development. Even representatives of interest groups such as governmental ministries and "green" bodies see the coastal environment from the perspective of other environmental issues they deal with. It appears as if only a few CCC members are dedicated to the

coastal issue alone, and are free from considering issues others than the conservation of the coast.

The second point, which may result from the first one, relates to the attitude manifested by the CCC's decision-making. The coastal planning legislation was motivated by the aspiration to reinforce the policy of the state. A closer view at the decisions taken throughout the last four years suggests that the policy operated by the CCC is in fact rather flexible.

Throughout the years, the CCC reviewed 196 plans of various scales and volumes[6], of which 76 were granted authorization, 7 were not yet decided upon and only 11 (6%) were rejected. At the same time, the most common decision taken by the CCC was to authorize the plans subjected to terms. As much as 101 plans were granted approval in this channel, usually meaning that a range of changes need to be performed in line with the commission's instructions. The prevalence of this resolution, and the scarcity of plans that were actually rejected by the CCC, may point at the commissions' tendency towards development.

Alas, this troubling tendency emerges even beyond the statistics. In various cases, the commission authorized plans that offered development in an undeveloped coastal strip. One of the projecting cases was that of a plan for the construction of a leisure village at HaBonim Beach, an undeveloped haven north of Hadera in the central coastal plane. Despite objection made by members of the CCC the detailed development plan was granted authorization[7]. Similarly, the CCC authorized few plans for high-rise housing buildings in Netanya. Again, representatives of environmental NGOs within the CCC expressed objection, but the commission was satisfied with changing and adjusting the plans by means of making terms.

The CCL is still at its infancy. More time is needed for an accurate assessment of the ability of this framework to deliver a stable, secured decision-making mechanism that changes the inherent problems of its successors. Nevertheless, as most environmentalist NOG representatives in Israel are happy with the performance of the new frame, perhaps the public interest has finally reached a safe haven.

CONCLUDING DISCUSSION

Coastal planning in Israel provides an opportunity to compare between three major frames of planning in terms of their capacity to protect the coastal environment: first, comprehensive outline planning, second, strategic planning and third, a discretionary mode of planning supported by primary legislation. It also provides an insight to the fate of public interests in a development-oriented society, and the role of the pubic planning system in securing these interests.

The public interest is often seen as an elusive value. Since it is usually a complicated, loaded issue, the planning system finds it hard to protect the public interest and to safeguard it from narrow, private interests. Conversely, the public interest in

the coastal environment is a relatively clear issue. It was similarly articulated by the NOP13 planners, by professionals involved in various aspects of the marine surroundings as well as by the numerous environmentalists that were engaged in planning conflicts at the shoreline. It is the relative lucidity of this interest that makes it suitable for testing the operation of the public planning system, particularly for contesting the aptitude of the system to protect the public interest at the coast and to deliver a unified message regarding the future setup of this fragile environment.

This paper showed that the first phase of coastal planning continuously failed in the task. The NOP13 managed to define the public interest at the coast yet could not deliver it. Since the early 1980s, and at a greater extent during the 1990s, the public interest at the coast was constantly violated by private, entrepreneurial interests. The plan could not prevent the construction of large landings, backed with housing and commercial activities, and the economic development of unoccupied beaches. Mainly it was the combination of the necessary flexibility on one hand and the rigid statutory frame on the other hand, that encouraged the systematic circumvention of the plan. Clearly, this planning tool is unsuitable for the task of blocking developmental initiatives for the sake of the common.

The second phase, the CWPP, was similarly doomed to failure. This time, the frame was inherently flexible leaving the public interest with no substantial armor. Particularly, the powers of the Coastal Water Commission were limited to plans that bordered the coast. Resulting from the limited power granted to the protectors of the coast, this frame was heavily criticized and needed to be replaced.

The third frame, the CCL, appears to offer a much better and powerful tool for protecting the public interest–although not free from flaws. The major weakness of the CCL appears to be the relatively narrow definition of the public interest, expressed by the law, and the structure of the CCC. Nevertheless, it looks as if the public interest is much safer now, that it is protected by strict legislation and an inclusive commission. Indeed, only time will tell whether this frame managed to provide a better shelter to the common interest. Should it prove to be effective, though, this planning tool would serve as a model for the protection of other public interests by the planning system.

The coastal planning case, however, opens the door to a fundamental issue, namely the performance of the public planning system as the protector of the public interest. Scholars refer to the fact that the public interest is usually an indistinct value, contested by professionals as well as pressure groups. As the very definition of public interest is often under debate, the inclusion of public interest issues in plans and policies turns out to be limited and partial. Particularly, the academic discourse regarding these issues often assumes, implicitly, that finding a way to define and agree on the public interest issues is the key for their protection. The related implicit assumption is that once the public interest is agreed on, the planning system is capable of promoting and safeguarding it. The inclusion of public interest aspects in plans and policies thus appears to be the solution for many environmental, social and cultural debates.

Conversely, the coastal planning case reveals that acknowledging the public interest and agreeing on it, publicly articulating it and even including it in explicit policy papers and statutory plans, is not enough. In effect, public interest values forever face the danger of being systematically violated by private as well as public (i.e. local government) agencies with the silent collaboration of officials from the planning administration. In particular, as all private and capital-accumulation interests are promoted by specific powerful actors involved in the planning scene, the public interests are the first to be neglected and compromised on.

The struggle for developing the right tool for protecting public interest assets shows that there are some channels that could better fit the task. Chiefly, in the face of the inevitable need to perceive planning decision-making as a case-by-case mechanism, the need for a semi-judicial frame that openly assesses and judges the cases becomes evident. The mechanism operated by the CCC hints at the proper way to deal with endangered values. Mainly, the wide-ranging commission reviewing cases that may damage the protected interest, the publicity given to the discussions and the frequent publication of the guiding principles addressed by the commission are important. This frame needs to be further improved with the help of the CCC's experience and lessons. The next step, though, would be reproducing comparable commissions for protecting public interests at the environment and in the hub of cities, for the sake of the common and for future generations.

NOTES

1. According to the Ministry of the Environment (www.sviva.gov.il), due to sand mining and the seizure of sand in marine constructions, the beach already lacks 20 millions m3 of sand, which equals the lost of sixty years of sand supply from the Nile delta.
2. The 60 easements and zoning amendments refer to the Mediterranean shoreline, whereas another 65 easements and zoning amendments for the Sea of Galilee shore were considered in that period.
3. for example in Qesarea (plans from 1987 and 1991)
4. File no. 2038/98 was submitted to the District Court in December 1998. A year later the court accepted the appeal and stated that dwelling at the marina was illegal. Few months later, the Supreme Court cancelled this verdict, but it was reassessed by the District Court in June 2002. Currently, apartments are occupied by housing while the case is under the review of Supreme Court. Nevertheless, further construction of dwellings at the marina site was forbidden.
5. Ten governmental representatives in the CCC are delegates from the Ministries of Interior (Chair), Security, Tourism, Infrastructure, Agriculture, and Housing, two representatives from the Ministry of Transportation and two from the Ministry of the Environment. In addition, two representatives are officials from

local government, one from the Architects and Engineers Association, two are experts in marine environment, one from an environmental NGO and one from the Nature and Parks Authority – all appointed by the Minister of Interiors.

6. Data relating to the CCC were received from the commission's secretary, Ilana Shafran, and taken from the IPA's website (http://www.moin.gov.il).
7. A review of the CCC's protocols of the last four years reveals that decisions are usually taken unanimously. Only in twelve plans the CCC members were requested to vote and choose between two alternatives, and in only two cases the suggestion proposed by the green opposition was accepted.

REFERENCES

Alfasi, N. (2006) Planning policy? Between long-term planning and zoning amendments in the Israeli planning system. *Environment and Planning A,* 38 (3):553-568.

Allmendinger, P., Barker, A., Stead, S. (2002) Delivering integrated coastal-zone management through land-use planning. *Planning Practice and Research,* 17 (2): 175–196.

Booth. P. (1995) Planning or discretionary action: Certainty and responsiveness in implementing planning policy. *Journal of Planning Education and Research,* 14 (2): 103-112.

——,(1996) *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong.* London: UCL Press, The Natural and Built Environment Series 9.

Booth, P., Breuillard, M., Fraser, C., and Paris, D. (2007) *Spatial Planning Systems of Britain and France*. London: Routledge.

Bresler, G. (2008) Personal interview (Representative to the Coastal Conservation Commission, Ministry of Environmental Protection, Israel).

Buanes, A., Jentoft, S., Karlsen, G. R., Maurstad, A., and Søreng, S. (2004) In whose interest? An exploratory analysis of stakeholders in Norwegian coastal zone planning. *Ocean and Coastal Management,* 47: 207–223.

Campbell, H. and Marshall, R. (2000) Moral obligations, planning and the public interest: A commentary on current British practice. *Environment and Planning B,* 27: 297–312.

——,(2002) Utilitarianism's bad breath? A re-evaluation of the public interest justification for planning. *Planning Theory*, 1(2): 163-187.

Claydon, J. and Smith, B. (1997) Negotiating planning gains through the British

development control system. *Urban Studies,* 34 (12): 2003-2022.

Cullingworth, J. B. (1993) *The Political Culture of Planning: American Land-Use Planning in a Comparative Perspective.* New York: Routledge.

——,(1994) Alternate planning systems: Is there anything to learn from abroad? *Journal of the American Planning Association,* 60 (2): 162-172.

Fletcher, S. (2000) The evolution of coastal management policy in the state of Israel. *Marine Policy,* 24: 395-405.

Forester, J. (1993) *Critical Theory, Public Policy and Planning Practice: Toward a Critical Pragmatism*. Albany: New York Press.

Han, I. (1999) *Landings on Israel's Mediterranean coasts*, Tel Aviv: The Society for the Protection of Nature in Israel (Hebrew).

Healey, P. (1997) *Collaborative Planning: Shaping Places in Fragmented Societies*. Basingstoke: Macmillan.

Howe, E. (1992) Professional roles and the public interest in planning. *Journal of Planning Literature,* 6(3): 230–48.

Huggett, D. (1998) The role of federal government intervention in coastal zone planning and management. *Ocean and Coastal Management,* 39: 33-50.

Hull, A. (1998) Spatial planning - The development plan as a vehicle to unlock development potential. *Cities* 15 (5): 327-335.

Israel Planning Authority (IPA) (1983) *National Outline Plan no. 13: A National Plan for Israel's Mediterranean Coast*. Jerusalem: The Ministry of Interiors. (Hebrew)

Kay, R. and Alder, J. (2005) *Coastal Planning and Management.* London: Taylor and Francis.

Klosterman, R. (1980) A public interest criterion. *Journal of the American Institute of Planners,* 43(3): 323–33.

Lerman, E. (2008) Personal interview (Representative to the Coastal Conservation Commission, The public interest).

Newman, P. and Thornley, A. (1996) *Urban Planning in Europe: International Competition, National Systems and Planning Projects.* London: Routledge.

Olsen, S. B. (2003) Frameworks and indicators for assessing progress in integrated coastal management initiatives. *Ocean and Coastal Management,* 46: 347–361.

Papay, N. (2008) Personal communication (Representative to the Coastal Conservation Commission, Society for the Protection of Nature in Israel).

Taussik, J. (1997) The influence of institutional systems on planning the coastal zone: Experience from England/Wales and Sweden. *Planning Practice and*

Research, 12 (1): 9-19.

Tewdwr-Jones, M. (1999) Discretion, flexibility, and certainty in British planning: Emerging ideological conflicts and inherent political tensions. *Journal of Planning Education and Research,* 18(3): 244-256

Treby, E. J. and Clark, M. J. (2004) Refining a practical approach to participatory decision making: An example from coastal zone management. *Coastal Management,* 32 (4): 353-37