Landscape assessment and the Environment Court

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Landscape assessment is a key aspect of the work of landscape architects, particularly for those whose professional life intersects with our local government planning systems governed by the Resource Management Act 1991. There are two aspects to this work. One aims to provide assessments of the quality of landscapes in order to determine if they warrant protection under S6(b) of the Act as 'outstanding natural landscapes and features'. This would usually be done in relation to the development of a District or City Plan. The other aspect entails the assessment of the impacts of proposed developments on the landscape to determine if they comply with local planning documents, and ultimately with S6(b) and 7(b) of the Act. Should decisions within either of these aspects be appealed they will be heard in the Environment Court and landscape architects take the role of expert witnesses in these hearings.

The Environment Court is constituted by a judge, providing legal expertise, and commissioners selected from a wide range of environmental professions, including landscape architecture. It is the final arbiter of matters of fact in relation to the cases that it hears. Appeals against its decisions can only be made in regard to matters of law. Consequently the role of the Landscape Architect in the Environment Court is to assist the Court by providing evidence to enable it to determine the matters of fact upon which it will make its decision (Skelton, 2000).

One of the generally accepted defining features of a profession is the possession of a generalised and systematic body of knowledge. Professions are also expected to demonstrate a sense of social responsibility and a high level of self-regulation, particularly in regard to training, licensing and quality of work (Dsur, 2008, Freidson, 2001). This implies that the arbiter of best practice within a profession is that profession, and that, at least ideally, consistency of theory, method and results should be anticipated. Issues have, however, been raised over many years regarding the quality and consistency of approach to landscape assessment in this country.

In 1999 the New Zealand Institute of Landscape Architects (NZILA) held a conference focusing on landscape assessment followed in 2008 by a series of workshops at which practitioners discussed the 'problem of landscape assessment'. These workshops led to the publication of a best practice note entitled 'Landscape Assessment and Sustainable Management' at the end of 2010. As a practitioner, there was little which I found to be helpful in this document beyond a confirmation that I was on the right track, in a very general sense. In 2013 the British Institute of Landscape Architects published an updated 'Guidelines for Landscape and Visual Impact Assessment'. The NZILA Education Foundation toured one of its authors around New Zealand, presenting master classes based on the processes detailed in what is, essentially, a manual. At that time it was considered by many that these guidelines

could be adapted and adopted by the NZILA for use in this country, and many practitioners, myself included, adopted them as a sound basis for our assessment work. They were not adopted by the NZILA and disquiet about process continued. In late 2017 a further series of workshops on landscape assessment were held around the country. The notes from those meetings suggest some movement towards a more consistent approach is occurring, but also show that considerable variance in opinion and practice remains.

In 2010/2011 I undertook a piece of original research examining the influence that the Environment Court and its decisions had had on the practice of landscape assessment. This research concluded that the Court had exerted a strong influence. This was quite explicit in some instances, practitioners reporting that they simply repeated what seemed to be preferred by the Court. Practitioners also, however, often followed what they referred to, incorrectly, as 'case law'. What the practitioners meant by 'case law' was a presumption that previous Environment Court decisions were in some way binding on their practice. This is a misunderstanding of what 'case law' actually is, and the role of the LA as an expert witness.

'Case law' has a narrow and particular meaning and is a part of the system of jurisprudence based on judicial precedents. It is made up of a body of reported cases and the interpretations of the law in those cases become binding on lower courts. It is certainly a fundamental part of the New Zealand legal system ensuring consistency of approach between levels and divisions of the wider court system. The key point, however, is that it focuses on the correct interpretation and application of the law and as noted above, the role of the landscape architect is to assist the Court in the determination of the facts.

Section 4 of the Evidence Act 2006 defines an expert as 'a person who has specialised knowledge or skill based on training, study or experience'. Experts are able to provide opinion as well as factual evidence. Such experts must qualify themselves to the Court by evidence of qualifications, experience and membership of an appropriate professional body. Consequently the locus of the professional's abilities and their qualification as an expert lies with the profession to which they belong, and it is to this profession that individuals must look for the answers to definitional and procedural questions, and not to the Court.

That having been said, it is the case that the legislation within which landscape assessment practice occurs is, in my opinion, problematic. Section 6(b) of the RMA requires the protection of outstanding natural landscapes and features from inappropriate subdivision use and development. It is strongly my opinion that this needs to be amended, and it appears from the 2017 professional workshops that this opinion is gaining traction within the profession. This clause has engendered arguments within the landscape profession which remain unresolved after 27 years regarding the meaning of 'outstanding natural landscape' and how these should be determined. My particular issue with this clause is that it is the case that most of our most outstanding and most natural landscapes are already protected by our network of national parks. We have many landscapes which are highly valued but also highly modified and at times it seems the ONL/ONF concept has been stretched to fit. It would be far better, in my opinion, to amend the Act to require the protection of 'outstanding landscapes' enabling communities to protect the landscapes which are important to them, whether urban or rural, modified or pristine.

With regard to landscape assessment practice, the outcome of the 2017 workshops is promising. It is clear there is an appetite within the profession for greater consistency of practice and a clarity that this must come through the determination of concepts and processes from within the profession. As well as calls for an updated practice note a strong emphasis on ongoing professional development from the NZILA and an acknowledgement of

landscape planning and assessment as an advanced specialism within the profession are, in my opinion, positive and likely to address successfully some of the weaknesses identified to date.

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Marion Read has a PhD in Landscape Architecture from Lincoln University and a Masters of Resource and Environmental Planning with Honours from Massey. From 2005 to 2013 Marion worked for Lakes Environmental, and its predecessor Civic Corp, both organisations charged with the planning and regulatory work for Queenstown Lakes District Council, as a Landscape Planner. From 2013 to 2017 she was self-employed doing similar work, but retired at the beginning of this year. Marion's work has been both in consenting and in policy. She lives on a small farm (lifestyle block) near Dunedin with her partner and Jack Russell, Freddie.