

Overview of the statutory context

SIMON SWAFFIELD

THE ELECTION OF THE FOURTH LABOUR GOVERNMENT in 1984, under the leadership of Prime Minister David Lange, heralded the beginning of a period of reform that affected all aspects of life in New Zealand. Environmental administration is one of many areas in which the role of the state and the nature of the public interest has been reshaped. The key statutes affecting landscape assessment are the Environment Act 1986, and, in particular, the Resource Management Act 1991 (RMA91). The Environment Act 1986 was significant for two reasons:

- first, it established the Ministry for the Environment, which has been central in influencing the direction of subsequent policy and statutes; and
- secondly, it established a public interest in all ecosystems (O'Connor and Swaffield 1987).

The Environment Act 1986 prefigured a major shift in the emphasis of planning, later expressed in the RMA91, away from development control and towards a concern for the health and sustainability of biophysical systems. The goal of the RMA91 is the sustainable management of natural and physical resources (s 5(1)), but the definition of sustainable management in s 5(2) continues to be the focus of debate among landscape architects and other practitioners. This definition attempts to balance use, development and protection of natural and physical resources in a way that enables socio-economic activity while safeguarding ecosystem functions (see the article, in this issue, by Batty for fuller analysis).

In relation to 'landscape' issues, the RMA91 includes requirements for:

- the preservation of the natural character of the coast and inland waters (s 6(a));
- the protection of the coast, inland waters, natural features and landscapes from inappropriate subdivision, use and development (ss 6(a) and (b)); and
- the protection of areas of significant indigenous vegetation and habitat (s 6(c)).

In addition, the agencies who administer the RMA91 are required to 'have particular regard' to a range of other landscape-related matters, such as amenity, heritage and environmental quality (s 7).

The RMA91 has an hierarchical structure, with provisions for national policy statements, regional policies and plans and district plans. Depending on the details of these linked provisions, individual resource consents may be needed for a range of site-specific activities, and these separate consents may also be subject to detailed conditions. Lower levels of determination must be compatible with levels above, and there is also a requirement (s 32) for policies and rules proposed by district and regional councils to be evaluated by those councils before implementation to ensure their effectiveness in achieving the purpose of the Act. As well as being hierarchically integrated, the RMA91 is cyclical: there is a requirement for monitoring (s 35) and provisions for review of policies and plans by councils. At the project level, the RMA91 requires the adoption of environmental assessment procedures intended to identify and then avoid,

Simon Swaffield is Professor of Landscape Architecture, Landscape Architecture Group, Lincoln University, PO Box 84, Canterbury, Aotearoa New Zealand.

Telephone: (03) 325 3804

Fax: (03) 325 3854

Email: swaffies@lincoln.ac.nz

STATUTORY CONTEXT

remedy or mitigate adverse environmental effects of proposed activity. The RMA91 also includes significant provisions and requirements for public involvement in policy preparation and review and in the consideration of significant consent applications.

One contentious concept that has been used to encapsulate the overall intent and operation of the legislation is the environmental 'bottom line'. The implication is that the RMA91 is basically about identifying and vigorously protecting the thresholds of acceptable change beyond which significant environmental damage could occur. The presumption is that landowners can do what they like with their land as long as these fundamental environmental limits are not crossed. This notion of 'bottom lines' is by no means universally accepted.

Although 'landscape' is not defined in the RMA91, it is mentioned in a number of sections, including s 6(b) (mentioned above) and in the fourth schedule, which sets out matters to consider when preparing an assessment of effects on the environment. It is clear from this, and from the overview above, that there is a range of potential applications for landscape assessment under the legislation.

The following two reports, by Bob Batty and Roger Tasker, discuss landscape provisions in s 6(b) and the assessment of resource consent applications. In every situation the fundamental parameters of the legislation apply. Therefore, landscape assessment must:

- deal with the actual and potential effects of land-use activity, rather than the activities themselves;
- follow, in broad terms, established environmental assessment procedures;
- relate landscape change to its policy context;
- incorporate provision for public input into policy or significant consent determinations; and
- test any policies or rules aimed at protecting landscape quality for effectiveness.

Finally, it must be noted that the RMA91 is currently under review, with a Bill before Parliament to amend the Act. Several proposed amendments impact on the 'landscape' provisions within the legislation. These include the redefinition of 'environment', which is narrowed to limit consideration of human elements to health, safety, amenity and cultural values, omitting a current reference to social and economic factors. The definition of 'amenity' is also revised, omitting reference to 'aesthetic coherence'. The second schedule, which includes matters that may be considered in district plans (including landscape), is repealed. The requirement under s 32 to demonstrate costs and benefits of proposed plans and policies is strengthened. The protection of historic heritage of special value to people and communities is proposed to become a matter of national importance under s 6. 'Historic heritage' includes historic sites, structures, places and areas, and historic gardens, and also refers to both the resource itself and its surroundings. Overall, the likely effect for landscape architects of the proposed amendment appears to be that 'landscape' issues will need more careful specification in regard to their significance to the purpose of the Act.

REFERENCES

O'Connor K F and Swaffield S R (1987) Integrating Development and Conservation Through Landscape During Organisational Change, *The Landscape* 32/33, pp3-9.