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'LANDSCAPE ARCHITECTURE AND PLANNING'

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Lincoln College

1985

A dissertation submitted in partial fulfillment of the requirement for the Diploma in Landscape Architecture at the University of Canterbury.
ABSTRACT

A study investigating the way in which landscape issues have been introduced into the planning system at the level of the District Scheme. An assessment is made of the relationship between Landscape Architecture and Planning Planning professions in a particular Local Authority.
Acknowledgements

In undertaking this study I have received information and personal assistance from several people involved in the fields of law, planning, local politics, and landscape architecture. I appreciate their time and would especially like to thank:

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INTRODUCTION

Planning is established as both a professional and a statutory activity. This dual relationship developed in the United Kingdom and has been translocated to New Zealand with the adaptation of the British parliamentary system. The discipline of planning shares similarities with that of landscape architecture. Its application involves both broad and small scale issues e.g. from national resource allocation to the location of activities in the urban environment. Since the post-Second World War reconstruction period, the role of planning has diversified in Britain and New Zealand. The rise of environmentalism, and world concern with resource depletion, has led to the involvement of planning in resource allocation. Economic analysis and predictive assessment are now accepted planning tools (eg. resource management). While diversification has occurred the traditional role of 'Town Planning' retains a high profile. As in the United Kingdom New Zealand Town Planning has been formalized through the passing of planning statutes. Though there are caveats attached, this formalization lends state authority to planning assessments. Most citizens have contact with Town Planning via the implementation of District Schemes. These regulate the nature and geographical location of development.

District Scheme planning is of importance to landscape architecture. It is through the process of such 'statutory planning' that landscape issues are presented at the local level. The impression gained as a student is that landscape architects find the planning system frustrating to deal with. This frustration seems to relate to the nature of the planning system and to the difficulty of expressing environmental issues in law. Problems with environmental law are not confined to the field of landscape architecture. Debate centers on whether the Courts are able to judge development issues on the basis of statutory interpretation when the issues appear to require ethical or political judgements. Justice Turner outlines this dilemma when discussing the conflicting value systems of Maori and Europeans with reference to the Waikato River and Manukau Harbour (see appendix I).
The aim of this study was to investigate the way in which landscape issues have been introduced into the planning system at the level of the District Scheme. In doing so it has also assessed the relationship between the landscape architecture and planning professions in a particular authority. The study results are detailed in three sections. Section One deals with the background to statutory planning and illustrates some of the variables relating to landscape issues. Section Two assesses the operation of the system using a case study to investigate the experience and points of view of those who operate it. Interviews with staff and members of a local authority and a brief examination of the District Scheme they were involved with are included. Section Three attempts to weigh up the administrative and historical issues, outlined in Section One, against the day to day influences identified by the practitioners in Section Two. In this summary consideration is given to the extent that landscape provisions can be incorporated in the planning system and to the nature and politics of both the planning and landscape professions.
SECTION ONE

LOCAL AUTHORITY PLANNING - THE 'NUTS AND BOLTS'
CHAPTER ONE

THE INSTITUTIONAL FRAMEWORK

1.1 Planning - Early History

Under the Local Government Act local authorities are charged with responsibility for the organization of services and amenities within their jurisdictional areas. This responsibility began with the Municipal Corporations Ordinance (1842) which gave local authorities powers to make and repair roads, water works and sewers. These provisions were strengthened with the Municipal Corporations Bill (1867) which covered protection and width of streets, sewerage, lighting, water supply, markets, community buildings and reserves.

Whilst the initial aim of local authorities was the development of an infrastructure necessary for 'western life', the emphasis shifted with increased levels of development. As in older countries increased affluence and security resulted in the promotion of environmental and cultural considerations. The local authority came to be responsible for public wellbeing, recreation, and environmental quality. Groups similar to Ebenezer Howards's 'Garden Cities Association' began to form in New Zealand and to support the establishment of comprehensive town planning legislation (eg. A.M. Myers Town Planning Bill of 1911). The political and legislative response mirrored the British experience and began to support the emerging discipline of town planning through the creation of planning legislation. United Kingdom law included a history of by-laws concerning matters such as disease and animals, eg. in 1300 the City of London refused permission to the king to build a road. However the legislation and planning was piecemeal and haphazard. It was the rapid emergence, and accompanying urbanization, of the Industrial Revolution which lead to the full development of both town planning and planning law.
1.2 Early Planning in New Zealand - Restriction of Property Rights, Absence of 'value' Definition

The first New Zealand planning statute was the 1926 Town and Country Planning Act (T.C.P.A). Under this Act cities of greater than 1000 inhabitants were required to prepare a town plan 'in such a way that will most successfully promote its health, amenity, and advancement'. This was the first comprehensive legislation to give territorial authorities the right to plan and to restrict land for certain activities or terms. The principal method of control was via zoning which either restricted or separated incompatible land uses. Definition of areas for 'specified purposes, or classes of purposes' was required by the Schedule of the 1926 Act. The introduction and form of this Act had implications for both planning and subsequent legal interpretation:

(1) It was by a restriction on the land owner that the concern and intent of the planning authority was given form.

Prior to the evolution of planning law the land owner could do as he/she wished within the bounds of by laws. The introduction of planning legislation could be seen as a shift from individual property rights to an acceptance of the 'greater good'. Referring to the 1953 Act Justice McMillan said:

The Act is one which, for the good of the community as a whole, places on individuals restrictions as to the use of their properties - restrictions which may often appear to them irksome and even unfair"

Attorney-General and Robb v Mt. Roskill Borough and Wainwright (1971 NZLR 1030 at 1043-1044.

The right to freedom of action within one's own property is a principle long established in common law and one which courts are reluctant to infringe upon:
"In construing its terms, the Courts, in accordance with established principles, will not adopt a meaning which takes away existing rights of property owners further than the plain language of the statute, of the attainment of its object according to its true intent, meaning and spirit requires"


The conflict between individual and community interest (embodied in official organizations) remains an issue today.

(2) While the interpretation of planning procedures by the Courts is said to have reference to 'good planning principles' the law itself does not define these principles.

Planning approaches are developed by planners. It is the legitimization of these approaches that is left to the Courts. As Paul discovered in the New Testament the law by itself is powerless to enforce the adoption of 'good procedure' and it can only determine what is 'bad procedure' by reference to the relevant statutes.

1.3 Further entrenchment via Statute - Planning becomes Mandatory

The 1926 T.C.P.A was not widely implemented, due to avoidance by local authorities via an extension clause, but the basis of future planning was laid. In 1941 the Standards Institute issued a Standard Code of Clauses for local authorities. The Ministry of Works formed a planning division with an advisory Town Planning Section. Then followed the inception of the 1953 T.C.P.A. which clearly indicated the path of planning in New Zealand - a thorough and descriptive process guided by statute. As well as the preparation of District Schemes by local authorities provision was made for the preparation of Regional schemes, though only local schemes were mandatory. Complementing the 1953 Act a model Code of Ordinances was passed in 1960. In 1977 a revised Act was implemented. The 1977 T.C.P.A. is the backdrop to current District Scheme planning and is different from the 1953 Act in several respects.
During the period between the 1953 and 1977 Acts New Zealand had experienced the rise of the environmental movement and had demonstrated public support for its concerns (the Manapouri Campaign, Nelson Beech Forest issue). The 1977 Act reflected this shift in social thinking and included references to the 'wise use and management of New Zealand's resources' (s3 (b) as one of the 'matters of national importance' to be recognised and provided for in all schemes (regional and district).

1.4 Directive Controls lifted

A shift had also occurred in the nature of its text. No model ordinances were supplied and though ordinances were required (s36 (2) (c)) the request was open ended - "(and) such other particulars and material as the Council considers necessary for the proper explanation of the scheme" (s36 (2) (d)). Planning by local authorities was seen to have come of age and local planners were expected to be capable of developing their own descriptive format. Bearing this in mind it is interesting to note that many authorities have maintained a fairly close approximation to the 1960 Code of Ordinances in their review procedures. This adherence to the zoning and ordinance system of the 1950's has had implications for landscape provisions.

1.5 The Institutional Process

The creation of a District Scheme is a structured process following set guidelines. It involves formulation of policy by Council, correspondence with interested parties, hearings in Council, and often hearings before a judicial body (the Planning Tribunal). As the aim is to echo the community will (within the confines of 'good planning principles') opportunity is given for public participation at different stages in the proceedings. Commenting on the 1977 Act the Review Committee said:

"New Zealand is now unique in the extent to which its planning legislation confers upon third parties such full opportunities of objection and appeal"

1977 Report of T.C.P.A Review Committee - Pg.3
Fig. 1 is a simplified flow diagram showing the formal sequence, the opportunities for public involvement, and the points at which a landscape architect might typically be involved.

<table>
<thead>
<tr>
<th>Public involvement</th>
<th>Sequence</th>
<th>Landscape Architects involvement</th>
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<tr>
<td>Council prepares pre review statement including proposed objectives &amp; policies S 60 (1)*</td>
<td>L.A. develops broad policy re different policy contingencies in scheme. This is 'formatted' by Planners and included in proposals</td>
<td>← L.A. develops broad policy re different policy contingencies in scheme. This is 'formatted' by Planners and included in proposals</td>
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<tr>
<td>Public notification &amp; submissions requested</td>
<td>A new scheme is prepared &amp; provisionally approved by Council. Copies are sent to interested or affected bodies &amp; persons. Copies are available publically S61, S42, S44</td>
<td>← L.A. prepares overview policy for district &amp; specific policy for use contingencies such as 'industrial' 'residential' etc.</td>
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<tr>
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<td>Public notification of submissions S46</td>
<td>← L.A. may prepare discussion/option papers for Council &amp; perhaps appear at hearings as Council officer for questioning.</td>
</tr>
<tr>
<td>Support/opposition by members of public to submissions</td>
<td>Council wholly or partly allows/disallows objections S49 (1)</td>
<td>← L.A. may have to appear as witness</td>
</tr>
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<td></td>
<td>Objectors may appeal to Planning Tribunal S49 (1)</td>
<td>← L.A. may have to rework policies</td>
</tr>
<tr>
<td></td>
<td>Tribunal may order scheme provisions to be modified deleted or confirmed S49 (2)</td>
<td>← L.A. may have to rework policies</td>
</tr>
<tr>
<td></td>
<td>Council amends scheme to give effect to decisions of Council &amp; Tribunal S50</td>
<td>← L.A. may have to rework policies</td>
</tr>
<tr>
<td></td>
<td>Scheme is Publicly Approved by Council S52 (2)</td>
<td>← L.A. may have to rework policies</td>
</tr>
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* numbers refer to sections of 1977 Town and Country Planning Act.
1.6 Public participation, The effect of law

Figure One illustrates the formalized nature of the preparation sequence. Within the process there are four access points for public comment/participation. Apart from the initial calling for submissions these opportunities relate to objections or support for proposals prepared by the Council officers themselves rather than the co-operative development of policies. Participation is therefore often of the 'adversary' type.

A second point is that all provisions, objectives, and policies contained within the scheme are 'empowered' by the Act. Any which do not fall within the confines can be declared 'ultra vires' and 'struck out' by the Planning Tribunal. 'Ultra vires' means 'beyond one's legal power or authority' and refers to the need to base action on the 'rules of the game' eg. the Planning Statutes. The system can be seen as 'unitary' as all components stand by themselves, or as part of a sequence, against the test of law. For this reason District Schemes tend to be specific and legalistic in their prescriptions. They are creatures of the legal process and reflect it. This relationship can present an obstacle for the local authority landscape architect who wishes to implement a strong district wide landscape policy. Broad term objectives can be stated but the implementation of specific policy aimed at achieving them is difficult to achieve legally. Part of the problem lies in a conflict between the ways in which the two disciplines of law and landscape architecture arrive at solutions. The discipline of landscape architecture defines the variables associated with a problem and then produces a prescription which is guided by those variables. The discipline of law also defines the variables associated with a particular problem but then determines the 'remedy' with reference to the additional framework of statute law. The circumstances of the situation are not ignored but are applied to a prior agreed formula for resolving the problem eg. planning statutes. This means of arbitration can be applied to situations of conflicting social interest in a predictable and ordered manner. The process does not concern the subtlety of design.
1.7 'Holistic' Design

'Holistic' is a word which draws on the term 'holism'. 'Holism' was coined by General J.C.Smuts to describe the tendency in nature to produce wholes from the ordered groupings of unit structures:

"There is a synthesis which makes the elements or parts act as one or holistically"

(J.C.Smuts, 'Holism and Evolution', 1927. Pg. 127)

This concept is illustrated in the ecological theorem that 'the sum of the individual units in an ecological system is collectively greater than the sum of the individuals by themselves'. 'Holistic' has since become something of a buzz word and is applied to many subject areas. Within the discipline of landscape architecture its application is made to describe the observation that the perception gained from a landscape is not derived from one component seen in isolation. In the same manner design cannot achieve a satisfactory solution with reference to selected variables taken from their overall context. Landscape architects tend to design with regard to visual/sensory boundaries rather than to legally defined site boundaries (survey lines). Figure 2 outlines the process of landscape design and compares it to that of the legal process.
FIGURE TWO - THE DESIGN PROCESS

SURVEY → ANALYSIS → SYNTHESIS → SOLUTION

- present use
  - physical inventory
- environmental factors - sun, wind, geology, etc.
- cultural factors

site, site potentials, limitations
- character of site and surrounding areas
- implications of client's brief

integration of design options with regard to site limitations and client's objectives

a 'best fit' based on survey and analysis of all relevant variables, i.e., a 'holistic' consideration. No one answer.

THE LEGAL PROCESS

STATUTE
- whichever Act covers the circumstances under test

SURVEY → ANALYSIS → SOLUTION

the 'facts'
- legal definition of problem, e.g., legal boundaries, provisions of District Scheme

- what are the areas of contention
- what are the legal issues
- what is the relevant case law

(Judgement)
- what the resolve is with regard to the circumstances and current law and precedent
1.8 Conflict Resolution

The Planning Tribunal sits in arbitration between the interests of Council and ratepayer if dispute between the two cannot be resolved at Council level. In deciding on issues the Tribunal will examine the Council's District Scheme in the light of the planning legislation (described in Chapter Two). With reference to landscape provisions it is possible that the 'solution' proposed by the Council landscape architect may cut across the interests of several landholders (affecting development options). If the provisions are deemed to be outside the law they will be removed ('struck out') but will remain ('held') if within the confines of the law. Thus if a landscape architect causes a policy to be included in a scheme which is objected to, but the objection is disallowed by Council, it will be with reference to statute that the Planning Tribunal will make a final decision in resolving the conflict (as well as to the planning issues involved).
As outlined in Figure 1 (third point of public input) the Council is required to hear objections to its District Scheme prior to an issue being referred to the Planning Tribunal. This amounts to Council adjudicating between the interests/recommendations of its staff (who developed the policy) and the interests/objections of its constituents (ratepayers). Hearings are held before the Council's Planning Committee which is formed of individual Councillors i.e. local politicians. These elected representatives hold their own view points and may have been elected on the strength of them. They are also, as representatives of their constituents, open to public lobbying. If there is a conflict between the objectives of the landscape architect and the public, historically, it has been more likely that the Council will heed the voice of the voters rather than that of the landscape architect.

1.9 Summary

Planning is historically linked to the development of the national and local political/administrative structures which have been inherited from England. In this sense the regulatory nature of planning is grudgingly accepted as one of the costs of the 'greater good'. However the implementation of comprehensive planning still has a relatively short history. the provisions of the 1953 T.C.P.A did not really 'bite' until the mid to late 1960's when District Schemes began to increase in sophistication and in the extent of their concerns. This intrusion into the freedom of 'do it yourself' New Zealander's has been met with some resistance - not least by the Courts. It is unfortunate for landscape architects that landscape provisions form some of the more recent additions to District Schemes. Landscape provisions are problematic in that their dictates are often difficult to 'slot' into the zoning concepts still prevailing. The form of public participation offered under the planning system does not encourage their ready acceptance. Public access tends to be after the major decisions have been made and therefore takes a confrontational stance. In the first instance public objections are resolved by the Councillors. If landscape provisions appear subjective it is likely that the Councillors will respond to public pressure rather than to the advice of their own landscape architects.
Within the present planning structure landscape architecture is 'last in - last served'. The established process evolved without landscape issues being considered. As such there is a limited opportunity to promote landscape policies and objectives in a positive fashion. Landscape architects can either dump policies that have broadscale implications, push for greater accommodation within existing organizations, or lobby for legislative change. The last option would aim to give 'landscape' greater importance within planning considerations. A first step would be the advancement of a case demonstrating the objectives of landscape architecture in a clear and positive fashion.
CHAPTER TWO

LANDSCAPE PROVISIONS - THEIR LEGAL BASIS

2.0 Introduction

The previous chapter introduced the historical background of planning. A distinction was made between the process of law and that of landscape architecture. It was suggested that there was a conflict between the two due to the specific character of the legal system as against the more 'holistic' nature of applied landscape architecture.

This chapter looks more closely at what the empowering legislation (1977 T.C.P.A.) enables in the field of landscape provisions. It represents a synthesis of discussion papers, interviews with practitioners, and a careful reading of Kenneth Palmer and Keith Robinson's books on planning law in New Zealand. This outline attempts to represent common understanding and makes no claim for legal accuracy.

2.1 1953 Town and Country Planning Act - The 'Absent Landscape' Act

Landscape protection, development, or enhancement by local authorities draws upon the provisions of the 1977 Town and Country Planning Act (T.C.P.A.). Prior to this Act there were no explicit legal powers given for landscape control. The term 'amenities' was the closest that the 1953 T.C.P.A. got to a landscape provision. These were:

"...those qualities and conditions in a neighbourhood which contribute to the pleasantness, harmony, and coherence of the environment and to its better enjoyment for any permitted use"
'Amenities' were mentioned in respect to the control of objectionable items (S.34 (a)) and with regard to the control of buildings - 'any change of use of land or buildings that detracts or is likely to detract from any amenities of the neighbourhood'. Within a Scheme the term 'amenities' could apply to:

(a) Public parks and reserves and recreational facilities.
(b) Preservation of places of historical or archaeological interest or natural beauty.
(c) Recommendations for the control of outdoor advertising.
Other amenities.

(1st Schedule 1953 T.C.P.A.)

Provision was given for the preservation of objects and places of historic/scientific interest/natural beauty, and the designation for community/cultural/civic/national reserves, recreation grounds, ornamental gardens, children's playgrounds, and open space.

2.2 Design Control

Few environmental or aesthetic controls were given in a design sense and none were specific to landscape. There was no control over the siting relationship between properties, incompatible building styles, or external materials (1). This was demonstrated when the Christchurch City Corporation attempted to control building appearances in the inner city:

"The limitations I see to the exercise of discretionary power may mean that the present Act cannot fully achieve the Council's object of preserving and developing the special characteristics of the Central Christchurch area."

Positive landscaping requirements were upheld by this case but in the limited sense of planting rather than design requirements.

2.3 Historical Basis of 1953 Town and Country Planning Act

The aim of the 1953 T.C.P.A was essentially to create a series of land use plans which would clarify for owners, or potential owners, of land what the allowable uses were. Its format and methods were a reflection of the 1947 British Town and Country Planning Act though it differed in some significant ways and followed American influences. Following the war years Britain underwent an intense period of reconstruction. Allied to this reconstruction was the development of 'new towns' and the attempted rationalising of transportation systems and industrial development. 'Development areas' were designated and the Board of Trade was given power to attract industry by the erection of factories and the issuing of loans and grants (new industrial projects above a certain size required the Board's approval that they were consistent with the proper distribution of industry). The New Zealand system followed the British example in its trend to 'planned grouping' via the use of zoning procedures but steered away from the introduction of full discretionary powers to local authorities. Discretionary powers are those that reserve some subjective control to the Council when granting permits for development. They represent powers that are not possible to define completely by land zoning and ordinance techniques. Instead of adopting the use of such controls the New Zealand Act followed American legislation and sought the protection of property values as a major policy. This was partly due to the lack of population pressure in New Zealand comparative to Britain at that period.

Some shift has occurred with the introduction of the 1977 T.C.P.A. The certainty required by the ordinances of the 1953 Act remains an issue but a greater amount of discretion has been included - if in a somewhat uncertain manner.
2.4 The Issue of Certainty and Discretionary Power

'Certainty' is an important issue when considering planning controls. The issue revolves around the requirement that the user should be able to ascertain what his/her rights are under an operative District Scheme. This point was clearly spelt out by the Fifth City Estate judgment:

"The Council should, so far as is practicable, express clearly and accurately in the ordinances, its specific requirements and intentions in relation to character and harmony in design and external appearance of buildings, and in relation to landscaping, before being entitled to use its discretion for those remaining matters which it becomes impracticable to specify in any further detail because of the need to have flexibility."


The implications of the case were that discretionary powers could only be taken when:

1. everything that could have been said must have been said- clearly and accurately,

2. could only be used beyond the point where it was impossible to express clearly and accurately the specific requirements of the Scheme.

Discretionary powers have obvious application to the field of design and in particular to the field of landscape design. Such powers could be used to protect existing development (e.g. an area of cultural sensitivity such as the Township of Akaroa) or to direct new development in an appropriate way. But as discussed there has been a presumption towards individual property rights and against the accumulation of 'discretion' by local authorities.
Overall the 1977 T.C..P.A is a more flexible document than its predecessor. It does not include a model code of ordinances or stipulate a particular planning period to be adopted by Schemes. Objectives to be considered by District Schemes are now placed in a broader and more environmentally orientated base. This change probably reflects the context of the time of drafting. The age of environmentalism was established, the country had experienced economic dislocation consequent to the Yom Kippur war and resultant oil shocks, and the extraction of natural resources had become a contentious issue. The 'matters of national importance' which are to be 'particular(ly) ...recognized and provided for' under the 1977 Act are:

(a) The conservation, protection, and enhancement of the physical, cultural, and social environment:
(b) The wise use and management of New Zealand's resources:
(c) The preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development:
(d) The avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food:
(e) The prevention of sporadic subdivision and urban development in rural areas:
(f) The avoidance of unnecessary expansion of urban areas into rural areas in or adjoining cities:
(g) The relationship of the Maori people and their culture and traditions with their ancestral land.

It is easy to get the impression that the 1977 Act is a charter for resource management. However Regional Planning only became mandatory with its introduction and represents a much more recent trend than that of Town Planning. Most local authorities still represent constituents that are affected more directly by a District rather than a Regional Scheme. With reference to case law it is fair to say that most attention has been focused on District Scheme planning.
2.6 Contents of District Schemes

Matters to be included in District Schemes are found in the Second Schedule to the Act (see Appendix Two for full list). Of most relevance to landscape provisions are clauses 5, 6, and 7 (a, b, and c):

5. The preservation or conservation of-
   (i) Buildings, objects and areas of architectural, historic, scientific, or other interest or of visual appeal:
   (ii) Trees, bush, plants, or landscape or scientific, wildlife, or historic interest, or of visual appeal:
   (iii) The amenities of the district.

6. Control of subdivision

7. The design and arrangement of land uses and buildings, including -
   (a) The size, shape, and location of allotments
   (b) The size, shape, number, position, design, and external appearance of buildings
   (c) The excavation and contouring of the ground, the provision of landscaping, fences, walls, or barriers.

With the increase in flexibility the 1977 T.C.P.A. has somewhat lost, as Robinson puts it, 'the attribute of certainty'. However an analysis of the provisions of the Act in conjunction with case law show that much of the legal interpretation built up during the period of the 1953 Act still holds. Dr Kenneth Palmer's book 'Planning and Development Law in New Zealand (Vol. 1)' covers this area in some detail. It is largely on the basis of his analysis that the following discussion rests.

2.7 Powers and Techniques under the 1977 T.C.P.A

Section 36, clauses 4, 5, and 6 are of most relevance to landscape provisions, though clause 7 is also important (see Appendix Two for full list).
36. Contents of district scheme

[3(1) Every district scheme shall provide for such controls, prohibitions, and incentives relating to the use or development of any land, area, or building as are necessary or desirable to promote the purposes and objectives of the district scheme.
(4) Every district scheme may distinguish between classes of [use or development] in all or any part or parts of the district in any one or more of the following ways or any combination of them:
(a) Those which are permitted as of right provided that they comply in all respects with all controls, restrictions, prohibitions, and conditions specified in the scheme;
(b) Those which are appropriate to the area but which may not be appropriate on every site or may require special conditions and which require approval as conditional uses under section 72 of this Act;
(c) Those which are permitted subject to such powers and discretions specified in the scheme as are necessary or desirable to achieve the general purposes of the scheme and to give effect to the policies and objectives contained in the scheme relating to—
(i) Landscaping;
(ii) The design and external appearance of buildings; and
(iii) Such other matters as may be specified in that behalf by any regulations in force under this Act.
(5) Any district scheme may confer on the Council such specified powers and discretions as are necessary or desirable to achieve the general purposes of the Scheme and to give effect to the policies and objectives contained in the scheme relating to—
(a) The preservation or conservation of trees, bush, plants, landscape, and areas of special amenity value;
(b) The design and external appearance of buildings; and
(c) Such other matters as may be specified in that behalf by any regulations in force under this Act.
(6) Any district scheme may provide for the circumstances under which, the manner in which, and the conditions subject to which, the Council may grant an application for the dispensation wholly or partly from, or waiver of, any provision of the district scheme relating to—
(a) The subdivision of land permitted to be used for any urban purpose;
(b) The height, bulk, and location of buildings permitted on site;
(c) The provision of parking and loading spaces;
(d) The design and appearance of buildings and signs and the provision, design, and appearance of verandahs;
(e) Landscaping; and
(f) Such other matters as may be specified in that behalf by any regulations in force under this Act.
(7) Any district scheme may provide for any class or classes of application for the exercise of any discretion conferred on the Council by the scheme to be made without notice:
Provided that such a provision shall not be made in respect of any application which is required by any provision of this Act to be a notified application within the meaning of section 65 of this Act.

Councils are given the ability to 'distinguish between classes of use or development in all or any parts of the District' (s.36 (4)) and are conferred 'such specified powers and discretions as are necessary or desirable to achieve the general purposes of the Scheme (s.36 (5)). There appear to be four basic techniques open to Councils to assist the achievement of 'general purposes':

- uses permitted as of right (predominant uses) s.36 (4)(a)
- uses permitted as of right with some powers of non-notified discretion
  - s.36 (6) and (7)
- conditional uses - uses acceptable in the area but permission granted on a site specific basis s.36 (4)(b) (notifiable)
- discretionary uses - relating to landscaping, design and external appearance of buildings s.36 (4)(c) and (5)(a, b, and c) (notifiable)
These powers and techniques appear to give considerable discretion to Councils administering planning controls but there are certain corollaries to these provisions. Section 36(3) states that 'controls, prohibitions, and incentives' shall be provided 'as are necessary or desirable to promote the purposes and objectives of the District Scheme'. The implication is that a valid ordinance should differentiate between uses subject to specified powers and discretions and those that are not. The power of discretion must be clearly identified in the Scheme first and a justification for its existence given. Definition is also required as where it will be applied and on what criteria of assessment. Thus the dictum of certainty established under the 1953 T.C.P.A. still effects the implementation of the 1977 Act.

2.8 Empowering Clauses

Section 36 subclause 3 appears to give an open ended discretion to landscape and design control but as discussed the need for some objective criteria against which to apply it limits its application. Palmer states that such provisions must:

"...be defined in sufficient detail to enable the Council (upon objection) or the Tribunal (upon appeal) to apply an objective test. If the policies are too uncertain to be given any sensible meaning by the Tribunal or a Court, they might be declared invalid or simply unenforceable." (2)

Section 36 (4)(c) deals with future development but addresses 'landscaping' in the context of the Second Schedule (see 2.6). Section 36 (5) deals with preserving present landscape features and buildings. Sections 36 (6) and (7) require comprehensive provision in ordinances as to the 'class or classes of application' from which dispensation or waiver from any control can be determined.

It is clear that the objectives of the Christchurch City Corporation in attempting to control inner city character were accepted by the 1977 Review Committee and that 'remedy' has been put in the 1977 Act (s.36 (4)(c) and (5)). However discretion is not open ended and the following points still apply:
1. The user must be able to discern the purpose of the Scheme and determine, with some certainty, what is allowable and not allowable.

2. Discretionary powers are not applicable to areas of predominant use.

3. 'Blanket' application of conditional use status over a large geographical area would be tentative in law. Such an application would be interpreted as an unnecessary infringement of property rights.

2.9 Implications for Landscape Provisions

A landscape architect developing policy for a District Scheme is likely to have objectives which apply to different scales of land use, e.g., from the preservation of broad landscape character to the control of unit housing. In attempting to implement landscape objectives the legal issues discussed will have bearing on their form and effectiveness. Of importance will be the issues of the operational limits to discretionary power and the need for certainty, and the presumption in favour of individual property rights.

2.10 Spatial Values v. Specific Control

Landscape architecture is a spatial discipline which does not see a site in isolation to its surrounding environment. Conversely planning tends to operate on a site to site basis in the application of its solutions. This is partly because the opportunity for large scale change or influence does not exist for planning in an established environment. However, the unitary approach of planning must be adopted by landscape architecture if it is to introduce its policies. In practice this means minimising discretionary control by quantifying the provisions as much as possible, e.g., percentage planting requirements per a given site area. The incorporation of the underlying principles in the Scheme Statement must provide the design objectives (see 4.7).
2.11 'Landscape' defined by Law

The reference to landscape design contained in the 1977 Act is that of s.36 (4)(c) which refers to 'landscaping'. The obvious association to this term is 'gardening'. Further definition is given in the Second Schedule s.7 (c) which emphasises the physical construction aspects of 'landscaping'. These activities are undertaken as the result of landscape design but do not imply or encompass the wider environmental factors which contribute to either the design process or to the overall landscape character of an area. The general impression is that 'landscape' equals flower beds, grass, and possibly shrubs at the boundary fence.

It may be that this interpretation is not that which was intended by the Act. A research interview was conducted with the senior planner of the Town and Country Planning Directorate (Mr. Dennis Bush-King) concerning the intention of the Act. When queried regarding changing the terms used his comment was:

"The difference between 'landscaping' and 'landscape design' is one of semantics. There is always a difference between legislators and interpreters. In terms of the evaluation of an idea the 1977 Act sees 'landscape' in the broadest possible terms....There is no point in changing the description of landscaping in the Act as the intent is already there. Effort is better spent in education rather than legislation."

While a broad interpretation may have been intended the 'flower and garden' image is the most likely currency within the Courts and Council. In the public mind 'landscaping' does not equate with either small or broadscale environmental design.
'the flower and garden image is the most likely currency within the Courts'

2.12 Summary

The potential for the introduction of landscape policy increased with the passing of the 1977 Town and Country Planning Act. No specific provision for any design control was made under the 1953 Act whereas the 1977 Act makes some provision. A more 'holistic' flavour is given to the 1977 Act by the inclusion of general environmental considerations. However some of the 1953 Act status quo seems to have been inherited in the interpretation of the latter Act. Unless the Council is prepared to purchase, or community support is strong, it is difficult to provide landscape policies that cover more than single sites, other than public land. The terminology included in the Act tends to work against a broad interpretation. Generally landscape policies would appear to have the greatest chance of success (when applied in the wider sense) where they are agreed upon by community interest and are therefore not subject to the test of law.

Footnotes


(2) Ibid, Pg. 218
SECTION TWO

'THE PRACTITIONERS EXPERIENCE'
CHAPTER THREE

INTERVIEWS

Introduction

The following comments and experiences have been selected from interviews conducted with staff and members of the Waimairi District Council during June 1985. These were empirical in nature and so were mostly unstructured though some themes were pursued as the interviews developed. Responses have been grouped in sections to give a representation of the differing perspectives on the common topics that emerged.

3.1 Methodology

Epistemological considerations underlying the research approach adopted in this section are considered in Appendix Three. A brief outline of technique is given here to enable an evaluation of the setting and circumstances in which the interview comments were recorded.

The approach adopted was a qualitative one. This suited the research problem for which there was no previous data for use in the generation of a more structured quantatitative approach. A week prior to the interviews respondents were contacted by telephone to arrange a convenient time. The interviewer identified himself as a student of Lincoln College who was interested in the role of landscape in the District Scheme process. Interviews were conducted at the Waimairi District Council buildings except for the interviews with Ian Calvert, Karen Gerade, Christine Thomas, and Brian Croad. All respondents gave up part of their working day to participate. Immediately following the interviews (average duration of 35 minutes) the shorthand notes taken were written up in full. After all interviews had been completed (over a period of several weeks) they were placed in professional groupings and coded for common themes.
3.2 Background

Waimairi is the second largest local authority in the greater Christchurch area. It has a total area of 11,474 hectares of which 3,134 are in urban use. Its residential areas form parts of the northern and western 'urban fence' and are the outlying suburbs of Christchurch. Waimairi has had an operative District Scheme since 1965 and is currently undertaking its second District Scheme Review. It has had landscape staff since the mid 1970's and currently employs two landscape architects.

3.3 Respondents

Interviewed were Councillors, planners, and landscape architects - being the three main groups involved with landscape policy in the Waimairi District Scheme. Chairman Margaret Murray and Councillor Ian Calvert represented the Councillors. Ian Calvert has been Chairman of the planning committee and is still a member. The planners interviewed were Hans Versteegh and Brian Croad (currently with Canterbury United Council). Landscape architects included Karen Gerade, Christine Thomas, Jenny Roy, and Mike Barthelmeh (Jenny and Mike are currently employed at Waimairi). Each interview started differently but began after the interviewer had explained that he was interested in the implementation of landscape within District Schemes.
3.4 Councillors

Discussion with the Councillors covered the presentation and form of landscape issues, the place of landscape in the Waimairi District Scheme and the role of landscape architects in the Council.

Both councillors were positive about 'landscape' as being a necessary issue but were less enthusiastic about the prescriptions implied by the policies. These were perceived as rigid while the nature of landscape architecture was one of flexibility:

- "landscaping is a general term and it is seen that way. It is open to interpretation and is not quantifiable eg, 'fences should be painted brown rather than white in a rural setting'. The Councillors know that there are a large number of white fences existant in a particular road but the landscape officer digs their toes in. The Council will then ignore the advice of their officers"

- "the Councillors do not like to impose conditions on individual ratepayers (and on themselves) "Councillors see some landscape conditions as harsh and inflexible"

Rural landscape - and white fences..
Both Councillors felt that landscape was difficult to be decisive about and as a subjective discipline was 'anyones territory':

"landscape is probably the most difficult concept to get across as conversely it is the easiest to knock eg. if buildings are too close together it is easy for a layman to perceive the light problem. The concepts of landscape are not obvious because of opinion. A layman finds it difficult to see why a landscape architect should impose their views on an applicant"

Their reluctance to impose controls stemmed from the view that Waimairi did not have a unique character of its own. There was not sufficient community self interest on which to base controls. Akaroa and Southland Lakes County Council were given as examples where landscape controls were comprehensive with regard to colour and design. These were seen to rest on financial self interest re tourism. It was also suggested that these controls would be found ultra vires in Court. Conversely good industrial landscapes were in Waimairi's self interest:

"Councillors would like to see more high class industrial development, such as has occurred in Shefield Crescent, for reasons of local pride, and of money - good design draws people who in turn generate commerce"

Debate has occurred with regard to the landscape guidelines which are included in the current Scheme Review. The use of these guidelines by staff for advocacy purposes at planning hearings is of concern:
"the guidelines have no standing in law but if care is not taken they are used as a 'bluff principle' at hearings eg. tree register. The Council is not sure whether the register has standing in law but the staff use it as a rule stick."

"The District Scheme is the main vehicle for contact. It can be restrictive or advise. At present the Council is looking at the idea of removing guidelines and creating a series of separate booklets, which will serve the same purpose but not be part of the District Scheme."

The Councillors' concern for the private citizen extended to private landscape designers:

"The Council is conscious that it has its own 'landscapers' but aware that they must not be allowed to dictate to private landscapers. Staff mustn't do work for the private sector and landscape is an area where people can have different opinions."

The role of landscape architects was not seen as a significant one in the District Scheme process other than in the giving of assistance to the planners. However emphasis was put on the need for landscape architects to be strong in their presentation of principles when called upon to give evidence at hearings:

- "You have to be direct to Council and have to be able to defend reasons sympathetically - you cannot have an 'either or else' attitude. Councillors must be able to know what the implications are of policies therefore landscapers must be able to defend options"
- "A rigid and inflexible approach probably does considerable harm to the profession as laymen (Councillors) have to be flexible themselves in making decisions"

- "There is a real need for people in local bodies with vision who can carry other people with them. A problem in today's world is that people don't like change."

3.5 Comment

The Councillors appear to have an ambivalent attitude to the place of landscape architects and their work. While the 'landscapers' are useful their professionalism is suspect. This diffidence on the part of the Councillors seems to relate to two issues. Both Councillors implied that landscape architecture did not have a sound basis, or if it did it had not been demonstrated. It was the 'opinion' seen to be associated with landscape assessment that Councillors objected to most. The involvement of personal opinion (rather than 'professional judgement') gave no legitimacy for the enforcement of recommendations on the private citizen. However landscape policy assumed a positive value if it coincided with the 'greater good'. The enhancement of commercial opportunity definitely articulated the wider community interest. In a similar manner to the Courts the Councillors are determined to protect the individual from arbitrary provisions.

3.6 The Planners

Waimairi District Council has had District Schemes drafted under both the 1953 and 1977 Town and Country Planning Acts. Its planners were asked whether successive legislation had led to a change in the level of landscape input and whether or not the terms expressed in the Acts have had an effect on provisions. Both planners generally held that change in legislation had not led to major differences in input but had influenced the format of ordinances:
- "There was little difference after some minor requirements of the Act had been met. Major changes were not the result of legislation. Ultimately changes result from mass public opinion putting pressure on Council."

- "The 1977 Act talks about 'landscaping'. This can probably be equated with 'treatment'. It doesn't have much to do with the meaning of Landscape Architecture and has not much to do with what is presently being done in the Waimairi District Scheme. Also mentioned is the term 'landscape' eg. the preservation of landscape. It is from this term that the Waimairi District Scheme rural section draws its basis."

- "Prescription is required by the Act (1977 T.C.P.A) which implies 'definition'. This is a problem with landscape treatment as clear objectives must be spelt out in order to determine whether a development/treatment is not acceptable or acceptable. Compliance or non compliance must be able to be determined from the Scheme. Compliance cannot be enforced in law without definition. This has led to the 'percentage landscape treatment per site area' approach and the definitions as to what constitutes landscape treatment (eg. 'shrubs' as against 'grass'). This approach is reinforced by the use of the Amenities section which explains the general objectives."

A major shift in policy appeared to occur with the inclusion of a landscape guideline section in 1979. The planners saw administrative requirements rather than policy shifts as being the motivating force behind changes:

- "The reasons for the change (Change 27) arose firstly from administrative issues with regard to the past requirements for landscape treatment - especially with regard to industry. Some developments were felt to fall below the required standard but there was no determining objective in the Scheme to allow rejection. Secondly Councillors wished to remove the subjective elements out of the Scheme. They did not want to have to judge good or bad design with regard to landscape."
Rural and industrial are the two main areas of involvement in the formal Scheme. This is possibly because historically industry has had controls on its development. Also because landscape can be used as a trade off against objectors to new industrial development, (okay if it has stringent landscape control/treatment)...The Rural guidelines remain 'guides' rather than 'criteria'...But the 'mays' and 'shoulds' of the guides can often become 'must' and 'shall' at the hearing stage.

Sheffield Crescent - 'landscape can be used as a trade off'

"Change 27 brought in the Rural Guidelines which took quite alot of re-education. However the guidelines were not on their own but were part of a sequence of changes. Councillors were perhaps not aware of the landscape provisions and implications and misunderstood the intentions. There were no appeals but when the implications began and planning applications arose the Council realised that the changes included firm requirements...The initial reaction came when an applicant wanted to paint a fence white in a rural zone. Council's reaction was to inquire as to what right the landscape architect had to place a restriction."
With fairly extensive landscape guidelines included in the Scheme in 1979 and expanded with the Second Review it was asked whether or not the new provisions had had any influence on Council staff:

- "There was an increase in awareness amongst technical staff - especially engineers. Some still see landscape architects as the end of the development process but this is changing. Property and health officers were 'educated' and accepted landscape architects as all part of the deal. The least positive were the architectural staff who didn't want anything to do with the landscape input."

Change in policy formulation has been 'staff up' rather than a 'top down' or external influence:

- "The first District Scheme and 1st Review were drawn up by Max Parker (District Engineer) and the subdivision officer. After Max died the Council employed a Planning Consultant and then Dave Hineman who was the first professional planner of a different generation...Dave Hineman...understood the value of landscape in the planning process. There has been a high correlation between training and attitude to landscape."

- "The main vehicle of change has been staff - a young planning department associated with the young landscape architects. There was more empathy for the planners with this grouping than others. Personality rather than conceptual change or external change in attitude was the basis."

- "Politicians didn't change and perhaps retracted into a negative position. The current situation is that there is no reaction from the Council to the landscape architects and the landscape architects don't react much to Council. The Council is not going to take anything on board that is controversial. The landscape architects approach is perhaps wise in that long term objectives will be achieved."
"It is now generally accepted that landscape architects have an interest in the urban process ... But a further crediting of their role and potential depends entirely on the individuals performance"

3.7 Comment

The planners had a pragmatic understanding of what influenced change within the official structure. Key factors were seen as being political capital and personality. Change was seen to have been initiated from within rather than imposed from without. Legislative change was not seen as a big issue though some effort was made to utilize its provisions to meet landscape objectives. Emphasis was put on the advocacy role played by the landscape architects. As 'middle men' in the process of collating all Scheme policy they were aware of political realities and unlikely to waste their time on lost causes. They identified industrial landscape as a winner and the rural landscape provisions as politically shaky. Their assessment regarding the advancement of landscape objectives was that success of failure would in large part be determined by the abilities of the landscape architects themselves.

3.8 The Landscape Architects

Landscape architects have been employed at Waimairi for nearly a decade. The working period covered by these interviews is eight years - from 1977 to the present. All landscape policy included in the District Scheme has to be finally approved by Council and it was the relationship of the landscape architects to the Councillors and their place in the administrative hierarchy which emerged as a major theme. Also covered was the general appreciation of landscape within the Council, the effect of planning statutes, and strategies employed by landscape architects in their work. The responses in this section have been grouped under general questions asked in interviews.
Question As a landscape architect at Waimairi District Council does the 1977 T.C.P.A. have a direct effect on your work?

- "Yes I looked at the clauses constantly. I tried to illustrate how what was being said...related to the Act - however tenuous the connection might be. If there was nothing to hang arguments on then the landscape architects comments were seen as subjective and opinionated."

- "The only reference in the Act is 'landscaping'. This is a broad statement that is subject to individual Councillors interpretation. Many see it as referring to the odd corner. They don't tend to see it as part of the whole. The definition within the Scheme is tied back to the Act."

- "The use of the word 'landscaping' results from the use of the term in planning legislation. Thus the District Scheme uses the same term. Tony Jackman made a submission on behalf of the N.Z.I.L.A to the 1977 Review Committee but appears to have been unsuccessful."

Question What level of appreciation do Councillors show for landscape issues?

- "Landscape was an issue to some Councillors. Ian Calvert was probably influential here as he had strong beliefs, was Chairman of the Planning Committee for a time, was County Engineer at one stage, and had been exposed to landscape principles at Lincoln. His appreciation was probably broader whilst most Councillors saw 'landscape' in terms of 'trees'."
- "Landscape is what the Councillors will accept. The landscape architects are wasting their time if the Councillors are negative to the idea of 'landscape'. Often Councillors can't see many landscape principles as important eg. Colour in the rural landscape. The landscape issue is not that 'white' is bad and brown is 'good' but that brown is subservient to the landscape. Councillors are inclined to think that they have a white fence and they like it therefore it is good everywhere else as well. Landscape points are taken by Councillors but not agreed with..."

- "The image of the Edmonds Factory is quite strong - especially as it wins design awards. A problem is that N.Z.ers are strongly competent in many areas ('do it yourselfers'). Thus the Christchurch Beautifying Association has influence. So long as your garden has nothing over 3 feet in it, marigolds around the edge and a manicured lawn you have a good chance of getting an award....Councillors see how these awards are placed and conclude that this is what ratepayers want."

Edmonds factory

- "Councils change and each Council brings its own personal conceptions and prejudices. The present Council is loaded towards businessmen. A problem with the landscape profession is that it usually involves younger people."
"A difficulty in the process is that Councillors are in situations of power and authority via the selection of local issues. They are average people who are called upon to make difficult design decisions."

'Christchurch Beautifying Association...'

**Question** What is the relationship between Councillors and the landscape architects?

- "...they didn't recognize my input in the planning sense though I did attend some Town Planning meetings. It was a small Council at Waimairi. I had contact with Hazel Tate, Frank Chisholm, Margaret Murray and Mr Skellerup. They were all generally positive but retained a big business perspective which held to a 'no restrictions' approach to individuals."

- "There is no opportunity to educate Councillors. Not until landscape architects have the status of district planners etc and have the opportunity to work with Council will the ideals of landscape get through."
"Councillors are inaccessible to landscape architects. They can contact landscape architects but landscape architects don't have reciprocal rights, though the public do."

'Councillors are inaccessible...'

"...lack of acceptance of advice is frustrating to landscape architects. If the Council employs a person in a professional capacity they should accept the advice given but this does not happen."

**Question** What are some of the basic techniques applicable to landscape work within a District Scheme?

"There is always a number of solutions appropriate to an industrial site. Percentages and numbers are required by the Council though the landscape architects are loath to give them. However the requirements of the Scheme have to apply evenly to all people and had to be 'spelled out'. Clear guidelines let developers know what is required and enables the Council to enforce the provisions."
- "..by including the criteria an applicant knows that he/she should look at the site in the overall concept. They are also useful for 'bluff' eg. if an applicant is resisting requirements the criteria can be pointed out as being down in 'black and white' in the Scheme."

- "The best strategy is to attempt to change people's ideas while maintaining the original ideas of the applicant."

- "The rural guideline came about as an attempt to put some sort of logic behind Change 27. The objective was to amplify objective 5 which talks about 'encouraging sensitivity for the landscape' etc."

**Question**  Has your work at Waimairi changed since you began?

- "To begin with my work was concerned with planting plans for reserves. Expansion came with friendship with the planners. I had to convince them of my role re visual amenity. This also involved fights with John Lamb (District Engineer) who felt I would have too much work. As a result he gave me a day in which to write the initial rural guidelines. I sat outside and wrote them off the top of my head and spent one night carrying out some refining with Hans Versteegh and David Hineman."

- "I had to 'go for gold' and then look towards a planned strategy. At that point a planned strategy wouldn't have succeeded. I enjoyed talking to people and liked broadening people's outlook. I had a good role as a promoter/talker and had good communications skills. It would now be better for someone with good planning skills to take it further."
"The County Engineer 'held the reins' on day to day activity. His use of the landscape section was selective and to his advantage when it suited."

3.9 Comment

Determination and frustration was reflected in the landscape architects comments. Policy is carefully tied to the provisions of the 1977 T.C.P.A. and translated into 'site cover' formulas. A clear understanding of their position in the hierarchy and what this implied for the achievement of objectives was shown. Different landscape architects have 'targeted' other staff members as being important to their cause and have set out to win them over. Attempts are also made to achieve objectives by influencing applicants rather than by confronting them. Frustration with the absence of Council confidence in their work was also expressed. This appeared to relate to the slight on their professional status as much as to the failure of objectives. Various options for overcoming the problem were advanced. Education of key people, such as the Councillors, appeared as high priority.

3.10 Chapter Summary

The interview responses indicated a divergence of opinions as to the place of 'landscape in the District Scheme'. Staff and Council relationships appear cordial while the appreciation of some issues remains very different. The Councillors support the regulation of development via planning while also intending to protect their constituents from 'bureaucratic' landscape provisions. Their concepts of landscape architecture appear centered around urban development, and around commercial areas in particular. It may be that these are the least contentious issues on which to apply control. Planners saw landscape provisions as having a valid place amongst planning objectives. The advancement of landscape policy would involve its careful and deliberate integration into both District Scheme and 'inhouse' development proposals. The landscape architects held objectives that cut across the Councillors responses. Some effort has been made to defend ultimately contentious policy (eg. the white fence issue). Their rationale appears to have been that it is important to defend the underlying criteria of their discipline. On a day to day basis the landscape architects are able
to implement many of their ideas and do use the District Scheme provisions
to this end. There is an impression that the Scheme provisions are also a
means of retaining the design control gained so far and a protection against
Council retrenchment.
CHAPTER FOUR

IMPLEMENTATION IN THE DISTRICT SCHEME

4.0 Introduction

This chapter contains a brief review of previous Waimairi District Schemes and an examination of the Second Review in light of the respondents comments. All the respondents have had some influence on the Second Review if not the First Review.

4.1 Scheme One

Waimairi District Council submitted its first District Scheme to the Minister in 1961 (operative 1965). This was a handtyped A4 document containing 55 pages. Format was that of the 1960 Model Code of Ordinances and included 1 rural, 2 residential, 4 commercial, and 4 industrial zones. Planning maps were separate from the Scheme. No direct policy regarding the physical environment or landscape was included or predictive comment attempted for the District. Some mention was made regarding 'Amenities'. These included specific items such as control of advertising, the placing of historic/natural beauty objects on a register, and the prevention of unfinished buildings detracting from surrounding property values. The population at this point was 25,297.

Waimairi District Town Planning.
4.2 First Review

By the time of the First Review (1971) the population had more than doubled to 61,490. 12% of total land was in residential use. The Scheme had extended to 81 pages and included some rudimentary landscape provisions, though these were not seen as such (personal comment from current District Engineer). Headings included natural environmental areas, ancillary works to motorways, special development plans for commercial and industrial sites, and comprehensive plans for residential development. Some predictive comments regarding the continued depopulation of Central Christchurch were included and an extra 915 ha was zoned for residential use. Maps remained separate but the scheme now appeared in a black vinal covered folder with loose leaf printed pages.

4.3 Scheme Changes

Significant additions occurred between the approval of the First Review and the introduction of the Second Review through scheme changes made by the Council. Among those was 'Change 24' (15 November 1978) which established the first definative landscape policy. A 'percentage cover' ordinance was introduced for industrial sites with 'landscaping' being defined as:

"... the treatment of areas for amenity purposes so as to relate and coordinate the built and unbuilt portions of any site and thus increase the harmony and coherence of the locality, and shall include the provision of trees, shrubs, bedding plants, lawns and other ground cover, the contouring of the land, the construction of walls and courtyards and pedestrian paving". "Landscape" and "landscaped" have a corresponding meaning".
Landscape treatment proposals were required with development applications. 'Change 27' followed on 29 September 1980 and introduced a 'Rural Landscape' section (referred to in interviews - 3.6, 3.8). This was a relatively philosophical section with some ordinance requirements. Discussion was given on the design principles relevant to the District but graphics were not as yet included.

4.4 Second Review

Planning techniques and explanations became more ambitious with the development of the Second Review (notified 31 October 1983). Length and bulk expanded from 81 pages to 697 pages (plus 71 maps) and from 0.45 kg. to 2.1 kg. in weight.

The Scheme was produced in a large hard cover ring binder with glossy card dividers separating the various sections. Planning maps are included in the back of the Scheme. Figure 3 makes some comparisons between the three schemes in terms of written content allotted to different categories. Note that the Second Review categories of residential, Industrial, and Commercial form 60% of ordinance material while applying to 36% of land area.
Figure Three

<table>
<thead>
<tr>
<th>Zone Categories</th>
<th>No. of Pages.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1961</td>
</tr>
<tr>
<td>Residential (+ subdivision)</td>
<td>12</td>
</tr>
<tr>
<td>Rural</td>
<td>3</td>
</tr>
<tr>
<td>Industrial</td>
<td>6</td>
</tr>
<tr>
<td>Commercial</td>
<td>6</td>
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</tr>
<tr>
<td>Amenities</td>
<td>2</td>
</tr>
<tr>
<td>Interpretation</td>
<td>5</td>
</tr>
</tbody>
</table>

Note: 1983 Review also included sections on 'utilities, public works and community uses' and 'general ordinances'.

4.5 Landscape and the Second Review

Given the increase in size and apparent sophistication of the Second Review, and the comments made by respondents, several questions are considered in the following analysis: Has the legal framework underlying the Scheme affected the format of the landscape provisions? Would the withdrawal of the guidelines significantly affect the landscape ordinances as they stand? Has the inclusion of landscape policy in the Scheme had significant impact in terms of either bulk or public response? To answer these questions the Second Review is examined in terms of structure, landscape provisions and techniques, and the effect of legal provisions on landscape policy.
4.6 Scheme Structure

Two objectives were involved in the choice of structure and format. Firstly it was intended to split the Scheme into sections that each dealt with discrete subjects or geographical areas. By grouping all designations, explanations, and ordinances relevant to one area/aspect the user would not have to cross reference. Secondly the form of the Second Review is expected to be ongoing. Scheme changes will in future be slotted into the existing document and deleted sections removed. Consequently ordinances were split into the various subsections in tandem with the relevant parts of the Scheme Statement (illustrated in 4.7). Each section is intended to stand by itself though there is need for additional reference to the General Ordinances and Planning Maps. Many dividing pages and blank sides are included to achieve this format which has contributed to the general increase in bulk. Landscape guidelines contribute 14 sides to the 700 sides (approx.) total. As the 'Definitions' by themselves total 16 sides the separate landscape guidelines are not a significant addition - though 'landscape' is mentioned 97 times (approx.) compared to the 6 or 7 times in the First Review.

4.7 Landscape Provisions and Techniques

The techniques used in the presentation of landscape provisions follow those used in the overall Scheme and draw from the 'general' (Scheme Statement) to the 'specific' (Ordinances). Ordinances, and accompanying Scheme Statement, are placed in the text with other provisions relating to the particular area and activity. Physically the format is that of the Scheme Statement on the left facing page and the Ordinances to the right as the Scheme is opened at each section eg, Figure 4.

Figure 4
The following material illustrates how this works. The Scheme Statement and Ordinances relate to the Industrial L designation (draft Second Review, Section 8, pp. 16 and 17).

**Scheme Statement**

Large scale trees are a valuable asset in industrial areas. Trees which will grow above roof height provide vegetation in scale with building development and link buildings into an overall landscape pattern. Broad scale planting can define spaces within a site, segregate work and storage areas and screen unsightly activities from areas of public usage. A sufficient area of the site is required to enable both large trees and lower plant material to be established. Ground covers should also be used to reduce maintenance.

Landscape principles and guidelines are set out in PART TWO - SECTION ELEVEN - AMENITIES.

**Ordinances**

3.7 **LANDSCAPE TREATMENT**

3.7.1 Minimum Requirement
A minimum of 10% of the site shall be in permanent planting, including trees at the rate of 1 tree per 10 m² of area of permanent planting.

3.7.2 Landscape Plan
A detailed landscape plan and programme of development and maintenance shall be provided to the satisfaction of the District Engineer in accordance with the provisions of PART TWO (Landscape Treatment) - SECTION ELEVEN - AMENITIES.

3.7.3 Landscape Bond
Prior to the issue of any building permit relating to the use, a bond shall be entered into by the owner with the Council to the estimated value of the completion of the planting.
The requirements of Ordinances 3.7 to 3.7.3 (eg. permanent planting) are detailed in the 'Definitions' section located at the beginning of the Scheme.

Landscape Definitions


AMENITY PLANTING means the use of vegetation to enhance an area by
(a) improving its appearance e.g. by adding vertical scale elements, by providing visual relief, or strengthening its relationship to the overall local landscape pattern;
(b) improving its usefulness, e.g. by providing wind shelter or shade from summer sun.

LANDSCAPE TREATMENT includes the comprehensive design and development of a site so as to relate and co-ordinate the built and unbuilt portions of the site generally in accordance with the landscape principles expressed in this Scheme. Permanent planting is one component of landscape treatment. "Landscaping" and "Landscape" shall have a corresponding meaning.

PERMANENT PLANTING in relation to a landscape requirement means the planting trees and shrubs. Ground cover used in conjunction with earth shaping to perform a screening function also constitutes permanent planting for the purposes of this Scheme. Ground cover includes plant material which does not exceed 200 mm in height under normal horticultural management.

The preamble to Ordinance 3.7. LANDSCAPE TREATMENT includes reference to SECTION ELEVEN - AMENITIES. In a formal sense the Amenities guide is a piece of free design advice included to aid ratepayers in the development of their holdings (see Appendix Three). In practice the guidelines are used by the planners and landscape architects as a secondary Scheme Statement in order to back up requirements made of applicants (see 3.6). Figure 5 gives a diagramatic outline of this process:
FIGURE 5 - THE LANDSCAPE PACKAGE - SECOND DISTRICT SCHEME REVIEW

Sections not specifically empowered by Planning Act

Amenities Section
Rural Guidelines
- principles and graphics outlining design considerations for development actively *

* No legal standing but used as a de facto definition. The Guidelines fill out the Definitions in a more subjective manner.

Scheme Statement
- outline of general objectives and intent. **

** Does not direct relationship to specific criteria but gives an indication of overall objectives sought. Ordinances will not stand if Statement has not 'set the scene'
(See 2. 'Powers and Techniques')

Sections empowered by Planning Act - individual legal standing

Definitions
- what specific terms and requirements mean

Ordinances
- performance requirements
- articulation of general policy 'on the ground'

APPLICANT
4.8 Effect of Legal Provisions on Landscape Policy

The requirement for 'certainty' outlined in Chapter Two is formally fulfilled by the Definitions and Ordinances. However, the greater compliance required to achieve satisfactory design criteria is achieved on a de facto basis by the secondary reference to the Amenities guidelines. The 1977 T.C.P.A. does not prohibit the format adopted but neither does it support the inclusion of subjective design criterion which the references to 'scale, visual relief' must be regarded as (see Appendix Three). As noted by the Councillors the guidelines have no legal standing. Similarly, the design inferences of the Amenity Planting Definition, and the somewhat vague 'accordance with the landscape principles expressed in this Scheme' (Landscape Treatment definition) would probably be found ultra vires by the Planning Tribunal due to their discretionary implications.
Landscape guidelines....a piece of free design advice

RURAL

scale

Large scale landscapes with broad open spaces and significant groups of trees can absorb large structures.

Small scale landscapes, with varied and detailed spaces, landform or vegetation, will be less successful in absorbing a large structure.

siting

Buildings grouped in a harmonious cluster form a better relationship with their surroundings than scattered buildings.

Buildings scattered over a site change the character of a large area of rural land to a more urban nature and may require more services, access roads, etc.
What effect then would the removal of the 'guidelines' have on present landscape provisions and the utility they give to administrative staff? The Ordinances with a numerical criterion (e.g. 3.7 - 3.7.3) would stand with reference to the Definitions. But as expressions of a wider design intent the Ordinances would provide less leverage for the landscape architect than is presently achieved. The Scheme Statement (see 4.7) gives an indication of the design intent (ground cover, trees etc) but does not contain the graphic material vital to the expression of design concepts. Individual advocacy and persuasion by staff would remain as an unofficial way of achieving these if the guidelines were removed.

'Individual advocacy and persuasion...'

4.9 Public Submissions

Public submissions and objections to the Second Review were being considered as this study proceeded. Landscape provisions attracted a share of the 1400 or so made against the Review (sample of objections at chapter end). Basically wherever provisions of a performance nature were placed in the Scheme (percentage cover etc) the objectors either wanted to reduce the percentage or delete the provision entirely. Most notable amongst the deletion category were firms with an interest in commercial land. Some objectors expressed quite strong 'individual rights' sentiments:
"Rural Landscape: To be consistent the Scheme could equally have a section on how to grow cabbages. Leave it to private enterprise. Schedule B should be left in a text book."

"Most of S4 ppl-8 is just empty verbage - planners jargon written to make Review the bigger, the brighter, the better, and always at the ratepayers expense. Rewrite consisely."

(this comment refers to Rural Overview and not specifically to landscape provisions)

4.10 Comment

The inclusion of landscape provisions in successive Waimairi District Schemes needs to be seen in the context of the evolution of the Schemes themselves. From the First Scheme to the Second Review format and content changed from a virtual copy of the 1960 Regulations to a detailed administrative document, specific to Waimairi District. During this period attitudes and expectations also changed. These shifted from clear cut physical development issues (the provision of services and the location of different uses) to a consideration of broader 'quality of life' issues. The planning legislation reflected this shift (see 2.5). An increasing use of environmental and social jargon in the Waimairi schemes can be seen as reflecting these changes - particularly in relation to Change 24 and Change 27. Following the introduction of the 1977 T.C.P.A. and the planning debates surrounding the 'Think Big' projects such ideas and terminology became national currency. Landscape provisions were also explicitly included in legislation - if at a somewhat rudimentary level.
LIST OF OBJECTIONS/SUBMISSIONS TO THE DISTRICT SCHEME

7/50013 Linc, A D, R. D. Lynch, Buddle Findlay, PO Box 5694, Wellington
NATURE OF OBJECTION: Landscape treatment provisions - Com. L zone.
ALTERATION SOUGHT: Deletion of landscape treatment provisions.

7/80412 Federation Service Ltd, R. Tooney, Buddle, Findlay, Solicitors, PO Box 892, Wellington
NATURE OF OBJECTION: Landscape treatment requirement - Com. S zone.
ALTERATION SOUGHT: Reduce requirement from 5% to 3%.

7/21036 Associated Travels Ltd, R. Morris, Staghe - George, PO Box 2794, Wellington
NATURE OF OBJECTION: Landscape Treatment - Com. B zone.
ALTERATION SOUGHT: Delete minimum requirement, landscape plan & landscape bond requirements (Ordinance 3.4.1, 3.4.2, 3.4.3 Section 7, p 35).

7/11053 Church and Businesses Group, 10 Auburn Ave, Ch Ch 4.
NATURE OF OBJECTION: Landscape treatment - Com. D zone.
ALTERATION SOUGHT: Reduce from 8% to 5%.

7/91061 Mr. & Mrs. Conley, PO Box 3726, Ch Ch.
NATURE OF OBJECTION: Landscape Treatment - Com. L zone.
ALTERATION SOUGHT: Reduce minimum requirement from 8% to 5% (Ordinance 3.6.1, p 11).

7/61076 Cotter C. A (U2) Ltd, Buddle Findlay, PO Box 2694, Wellington
ALTERATION SOUGHT: Delete.

8/70069 Oakley Ltd, R. J., N. Watson, P.O. Box 1001, Ch Ch.
NATURE OF OBJECTION: Landscape treatment requirement - Ind. G zone.
ALTERATION SOUGHT: Reduce requirement from 10% to 5%.

8/31091 A. R. Harris & Co Ltd, PO Box 863, Ch Ch.
NATURE OF OBJECTION: Landscape Treatment - Ord. 3.7.1, p 17 - Ind. L zone.
ALTERATION SOUGHT: Delete 10% and replace with 5%.

8/10999 Mr. G. A. Holderness, 27-164, Wellington
NATURE OF OBJECTION: Landscape treatment - Ind. L & G zones.
ALTERATION SOUGHT: Delete minimum percentage & number of trees and simply require "front yards to be landscaped" Ordinance 3.7.1, p 17.

8/41092 A. R. Harris & Co Ltd, PO Box 863, Ch Ch.
NATURE OF OBJECTION: Landscape Plan - Ord. 3.7.2, p 17 - Ind. L zone.
ALTERATION SOUGHT: Delete.
SECTION THREE

DISCUSSION
5.1 Introduction

The aim of this chapter is to draw together the conclusions of the previous two sections. It attempts to place in context the influence of legislative content, and professional and social attitudes on the implementation of landscape principles in planning. Discussion centers on how the variables involved can be further influenced to the benefit of landscape architects.

5.2 Process - National Level

Chapter One outlined the history of planning and its developmental relationship with law. It was seen that the planning techniques of pre and post Second World War Britain were implemented in New Zealand. An important difference between the two countries was the degree of discretionary power ascribed to local authorities. New Zealand, with its lack of physical constraints, chose to follow the American path by placing emphasis on the protection of individual property rights. Having a recent pioneer history the perceived control of individual freedom was not favoured. The result of this decision was that the influence of planning fell within the confines of land use allocation. This activity was associated with the general development stage of New Zealand's history.

The late 1950's and early 1960's were an especially prosperous time for New Zealand. It was during this period that District Scheme planning developed but did not reach its more sophisticated form until the mid 1970's. In the early 1970's environmental issues began to emerge as important planning considerations. The 1953 T.C.P.A. was amended to include some 'matters of national importance'. The 1974 oil shock gave further weight to the inclusion of resource management as a planning issue. At the same time the economy experienced a sudden downturn and the development orientated form of planning became less appropriate. Trends to ever greater decentralization began to reverse themselves. In 1977 the legislative response with the redrafting of the Town and Country Planning Act. As was seen in Chapter Two this contained a much wider range of issues for consideration. More importantly, for landscape architects, 'landscaping' was included as an explicit issue. Following the introduction of this Act, and the
late 1970's development debates, planning gained a greater public profile. From a legislative point of view the period following the introduction of the 1977 Act has been of greatest importance to local authority landscape architects. This has also been the period in which social and environmental issues have been increasingly included in District Schemes. However, as was seen in Chapter Two, national level change such as the 1977 T.C.P.A does not automatically imply change at the local level. Following legislation Central Government policy has then to be interpreted by the Courts. Movement at this intermediary level has not been so rapid. There has been little case law on design issues generally and less still on landscape issues (perhaps a reflection on the level of implementation). What has emerged has come down against discretionary control. The 1977 Act has moved to overturn the significant 'Fifth City Estate' judgement and has given some discretionary power to design control and 'landscaping' - but has also attached the certain requirements. Discretionary powers are not applicable to areas of predominant use (significant in most Schemes), and conditional use status (which allows discretionary power) cannot be applied over wide areas except in exceptional circumstance (such as the Waitakari vegetation controls in the Auckland area). These conditions limit the application of design controls but the interpretation given by the Courts has tended to be the most inhibitory factor. While few policies have been 'tested' it is generally assumed that interpretation will be conservative which in turn deters ambitious policy. The 1977 T.C.P.A. dispensed with the zoning regulations of the 1953 Act but the technique has remained in use. Zoning does not take account of landscape character and makes the inclusion of policy on broadscale issues difficult. Consequently landscape policies have often remained the cosmetic type. The Town and Country Planning Directorate has not taken active steps to further influence the interpretation of the Act, in spite of submissions from the New Zealand Institute of Landscape Architects (N.Z.I.L.A.). Landscape policy is either not an issue or the Directorate is letting public pressure decide upon its directions.
5.3 Process - Local Level

Section Two showed the implementation of planning policy to be a process involving both professionals and politicians. As such District Schemes become a synthesis of planning objectives, law, and the influence of changing social trends. The latter are articulated by the politicians (Councillors). Interview comments by Councillors demonstrated that they are aware of what is likely to be acceptable in the wider community. Whatever interpretation is placed on those seeking public office the fact remains that the aspirants objectives will not be achieved if office is not gained and held. The observations of the Waimairi landscape architects reinforce this perspective. 'business' bias of their present Councillors. That a 'big business' bias has occurred during a period of nationwide recession is not surprising and reflects a general trend in western countries. This has seen the rise of conservative parties and the anticipation of salvation via free enterprise. Comments re the 'rights of individual ratepayers' can partly be seen against this background, and that of the New Zealand tradition of individual freedom.

The planners tend to perform the role of middlemen within local authorities. They are responsible for the form of the District Scheme and its legality. As such their attitudes and objectives have a strong influence on the direction the Scheme takes. While Council ultimately decides on acceptance/rejection of policy the format in which it is presented to them by the planners influences their decision. This can be seen in the process whereby the initial landscape guidelines (Change 27) were submitted to, and accepted, by the Waimairi District Council. Having 'Change 27 as a precedent would have made the more elaborate Second Review guidelines easier to include. But if the interests of the Councillors are different from those of the Council staff the Councillors wishes will prevail. A primary interest of any Council is the provision and maintenance of services at the lowest rate of expenditure. Social considerations such as 'landscaping' get what is remaining, unless a strong precedent in their favour exists. Attracting commercial interest is a primary objective as the collection of commercial rates decreased the levy against private rate payers. As noted in Chapter Three, landscape provisions are seen as a positive means of assisting commercial operations in that people wish to live and invest in an area with a good image. Councillors are also susceptible to negative commercial lobbying. If commercial interests object to such provisions then the Council is likely to give their objections weight.
Chapter Three also pointed to the fact that Councillors are 'average people' elected through the selection of local issues. They share the likes and dislikes of the local community. Influences on their attitudes, noted by the landscape architects, include public events such as garden society prizes and the displays mounted by the Edmonds Factory. 'Landscaping' tends to be seen as 'flowers and shrubs' of these displays and the design component of the Edmonds gardens is not understood. This perception effects the amount of support the landscape architects are likely to get in their assessments of development applications. Within the structure of the Waimari District Council ratepayers have a direct access to the Councillors that the landscape architects do not have. Because of this relationship the form and content of the landscape provisions in the District Scheme are especially important to the landscape architect. If specific requirements are included the applicant has no option but to comply.

While the achievement of 'comprehensive' landscape provisions at Waimairi seems unlikely the structure and format of the Second Review increased the ability to present more sophisticated policy. The Council wishes to restrain bureaucratic intrusion but seems caught with its interest in appearing as an efficient and competent administration. The Second Review seems to fit this image. It is whether or not 'landscape' can retain its position as part of the image that remains uncertain.

5.4 The Image of Landscape Architecture

It was noted in Chapter Three that the lack of acceptance of advice is frustrating to landscape architects. Also held was the conclusion that until they can 'educate Councillors' the 'ideals of landscape' will not be understood. The interview responses pointed to the Councillors perceiving landscape as a subjective activity, whose purpose was essentially cosmetic. The landscape architects see themselves as professionals and consider that the Council should accept advice given 'but this does not happen'. What exactly the discipline addresses is not agreed upon and is the root of the conflicting objectives seen in the case study. A design orientation is outlined, in the Second Review, which develops the theme of 'integration with' and 'subordination to' the landscape (Amenity Guidelines). In contrast the Councillors tend to see parks and street tree planting as the preserve of landscape architects. None of the respondents volunteered a specific
definition of 'landscape'. This lack of common ground is probably not unique to Waimairi District Council and begs the question of what are the ideals of landscape and how best should they be implemented in the public arena. The professional realm of 'landscape' applies to an activity spectrum ranging from garden design to broadscale landscape planning. New Zealand landscape architects tend to echo an environmentalist stance of which the 'protection and sensitivity for the landscape' are key themes. What this actually means in terms of a local authority or private practice is not clear to the consumer or, perhaps, to some landscape architects. A letter in Landscape Design (December 1984) illustrates this problem from a British perspective:

"Capability also asks for a 'shared philosophical commitment to the principles of sound environmental management'. This also as rhetoric sounds fine, but I have little doubt that the this were defined in detail the more out differences in opinions and values would produce disagreements".

A correspondent in the Landscape Architectural Forum! (Winter 1981) goes someway to relating the environmental theme to daily practice:

"landscape architects...are the only professionals who regularly integrate living systems with human systems".

It is towards the latter perspective that the design issues raised in the Waimairi Second District Scheme Review seem to relate (especially the Rural Guidelines). That the Councillors are unable to make this connection is not necessarily their fault. Landscape Architects have been increasingly active in New Zealand since the early 1970's, and many of those graduating have entered government positions. Within those positions many have had the opportunity to involve themselves with environmental management (Lands and Survey Department, Forest Service). However the landscape architects with whom the public have most contact have been involved with planting and layout plans for private gardens. It was probably in this context that the first landscape architects were employed at Waimairi to develop reserves. Consequently it is not surprising that they are not seen as part of the planning process because as yet there has been little public reason to associate the discipline of landscape architecture with either environmental planning or design.
5.5 Underlying Themes/Conclusions

The question of what landscape architects are able to achieve within the planning system cannot be answered simply by reference to legal definitions. Variables such as the political leanings of a Council, public attitude, and the abilities of individual landscape architects appear in this study as equally as important as prevailing legislation. A conflict emerges between the professional practice of landscape architecture and that of law but this conflict is in itself influenced by public attitude. It is the initial conclusion of this study that the progression of 'landscape' within the planning system must be seen in the context of the introduction of a set of new ideas into an already established environment. In this sense the variables affecting the inclusion of landscape are those common to other situations of social change. Some of these are seen in the case study. The theme of informal v. formal change was alluded to by both planners and landscape architects. Reasons given for the empathy between these two groups were age and professional outlook. Both were young and operating in an organization whose decision makers were older than themselves in age and outlook. Both groups saw planning as a more comprehensive activity than those making the final decisions. As such the planners assisted the landscape architects. In opposition to their objectives were the Councillors and, to some degree, the Courts. The Councillors criteria for acceptance/non acceptance of policy was related to their own ideas and experience rather than to evolving concepts of planning. Taking the Councillors as reflecting the attitudes of their constituents the efforts of the landscape architects appear to have reached the limits of current 'public acceptance' and a deadlock is likely for the near future.

Taking a pragmatic point of view the major observation to take from this study is that the formulation of a District Scheme is a political process as well as being a technical activity. Objectives and policies are formulated by professionals but the ultimate client is the public, whom the Scheme affects. Acceptance of policy is public acceptance. To achieve this acceptance landscape architecture, must by some means, be packaged and sold as an acceptable and beneficial activity. As noted by the Waimairi planners 'ultimately changes result from mass public opinion putting pressure on Council'. How pressure sympathetic to the 'ideals of landscape' is achieved is a question of political strategy and a task that is perhaps 'extra
curricular' to normal work activity. Press articles and public lectures are one approach, though requiring coordination if they are to achieve specific objectives. These could be organised by landscape architects within their professional groups (eg. the 'soon to be formed' local Chapters). At a national level continued targeting of government agencies such as the Town and Country Planning Directorate is required by the N.Z.I.L.A. As a long term strategy the proposed publicity campaign to be aimed at schools and tertiary students is a positive step towards increasing public awareness of what landscape architecture encompasses and the existence of a professional group fulfilling its functions.
In giving this address I am conscious that I am speaking to members of a learned profession. Now, a profession is a vocation in which knowledge of some department of learning is used in its application to the affairs of others.

In the practice of their profession, engineers expect to use their knowledge to produce structures of grandeur which are a tribute to their professional expertise.

Engineers alter nature, and the manner in which and the urgency with which they alter nature can vary according to the circumstances of the times.

I am reminded of the comment by the American engineer who said that with his country growing the way it was he simply could not sit back and let nature take its course.

Engineers are technocrats. They believe in the application of rational and value-free scientific and managerial techniques to the natural environment which is regarded as neutral and from which mankind can profitably shape his destiny.

But professionalism is not merely specialised competence. One writer said that professionalism is a tribal ideology, and that a profession reflects the values into which its members have been socialised.

A profession has its own particular attitudes and it does have its own values — attitudes and values which are not necessarily the same as those of the community which it serves.

Sometimes it is necessary for the profession to bring in a speaker from outside to learn what the outside world is thinking, and that I understand to be the purpose of this lecture.

First, to make an important statement about values. I refer to the report of an English committee made last year. It was on a subject which is quite irrelevant to today's address. It was the report of a Committee of Inquiry into human fertilisation and embryology known as the Warnoch Committee.

In the course of their report the committee said that matters of ultimate value are not susceptible of proof. And I would like you to bear that statement in mind over the course of my address.

I am a member of the legal profession. My profession does not produce structures of grandeur, nor does it deal with the certain and inexorable laws of nature as does the engineering profession. My profession deals with the body of rules, whether formally enacted or customary, which a community recognises as binding on its members.

Those rules relate to human conduct. In the past the law has dealt principally with the behaviour of human beings towards one another. But increasingly the law is becoming concerned with the way in which humans manage the physical environment in which they live.

The law also regulates the manner in which, and the considerations by which, the community makes decisions affecting its well-being, and decisions affecting the changes it makes to the physical environment.

My particular responsibility for the last 15 years has been with the body of law which regulates the conduct of the people of this country towards our physical and biological environment.

And it is the changing basis of that law and the changing basis of decision-making under it which I wish to speak about.

It is appropriate in this introductory part of my address that I bring to your attention two further statements made in the report of the Warnoch Committee which have relevance to what I have to say.

One is, that the law is the embodiment of a common moral position. The other is, that doctors and scientists (and I may add for the purposes of this address, engineers) all work within the moral and legal framework determined by society.

That explains the surprise and bewilderment of some engineers when they give evidence before the Planning Tribunal. Bewilderment that something which to them is self-evident is being challenged and questioned.

Historical

I now wish to traverse some historical material, and to indicate the path taken by the law in recent years, and important changes which have occurred.

When I first took up my appointment I could properly have described my approach to the exercise of my jurisdiction as a technological one.

I believed that I was required like engineers, to apply rational, scientific and managerial techniques in the management of the natural environment.

At that time I saw the purpose of land use planning as being to achieve an orderly and coherent system of land uses.

I saw it as striving to achieve amenity, that is pleasantness, harmony and coherence in the environment in which we live.

To achieve an overall sense of order...
between the structures we build, and to achieve a degree of harmony between the natural and the artificial. Land use planning is not of course an exact science. There are differences of opinion as to the relationships that land uses have to one another. I expect that all of us have had personal experience of what we in land use planning call LULUs. I think LULU is an American slang word for a mistake. But in land use planning, LULU is an acronym for Locally Unwanted Land Uses — those desirable or necessary land uses which no-one wishes to have in their immediate neighbourhood.

Taverns are an example. Many people wish to have a tavern somewhere handy, but nobody wishes to live next door to one. Rubbish tips are another example. In the USA, I suppose nuclear power stations are a major LULU.

Internationally, perhaps nuclear testing and the disposal of nuclear waste.

Our task is to find a home for the LULUs.

Our jurisdiction in the Planning Tribunal also extends to matters of water quality and water use.

The management of our natural waters is more of an exact science than the management of land uses.

Questions of water quality, the prevention of water pollution, and a judgement as to whether a discharge can be made into particular waters, involve the application of science and scientific principles.

And in 1970 the law in that field did not require anything more than the technological approach that I have described.

But in 1973 a small cloud appeared on our horizon. I did not recognise it as such at the time, but is clear in retrospect. There were appeals by the Maori people and others over the water rights required for the Huntly Power Station.

The power station takes water from the Waikato River, uses it for cooling purposes and discharges heated water back into the River. No other change in the quality of the water is made.

The question of the extent to which the river can accept heat is highly technical and the appeals involved very detailed scientific evidence.

But in the course of the case in opposition to the water rights a very respected member of the Maori community told us that, according to the beliefs of the Maori people, there is a taniwha at each bend of the river and that these taniwhas are the guardians of the river.

An event with a different significance occurred the following year, 1974. That saw the first occasion on which a water right authorising the damming of a river for the purpose of electricity generation came on appeal.

In determining the appeal, we ruled that the Act under which the right was to be granted was concerned with rights to water and the effect which the right, if sustained, would have on other people's use of that water.

But the Maori owners of the land which would be flooded by the dam appealed to the High Court and the court ruled that we had determined the matter on too narrow a basis.

The High Court held that the term "soil conservation" used in the Act extended to and includes the preservation of the soil for productive purposes.

The court therefore ruled that the Act required us to take into account the loss of productive land which would occur if the right to dam was upheld; and that the loss of that productive land had to be weighed against the benefit which would follow from the exercise of the right.

The matter was remitted for reconsideration, and we held that the right should not issue; that in the circumstances the loss of productive land outweighed the benefit to be gained by electricity generation.

Thus the scope of relevant considerations was widened, beyond the immediate resources to be gained or lost, include what can perhaps properly called "down-stream" resources.

In 1977 the Town and Country Planning Act was revised and for the first time the new Act declared that one of the matters to be taken into account in making land use decisions is "the wise development and management of New Zealand's natural resources".

Another matter which appeared in 1978 Act for the first time is "the relations of the Maori people, their culture and traditions with their ancestral land".

The significance of the first of these two provisions was touched on by Court of Appeal in 1981. We had s that provision does not give a wide-ranging brief to manage all of New Zealand's resources; that land use planning has no control over resources on which they have been taken from the land.
But in proceedings brought before the Court of Appeal in relation to the synthetic fuel plan at Motunui one of the judges in that Court said that the term "wise use and management of New Zealand's resources" must include resources such as natural gas for producing motor fuel.

So it seems that the local planning authority and the Planning Tribunal have jurisdiction to consider whether or not our natural gas should have been put to some other purpose.

Another event occurred in 1981 which is of relevance, namely the enactment of the Mining Amendment Act. That Act gave the tribunal jurisdiction to conduct inquiries into applications for mining privileges.

Among matters which Parliament requires the tribunal to take into account under that Act are: the nature and extent of the mineral resource in the land and its relationship to other resources and industries, and the economic, social and environmental effects of the grant of the mining privilege.

The purpose of this historical narrative is to point out to you that my original approach to the exercise of my jurisdiction is now completely out of date. A narrow technological approach is now inadequate.

The statutes which the Planning Tribunal administers require that when decisions are being made concerning the management of our physical environment, not only shall the environmental consequences be taken into account but also the social, cultural and economic implications of the decision.

And that when resources are affected to a significant degree the importance of the resources to be gained and lost must be weighed.

This can be aptly described as diversification of our jurisdiction and of the factors which have to be taken into account.

But there have been changes in community attitudes as well — changes which have not been reflected in the legislation or court decisions. I wish to mention two of them.

The first is that a large section of the community is expecting that decisions affecting the physical and biological environment will not simply choose between particular resources.

These people are seeking the preservation, undisturbed, of particular parts of the physical environment. That section of the community is arguing that the statutory powers of decision-making should be used to that end. Some manifestations of this expectation can be mentioned very quickly.

One of the most significant was the movement to prevent the level of Lake Manapouri being raised as part of a hydro-electric scheme.

Another was the movement to preserve the South Island beech forests, and the presentation of the Maruia declaration to Parliament.

That movement has now enlarged its objectives and seeks the preservation of all remaining native forests, for example, Pureora, Waitutu and Whirinaki.

In more recent years there has been pressure to preserve "wild and scenic rivers".

That pressure resulted in an amendment of the Water and Soil Conservation Act in 1981 and the enactment of a procedure whereby certain outstanding rivers can be identified, and for the time being protected from development.

There is the movement for the preservation of this country's remaining wetlands. There is the movement for the preservation of our one remaining unmodified geothermal system, the Waimangu geothermal area.

There is the movement to protect particular land and water areas from what is perceived as incompatible development.

Local bills have been sponsored to prevent mining privileges being granted on the Coromandel Peninsula and on Great Barrier Island.

Two weeks ago the Prime Minister announced that an amendment to the Mining Act will be introduced to the House by the middle of this year outlawing large-scale open cast mining in the Coromandel and Otago Peninsulas.

Associated with these movements to preserve natural features is the general desire of the community to preserve rare and endangered species of wildlife. For example the black robins on the Chatham Islands and the kokako.

Also there is a desire to preserve and protect complete ecosystems.

But with some small exceptions the law does not provide for the preservation, undisturbed, of particular parts of the physical environment.

In general the law still reflects the ancient common law philosophy that the owner of land is entitled to do what he likes with it.

The second change in the attitude of a section of the community is the desire of the Maori people to have their cultural, spiritual and traditional beliefs taken into account in the administration of the law relating to the physical environment.

I have already mentioned the 1973 case of the taniwhas which guard the Waikato River, and the provision of the Act which now requires the relationship of the Maori people to their ancestral land to be recognised.

The tribunal interprets the latter provision as encouraging the Maori people...
to use their land for traditional Maori purposes. But that provision has raised Maori expectations far beyond the matter of the use they make of their own land. They are seeking to impose restrictions upon how non-Maoris may use land owned by non-Maoris.

In 1981 the question of water rights required for the Steel Mill at Glenbrook came before the Planning Tribunal. The mill is being enlarged in capacity and at present it draws water from an underground source. That source will be insufficient for the extended mill. The only available and sufficient supply is from the Waikato River.

The steel company sought rights authorising it to take water from the river, convey it by pipeline overland to the mill, and hold it in a reservoir until required for process purposes. After use in the mill the water would be treated and ultimately discharged into the Manukau Harbour.

A sincere Maori woman of middle age brought an appeal and asked that the water rights sought for the mill not be granted on the grounds that the exercise of the rights would adversely affect the cultural, spiritual and traditional relationship which the Tainui people have with the Waikato River and the Manukau Harbour.

She said that the taniwha of the Waikato River is a deadly enemy of the taniwha of the Manukau Harbour and that one dare not mix the blood of one with the blood of the other.

That was her sole ground of opposition to the grant of the rights.

The tribunal ruled that the Act does not allow purely metaphysical concerns to be taken into account and dismissed her appeal.

The question of Maori spiritual and traditional beliefs has recently been considered by the Waitangi Tribunal.

In a report given in November 1984 on the proposal by the Rotorua District Council to construct a pipeline and to discharge treated sewage effluent into the Kaituna River, the Waitangi Tribunal said that to mix waters that are scientifically pure, is contrary to Maori cultural and spiritual values.

In that report it made a recommendation to the Minister of Works that the Water and Soil Act and related legislation be amended to enable regional water boards and the Planning Tribunal to take into account Maori spiritual and cultural values when considering applications for the grant of water rights.

But at this point it is perhaps appropriate that I remind you of the title and sub-title of this address, namely: The changing basis of decision-making - is reason sufficient?

Even before the Waitangi Tribunal issued its recent report the present Minister for the Environment had issued a public statement to the effect that Maori spiritual and cultural values should be taken into account and recognised in the law which regulates the use of natural water.

**Discussion of these changes**

(I) The use of resources

The power to decide by judicial process which of two or more resources should be used or preserved and to decide the purpose to which a resource should be put if it is to be used, has grown up more by accident than by design.

The original purpose of the Planning Tribunal was to safeguard the individual against arbitrary or unreasonable decisions by local government.

Its jurisdiction has been extended to authorise it to make value judgements over the use of resources. But questions of the latter kind are not justiciable: they are not capable of final resolution by judicial process. Because they involve value judgements there is no final indisputably correct answer.

Furthermore this jurisdiction now vested in the tribunal suffers from a serious deficiency — it is not comprehensive. Not all questions over the use of major resources are decided that way.

Neither the expansion of the steel mill at Glenbrook nor the expansion of the oil refinery at Marsden Point required an express planning consent. Both projects are authorised "as of right" by the relevant planning schemes.

In 1981 I attended a residential seminar in Cambridge, England, organised by the International Bar Association on the topic of environmental law.

One of the speakers at that seminar was a London barrister who at the time was chairing a public hearing into a proposal by the National Coal Board to open up a new coal mine in a delightful part of rural England.

The inquiry had lasted for six months. I made the general comment there that England has three major sources of energy, coal, North Sea oil and natural gas, and nuclear power. The reliance to be placed on energy derived from one or other of those sources was largely a matter of personal choice according to one's perceptions of the degree and importance of the risks and environmental damage associated with each.

A decision on the question of which resource should be used, depends upon the values held by the community, the esteem in which the resource is held, the community's estimation of its worth and usefulness, society's appreciation of the significance of the hazards involved and of the degree of environmental degradation which would be caused.

Community values change over a period of time as do economic values. Aluminium prices fluctuate. It is possible to switch the use of electricity overnight from one purpose to another.

So I repeat that the purpose to which a resource should be put cannot be finally answered by judicial process.

Over the last few years the role of the Planning Tribunal has become confused. Matters of national policy have become mixed with matters of land use.

But if questions concerning the use of resources are not justiciable, who then should make those decisions. How should they be made? Recent governments have wrestled with that problem. None has yet found a satisfactory answer.

The former Government found its answer in the National Development Act. The present Government intends to repeal that Act. I do not know whether it intends to replace it with something else.

It is misleading to say that decisions of that kind are political in nature, because of the overtones associated with the word "political".

But when a decision of that kind has to be made, the community must first have a broad understanding of what the consequences will be, one way or the other; and the decision, when made,
must be seen and accepted as the right one, by the majority of the members of
the community.

It seems that although the ultimate issue is not justiciable, there should be
some judicial input into the decision-making process.

(ii) The preservation of ecosystems and rare and endangered species

I think that everyone would agree that mankind should not change the whole of
the physical environment in which he lives; that here and there representative
samples of the natural environment should be preserved, unmodified.

The writers of the recently published book: To Save a Forest: Whirinaki say
that "a duty of care arises where parts of nature are scarce and are virtually in
peril of extinction, precious to science and superb for human enjoyment.
Stewardship must then involve curtailment of our purely economic expecta-
tions."

We would all agree with that statement. But how much should be preserv-
ed? Who defines scarcity? Who says what is precious and superb?

There are interest groups within our community who have decided for
themselves which parts of our environment should be preserved. They seem to
be somewhat intransigent, very difficult to bargain with, and unwilling to accept
compromises. To them, wilderness values are irreplaceable and priceless, in-
compatible with the concept of multiple use.

Recently a goldminer applied for a mining licence for 140 hectares of beech
forest situated in the Maruia Valley. The area applied for is within the Vic-
toria Forest Park, which is 177,000 hec-
tares. In the Maruia Valley, an
ecological area of about 6,000 hectares is
being set aside to be preserved untouched.

The hectares which the miner applied for is not within the ecological area and
it turned out that he was proposing to disturb no more than two hectares a year
over a 10 year period, and that beech tree regeneration would be certain and
relatively rapid.

The application for the mining licence was opposed by the Native Forest Ac-
tion Council, and in evidence to the Planning Tribunal, a witness for the
Council said:--- "The forests of the
Maruia symbolise the beauty and worth
of New Zealand's native forests to a
great many people. These forests have a
spiritual significance that has inspired
and sustained the forest conservation
movement since its resurgence in the ear-
ly 1970's."

How can a judicial tribunal deal with
a statement like that? Is it possible to
decide objectively and scientifically just
what and how much should be preserv-
ed?

(iii) Spiritual values

The suggestion that Maori spiritual
and cultural values be recognised in our
The law should be secular

The law should be concerned with the physical, not the metaphysical. The current philosophy is that the law should not legislate religious beliefs since it does not require our conduct to conform to spiritual beliefs. It should not require that public decisions be made having regard to spiritual beliefs.

Nevertheless, although the law should be secular, there is a spiritual dimension in all the decisions we make. It is concerned with our relationship to the creator of the universe.

But it is also concerned with our relationship to other human beings and to the physical environment in which we live.

The spiritual dimension in our decisions concerning the physical environment becomes apparent when we seek answers to the simple questions: Why care for the environment? Why preserve particular ecosystems? Why protect endangered species?

When I asked a scientist once why she believed that the community should protect an endangered species, she was rather at a loss for an answer. She finally said that we should preserve endangered species in order to preserve the gene pool — that at some time in the future human society might find some use for the genes of that particular animal.

That was a technological answer — based on the possibility of the utility of the animal to the human race.

You will each have your own answer to the question: why care for the environment? But I would expect that your answer is an emotional and spiritual one rather than a rational one.

There is no biological justification for conservation. Nature will not miss the loss of another forest, the extinction of another endangered species. Nature will not care about the modification by man of another ecosystem. Millions of acres of forest have been lost already. There are few ecosystems which have not already been modified. Uncounted species of animals and birds have died out in past ages.

The validation of conservation lies in the human situation and in the human heart. We say that if something else becomes extinct or destroyed the world will be the poorer. But it is only man who can make that evaluation.

The authors of the book from which I have already quoted say that the reason why we care for the environment is a' values matter, that values are intuitively and emotionally felt and that they are sources of conviction which we should not apologise for.

What then is the human situation? What is mankind's relationship to the physical world in which he lives?

There are three (and only three) possible relationships.

First, that mankind has authority and power over the physical environment and is answerable to no one as to how he exercises that power. Such limits as he places on his power are purely voluntary and self-imposed.

The second, that the physical world has a life or spirit of its own which must be respected by mankind and which places limits on man's actions.

The third, that mankind has freedom of action over the physical universe but is answerable to a higher power (the creator) for the manner in which he exercises that power.

Which of these three do you believe is the valid relationship? We all express certain or tacitly accept one or other of those positions. Many people in the western world tacitly adopt the first. They think and decide on the basis that there are no constraints on man's power over the physical environment.

But increasingly that attitude is being called into question. It is being blamed as the root cause of environmental
degradation, pollution and over-exploitation of resources. It is being called into question by the environmentalists who seek to preserve parts of nature; by those who seek to insert a spiritual dimension into our decision-making.

Many who would describe themselves as environmentalists have been seeking a new ethic, an environmental ethic. Some of them argue that the integrity of natural ecosystems should be preserved, not simply for the pleasure of mankind, but as a matter of biotic right. Nature, they contend, contains its own purpose, but as a matter of biotic right. Nature, which ethical principle.

to possibilities towards nature.

bioethical approach seems to me to be significant natural object has its own
differently. traditional values and wish to introduce new values into the decisions which the community makes concerning the environment and the use of resources.

Some are asserting that their spiritual values should be recognised when decisions are made. I have said that the law cannot recognise spiritual values directly. But the law should be the embodiment of a common moral position, and it will therefore in some way necessarily and indirectly reflect the spiritual values, the ethical position, adopted consciously or unconsciously by the community. The law should reflect (not dictate) those matters of ultimate value which are incapable of proof.

I have posed the question; is reason sufficient for our decision-making in this field? My answer to that question is no. What ingredient must be added? I suggest that the ingredient to be added is reverence.

The dictionary defines “reverence” as: deep respect and veneration for some thing, place or person regarded as having a sacred or exalted character. When we come to make decisions which affect the physical environment, should we not show reverence towards the one who created the world?

If you do not believe in a creator, should you not show reverence in the face of the amazing complexity, diversity beauty and perfection of the physical environment?

I am not arguing for an abandonment of reason, but for the addition of reverence to reason. Our decisions should still be in accordance with reason. Reason tells us that we should not over-exploit or pollute our environment.

Reverence tells us that from time to time a proposed development which could be justified on rational grounds should nevertheless not proceed because of the intrinsic value of the natural features which would be lost or modified.

Respect for each other may require that when there are several alternative ways of achieving a particular objective the method be chosen which recognises the sensitivities of a particular section of the community, but alternatives are not always available.

It appears to me that what the environmental movement, and what the Maori people are asking in effect is that the community have a more caring attitude to our environment than in the past. That we make a greater effort to live in harmony with the world and less effort to dominate and exploit it.
SECOND SCHEDULE

MATTERS TO BE DEALT WITH IN DISTRICT SCHEMES

1. Provision for social, economic, spiritual, and recreational opportunities and for amenities appropriate to the needs of the present and future inhabitants of the district, including the interests of [children and] minority groups.

The words in square brackets were inserted by s. 37 of the Town and Country Planning Amendment Act 1983.

2. Provision for the establishment or for carrying on of such land uses or activities as are appropriate to the circumstances of the district and to the purposes and objectives of the scheme.

3. Provision for marae and ancillary uses, urupa reserves, pa, and other traditional and cultural Maori uses.

4. Provision for the safe, economic, and convenient movement of people and goods, and for the avoidance of conflict between different modes of transport and between transport and other land or building uses.

5. The preservation or conservation of—
   (i) Buildings, objects, and areas of architectural, historic, scientific, or other interest or of visual appeal;
   (ii) Trees, bush, plants, or landscape of scientific, wildlife, or historic interest, or of visual appeal;
   (iii) The amenities of the district.

6. Control of subdivision.

7. The design and arrangement of land uses and buildings, including—
   (a) The size, shape, and location of allotments;
   (b) The size, shape, number, position, design, and external appearance of buildings;
   (c) The excavation and contouring of the ground, the provision of landscaping, fences, walls, or barriers;
   (d) The provision, prohibition, and control of verandahs, signs, and advertising displays;
   (e) The provision of insulation from internally or externally generated noise;
   (f) The location, design, and appearance of roads, tracks, cycleways, pathways, accesses, and watercourses;
   (g) Access to daylight and sunlight;
   (h) The requirements of [section 25 of the Disabled Persons Community Welfare Act 1975 and section 331 (2) of the Local Government Act 1974 (as enacted by section 2 of the Local Government Amendment Act 1978)].

   In para. (h) the words in square brackets were substituted for the original words by s. 3 (5) of the Local Government Amendment Act 1978.

8. The avoidance or reduction of danger, damage, or nuisance caused by—
   (a) Earthquake, geothermal and volcanic activity, flooding, erosion, landslip, subsidence, silting, and wind;
   (b) The emission of noise, fumes, dust, light, smell, and vibration.

9. The relationship between land use and water use.

10. The scale, sequence, timing and relative priority of development.
scheme specified shall be subject to section 65 of this Act.

[(1a) Subject to sections 3 and 4 of this Act, the district scheme, in respect of any area below mean high-water mark included in the district, may make provision for such of the matters referred to in the Third Schedule to this Act as the Council considers necessary or desirable.]

(2) Every district scheme shall include—
(a) a statement of the particular objectives and purposes of the scheme and the policies to achieve them;
(b) an indication of the means by which and the sequence in which the objectives, purposes, and policies will be implemented and achieved;
(c) a code of ordinances for its administration and implementation, and a map or maps illustrating the proposals for the development of the area; and
(d) such other particulars and material as the Council considers necessary for the proper explanation of the scheme.

[(3) Every district scheme shall provide for such controls, prohibitions, and incentives relating to the use or development of any land, area, or building as are necessary or desirable to promote the purposes and objectives of the district scheme.]

(4) Every district scheme may distinguish between classes of use or development in all or any part or parts of the district in any one or more of the following ways or any combination of them:
(a) those which are permitted as of right provided that they comply in all respects with all controls, restrictions, prohibitions, and conditions specified in the scheme;
(b) those which are appropriate to the area but which may not be appropriate on every site or may require special conditions and which require approval as conditional uses under section 72 of this Act;
(c) those which are permitted subject to such powers and discretions specified in the scheme as are necessary or desirable to achieve the general purposes of the scheme and to give effect to the policies and objectives contained in the scheme relating to—
(i) landscaping;
(ii) the design and external appearance of buildings; and
(iii) such other matters as may be specified in that behalf by any regulations in force under this Act.

(5) Any district scheme may confer on the Council such specified powers and discretions as are necessary or desirable to achieve the general purposes of the scheme and to give effect to the policies and objectives contained in the scheme relating to—
(a) the preservation or conservation of trees, bush, plants, landscape, and areas of special amenity value;
(b) the design and external appearance of buildings; and
(c) such other matters as may be specified in that behalf by any regulations in force under this Act.

(6) Any district scheme may provide for the circumstances under which, the manner in which, and the conditions subject to which, the Council may grant an application for the dispensation wholly or partly from, or waiver of, any provision of the district scheme relating to—
(a) the subdivision of land permitted to be used for any urban purpose;
(b) the height, bulk, and location of buildings permitted on site;
(c) the provision of parking and loading spaces;
(d) the design and appearance of buildings and signs and the provision, design, and appearance of verandas;
(e) landscaping; and
(f) such other matters as may be specified in that behalf by any regulations in force under this Act.

(7) Any district scheme may provide for any class or classes of application for the exercise of any discretion conferred on the Council by the scheme to be made without notice.

Provided that such a provision shall not be made in respect of any application which is required by any provision of this Act to be a notified application within the meaning of section 65 of this Act.

[(8) The Council shall make such provision in its district scheme as it thinks necessary in respect of—
(a) land used or to be used for a public work which is an essential work and for which it has financial responsibility; and
(b) land used or to be used for a public work which is not an essential work and for which it has financial responsibility, if the owner of the land has consented to such provision being made; and
(c) land of which the Council is the owner or lessee and which is used or to be used for any public work which is not an essential work and for which it has financial responsibility;]
APPENDIX THREE
This study began through an interest in the judicial process and a hunch as to how that process affected the incorporation of landscape within District Schemes. It was intended to compare the District Schemes of two local authorities and analyse the use of statutory provision, and policy effectiveness. This approach was dropped as it became obvious that a 'cause and effect' study would not reveal other factors affecting the inclusion of provisions. Subsequently it was decided to focus on one local authority (which employed landscape architects) and to attempt to determine what influenced policy inclusion. Research began with the loose hypothesis that statutory definition would prove to be a determining factor. Interview analysis later showed this to be inadequate.

The research method used has its roots in sociology. As information was to be sought from individuals it was appropriate to draw on a discipline which has gathered much of its data from person to person contact. The following discussion draws on the books 'Qualitative Sociology - A Method to the Madness' and 'Introduction to Qualitative Research'. It aims to explain why the study took the approach that it did for the benefit of students interested in similar topics.

Quantitative v. Qualitative Research Methods

There is frequent debate amongst social scientists over how much 'science' can be claimed for their research. The classic model of 'science' is that of Hypothesis formulation: Test of Hypothesis by Experiment - redefinition of Hypothesis or Verification of Fact. Unfortunately the complex nature of human resource material makes it difficult to eliminate conflicting variables or to replicate experiments with a reasonable degree of confidence. It is the weight put on approaches closely associated with scientific method that differentiates between the different schools of social research. Both Psychology and Political Science tend to hang their hats on statistical proof in order to establish their credentials as 'sciences'. One school of Sociology takes this path while another does not give 'science' so much weight. It is the second school whose research methods have been
The sociological research that looks for 'facts' or causes of phenomena is known as the 'positivist' or 'quantitative' approach. It is not generally interested in the subjective and aims at a rigorous and reliable collection of data that can be tested statistically against a working hypothesis. Quantitative sociology tends to see the social framework within which individuals live as the base explanation of behaviour (e.g., marxist analysis of the state). Its rejection of individual perception lies in the difficulty of studying it 'scientifically'.

The more subjective approach is known as 'qualitative' research. It attempts to understand behaviour from the study participants personal frame of reference. Qualitative researchers see the consideration of the interactions *within* a social setting as being as valuable as observing the evolution of the outside structure. Two reasons are given. Firstly it is difficult to determine the validity of a broad social theory when little is known of how individual participants make decisions. Secondly the influence of an individual can still be such that the direction of the whole organization is shifted. The qualitative researcher claims that in order to understand the social phenomenon the researcher needs to determine the participants definition of the situation and how these interpretations of reality relate to his/her behaviour. With this aim qualitative research selects people for observation on the basis of how representative they are of 'objects' of some larger collection. This approach and the advantages of its techniques make the qualitative approach valuable for initial research.

**Advantages of Qualitative Research**

1) qualitative research is the best means of gaining access to a problem in a short period of time.

Techniques used include open ended interviews, personal documents and participant observation. The first two techniques were used in this study.
2) qualitative research allows the investigation of a problem that does not have a clearly defined hypothesis associated with it.

There is no clearly established theory of how qualitative material (landscape design) is incorporated into an established administrative system. If the initial hunch had been implemented via a questionnaire (eg. legislation was the determinant) a limited, or biased, response would have given little indication of what the informal influences were. This was an empirical study which evolved as it proceeded.

Techniques and Difficulties

Unstructured interviews were conducted with participants at different points within the administrative structure of the local authority chosen. Contact was made one week prior to the desired interview time and then face to face interviews were carried out. Notes were taken during the interview and then written up immediately following the interview. Following completion and 'write up' the interviews were coded for recurring themes.

The success of this method of information gathering has been the gaining of an insight into the unofficial as well as official dynamics of a local authority. Setting up the interviews within the time available provided the greatest difficulty. As the interviews progressed other staff members were identified as important to the study which involved extra time. Each interview then took an average of 40 minutes to write up. The context of comments and the exact meaning were difficult to interpret in some cases as rapport had not been sufficient to pursue themes at the time of interview. This was partly a result of the fact that there was no one response that the study was seeking to elicit and also of the limited time available from the respondents point of view. A base line question was used in all cases but the respondents tended to direct the interview towards the areas they were either most familiar with or held the strongest feelings about. At times this tended to lead to irrelevant ground being covered but this was necessary to allow in order to keep the interview alive.
APPENDIX FOUR
PART TWO LANDSCAPE TREATMENT

1. INTRODUCTION

Requirements for landscape treatment are set out in the various zone ordinances. This part of the Scheme explains the principles of landscape treatment and describes landscape design components as well as the Council's requirements for landscape plans.

The Second Schedule to the Act includes "the preservation or conservation of trees, bush, plants or landscape of scientific, wildlife or historic interest or of visual appeal" and "the design and arrangement of land uses and buildings, including... the excavation and contouring of the ground, the provision of landscaping, fences, walls, or barriers" as matters to be dealt with in District Schemes. In this Scheme the term "landscape treatment", is generally used in preference to "landscaping" because "landscape treatment" more clearly indicates the broad meaning that the Council ascribes to this subject.

The previous District Scheme, as approved in 1974, placed little emphasis on the landscape treatment of sites or areas under development nor did it give consideration to the effects of development on the natural or man modified landscape. A number of subsequent scheme changes gave greater attention to these matters, but not on the comprehensive basis now proposed for this Scheme.

2. LANDSCAPE TREATMENT OBJECTIVES

(a) To promote a greater awareness of the local landscape pattern and encourage development to be in harmony with that pattern.

(b) To create and enhance a pleasing living, working and recreational environment.

(c) To encourage sensitive design and development in accord with landscape design principles.

To give effect to these objectives the Council has included landscape treatment requirements for various uses throughout the zoning ordinances, rural landscape guidelines in SCHEDULE C to SECTION FOUR - RURAL, and in this section sets out general landscape principles and design components for the guidance of those contemplating development.

3. MEANING OF LANDSCAPE TREATMENT

3.1 The terms "landscape treatment" and "permanent planting" are used throughout the Scheme and are defined as follows:

"Landscape Treatment" includes the comprehensive design and development of a site so as to relate and co-ordinate the built and unbuilt portions of the site generally in accordance with the landscape principles expressed in this Scheme. Permanent planting is one component of landscape treatment. "Landscaping" and "landscaped" shall have a corresponding meaning.

"Permanent planting" in relation to a landscape requirement means the planting of trees and shrubs. Ground cover used in conjunction with earth shaping to perform a screening function also constitutes permanent planting for the purposes of this Scheme. Ground cover includes plant material which does not exceed 200 mm in height under normal horticultural management.
AMENITIES - LANDSCAPE TREATMENT

4. LANDSCAPE PRINCIPLES

4.1 Landscape treatment should be based upon the basic design principles of UNITY, HARMONY, DOMINANCE/SUBORDINANCE and SCALE. An illustrated explanation of these principles follows.

4.2 UNITY
Means to attain order through repetition of the same design elements. This means that discrete structures or elements can form a composite which appears as a whole rather than a series of unrelated parts. An example is to use the same colour scheme on the walls of different buildings, or to reinforce the local landscape pattern by using the same plant material as exists in the locality in any new development.

4.3 HARMONY
Means to attain order through the repetition of related design elements. This means that discrete structures can form a strong relationship with each other by using similar elements. An example is to use a similar colour scheme on walls of different buildings, or perhaps using trees of a similar shape but different species to those found in the immediate locality.

4.4 DOMINANCE/SUBORDINANCE
To dominate is to become the focal point, which may not be a necessary feature of a development. To be subordinate is to allow other features to be the focal point.

This means that structures in the landscape need not focus attention on themselves to be functional or effective. By becoming part of the local landscape character, rather than imposing upon it, development can succeed both visually and functionally. For example, it is preferable to site a new dwelling in the rural landscape some distance from the main road so that it appears to belong to the land. By fitting the dwelling into the landuse pattern in this way, its impact on the character of the rural landscape is minimised and it remains subordinate to the rural landscape. A dwelling close to the road does not fit easily into the surrounding rural landscape because it is dominant and results in an altered, more urban character over its surroundings.
4.5 **SCALE**

Scale is the relationship between various elements which make up the visual landscape. A "good" scale relationship is one where the parts have some balance between them. A "poor" scale relationship is one where the parts are out of balance, and an inappropriate element assumes a dominant role. For example, a large warehouse type structure erected on a small neighbourhood reserve would obviously be too large for its setting; it would be out of scale.

![Diagram showing large tree group and broad open space]

Broad open spaces and large groups of significant trees form a large scale landscape which can successfully absorb large buildings.

![Diagram showing small tree group and small spaces]

Small spaces, scattered vegetation and varied landform are unable to absorb a large building which will appear out of place.

5. **APPLICATION OF DESIGN PRINCIPLES**

5.1 In the consideration of any new site development, or redevelopment of an existing site, the following factors should be considered at an early stage of the design process:

(a) **Existing Site Features**

Topographical changes or significant vegetation should be retained where at all possible. Landform variety is especially important in the relatively flat Canterbury landscape, and sensitive siting of buildings or other elements can frequently fit in with minor changes in level to produce a more interesting site development. Large existing trees, uncommon species or groups and clumps of smaller vegetation will normally be worthy of preservation. Sufficient space for further natural growth should be permitted, as well as taking care to limit any ground disturbance within the vegetation dripline. Any vegetation to be preserved should also be carefully protected during site works or construction periods.

(b) **Siting**

Buildings in particular should be placed with regard to existing site features, and developments or other land uses in the immediate vicinity. Adequate thought should be given to sun/shade aspects, predominant wind and shelter, and any further development envisaged even if this is many years away. Visual or functional effects (e.g. shading or wind funneling) on neighbouring land uses should also be considered.
(c) **Design**

Careful attention should be paid to the design of any structures in the landscape. In particular appropriate form, colour and materials should be major considerations. The appropriate form for an industrial site will be different from that for a rural site for example, and similarly materials and colour appropriate in an industrial area will seldom be appropriate in a rural setting.

The new building fits into an existing industrial site. It is appropriate in scale, form and materials.

The same building does not fit into an existing rural site. It is inappropriate in scale, form and materials.

This building of similar floor area fits into its rural setting and is more appropriate than the industrial type building.

(d) **Circulation patterns**

Pedestrian and vehicle circulation patterns should be carefully considered with building siting and especially with a view to any future changes. Separation of vehicles and people is desirable for safety reasons, by physical barriers, or choice of surfacing material if space is restricted.
(e) **Earth shaping**

Any proposed changes in level must be carefully planned with regard to the surrounding landscape. Frequently, small humps in a predominantly flat landscape will appear inappropriate and out of place. Landform changes should be consistent with the function desired, whether this is for visual screening, sound proofing, or general amenity reasons. Sudden changes in angle or direction are seldom visually successful and a major aim of earth shaping is to achieve gradual and subtle changes over as much of the site as possible.

- **Gradual changes** in a predominantly flat landscape are generally visually more successful than sudden changes.
- A sudden "hump" frequently looks incongruous and inappropriate.
- **Existing, open view**
- **Reduced screening**
- **Good screening, better with planting**
- **Mound relating to existing contour**
- **Sensitive enhancement, with further mounding relating to the existing ground form, complemented by planting.**
- **Poor relationship to existing contour.**
- **Existing parking area behind a minor slope.**
- **Removal of awale edge resulting in loss of screening from lost landscape feature.**

(f) **Planting**

This is one of the most successful ways to integrate a new development with its surroundings. Vegetation should perform a scale or a screening function and be suited to its purpose, i.e. larger industrial-type buildings will require groups or clumps of substantial trees to be effective, whereas an additional car parking area may only require shrub screening to public areas. Nearly all development will benefit from larger tree planting however, and allowance should be made for future tree growth or on-site development.

- **Planting which defines and encloses the site, is in scale with the building, screening parking areas, and positively helps the building fit into the local landscape pattern.**
- **Planting which does not provide scale or screening to the site, and does not help the building fit into the local landscape pattern.**
(g) **Other elements**
Paths, walls or fences, water and other site furniture (e.g. seats, litter bins, sculpture) are part of any site development. In the case of any proposed fences, consideration should be given to materials and colour, as well as to siting. A strong relationship with the materials and colour of the main building will help in integrating these elements. Consideration of wind and shelter, sunshine and shade, access, noise and safety should all be given to any areas proposed for pedestrian usage.

The addition of a fence, seating, water and sculptural elements enriches a space for people to use, provides human scale elements, and creates privacy and an intimate atmosphere.

A less private space, with limited scope for people to use.

6. **LANDSCAPE PLANS**

6.1 Whenever a landscape plan is required under an ordinance of this Scheme, any or all of the following information as may be considered by the District Engineer to be appropriate shall form part of that plan, together with scale, north point, date and author.

(a) **Existing site features**
Spot heights or contours and location, species, height and spread of vegetation.

(b) **Siting**
Location of all buildings, work and storage areas.

(c) **Design**
Building elevations, walls and fences, with information on materials, sizes and colours proposed.

(d) **Circulation patterns**
Location of pedestrian paths, and vehicle entrances, access, parking and turning areas, and any separation devices (if proposed).

(e) **Earth shaping**
Existing and proposed levels as spot heights or preferably contours.

(f) **Services**
Location of all underground and overhead services.
AMENITIES - LANDSCAPE TREATMENT

(g) **Planting**
Information on positions, numbers and species of trees, shrubs and ground cover to be planted. Flat grassed areas will not normally be considered to be part of any requirement for a minimum area of permanent planting, but may be appropriate as extra "soft" surface areas. Grass and other ground covers used in conjunction with earth shaping to perform a screening function would however be acceptable.

(h) **Other elements**
Location, sizes, materials and colours of other landscape elements such as seats, tables, litter bins and lighting.

7. **FURTHER DEVELOPMENT ON EXISTING DEVELOPED SITES**

7.1 In any case where further development is proposed on an already partially developed site, no such further development shall diminish any area of permanent planting to less than the minimum area specified in the relevant zoning ordinance of this Scheme.

7.2 In any case where further development is proposed on a site which does not meet the current landscape requirement of this Scheme, permanent planting shall be provided as required by the Scheme but based on the area of further development only.

8. **LANDSCAPE BOND**

8.1 Under certain circumstances, a landscape bond will be required to ensure that the proposed landscape treatment is carried out and maintained. The amount of the bond is calculated according to the estimated value of completion of the landscape works.

8.2 Should the agreement not be honoured, the bond gives the Council authority to carry out approved landscape works and recover the appropriate costs. The bond will usually require the necessary planting to be carried out within 12 months and maintained for a further 24 months.

9. **MAINTENANCE OF LANDSCAPE TREATMENT**

9.1 The maintenance of the landscape works means that not only should the planting be kept in a healthy state but also the ultimate purpose of the landscape treatment is achieved. All landscape treatment shall be maintained to the satisfaction of the District Engineer at all times.
Amenities - Signs and Advertising

Refer to definitions of SIGN, HOARDING, SITE - SECTION THREE - DEFINITIONS.

The zoning ordinances contain details of size and location of signs permitted for each use. This part of the Scheme sets out the Council's policies in relation to signs, its requirements for sign applications, provisions for temporary signs and design guidelines for signs and advertising.
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