BUDDLE FINDLAY

# Is culture the new landscape? Recognising Māori cultural values special to location and place

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In the recent Environment Court decision *Self Family Trust v Auckland Council,*[1] the Court notably recognised and placed significant weight upon Māori cultural landscape, departing from a number of previous judicial decisions that have grappled with this concept.

As most readers will be aware, the protection of landscapes from inappropriate development is a matter of national importance that needs to be recognised and provided for under the RMA.

But what makes a landscape? The RMA does not define it, perhaps deliberately so given that the concept of a *landscape* involves the interaction between the physical environment and human perception. Like the proverbial tree falling in a forest, does a landscape exist without a person to see it?

The landscape of New Zealand/Aotearoa has the further unique cultural dimension of values that are special to mana whenua. For mana whenua, what is important is the association of landscapes with people and the values that describe that relationship, rather than physical evidence. The record of these values is multi-layered, informed by written, oral and archaeological history, memories, ancestry, traditional activities, and, in part, captured by the form and spirit of the land itself.

The term "*cultural landscape*" is often used in planning documents and Court decisions in a shorthand manner to describe this relationship mana whenua have with land. The New Zealand Coastal Policy Statement (NZCPS) uses this phrase in three policies, most notably in the context of identifying outstanding natural landscapes and features. Recent cases about identification of landscapes have emphasised mana whenua's role in such a task.[2]

Despite its relatively common usage, to date few Court decisions have substantively recognised and provided for Māori cultural landscapes. In *Gavin H Wallace Ltd v Auckland Council*[3] the Court acknowledged the strong association that mana whenua had with the landscape, but stressed that decision-makers should exercise a degree of caution before determining a landscape to be a cultural landscape. Part of the Court's concern about recognising a landscape as a cultural landscape was that it could lead to a double counting of Māori issues already provided for in Part 2.

In a more recent decision Independent *Māori Statutory Board v Auckland Council*[4], the High Court concluded that it was correct in law for a cultural landscape layer to be deleted from the Auckland Unitary Plan (AUP), as other provisions within that plan recognised and provided for the relationship mana whenua have with landscapes, and for the identification of landscapes based on cultural values. This seeming reluctance to provide express provision for cultural landscapes (as distinct from landscapes) is a common element in case law that has looked at this issue.

In contrast, the Environment Court in *Self Family Trust* expressly recognised the importance of cultural landscapes.

Self Family Trust and other landowners appealed against Auckland Council's decision not to include greenfield land within the urban side of the Rural Urban Boundary (RUB) line, the rural land in question including two volcanic craters, Crater Hill and Pūkaki Crater, and the Pūkaki Peninsula. Te Ākitai Waiohua were the kaitiaki for the land, having used parts of the area for habitation, gardening and food gathering on a continuous basis since pre-European times. Both volcanic craters were mapped and scheduled in the AUP as Outstanding Natural Features, but were not mapped as heritage or mana whenua features.

However, the AUP did recognise that the area was a Māori cultural landscape in the objectives and policies of the Puhinui Peninsula precinct. Taking into account the relevant plan provisions and evidence provided by Te Ākitai, the Court gave significant weight to the cultural and spiritual dimension of this landscape, recognising that the craters, Pūkaki Peninsula and the coastal margins lie at the centre of a cultural landscape of significance to Te Ākitai. The Court drew particular attention to the mythological connection of volcanic craters as the footprints of Mataoho (the god of earthquakes and volcanic eruptions), the historic portage links, traditional land uses and the presence of the Māori Reservation at Pukaki-Waokauri. The Court also noted that the concept of "Māori cultural landscape" has some utility as an English language compendium of the values important to mana whenua identified in the RPS. The Court also drew attention to NZCPS Policy 15(c)(viii) which recognises the concept of cultural landscapes.

The Court considered that extension of the RUB and the development to follow would result in the loss of the cultural dimensions

of the area as a whole. Not changing the RUB location was therefore essential for sustaining the existing quality of naturalness, and thereby the mauri of the remaining undeveloped parts of Te Ākitai's rohe.

Whether *Self Family Trust* will set a precedent for increased weight being given to cultural landscapes in RMA decision-making remains to be seen. The context of this particular area as the last bastion of Te Ākitai's rohe was particularly relevant to the decision, as was the express AUP recognition of this cultural landscape. The decision therefore may be distinguished on these grounds and is also now under appeal.

But *Self Family Trust* is a reminder that landscape is a social construct, one that can overlap with other values of national importance under the RMA, including heritage and the relationship Māori have with the land. Within the 'post-*King Salmon* world' of stronger weight being given to planning objectives and policies (particularly those in the NZCPS), it may be necessary for RMA decision-makers and plan users to take a broader of the values that may need to be considered when the phrase cultural landscape appears in planning documents.

*This article was written by Jennifer Caldwell (partner), Leigh Ziegler (senior solicitor) and Rafael Krzanich (senior solicitor).*

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[1] [2018] NZEnvC 49.

[2] *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147.

[3] [2012] NZEnvC 120.

[4] [2017] NZHC 356.


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