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PRESENTATION ON SIGNIFICANT TREES

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HOW DO WE DETERMINE WHICH TREES WARRANT PROTECTION AND RETENTION?

In South Australia, "development" which is defined to include any "tree damaging activity" to a "significant tree" may not be undertaken without approval from the relevant planning authority.

The South Australian Approach

The term "significant tree" is defined to mean:

> *(a) a tree within a class of trees declared to be significant trees by the regulations; or*
> *(b) a tree declared to be a significant tree, or a tree within a group of trees declared to be significant trees, by a Development Plan.*

Regulation 6A of the Development regulations provides:

> *"(1) Subject to this Regulation, the following are declared to constitute classes of significant trees for the purposes of paragraph (a) of the definition of "significant tree" in Section 4(1) of the Act:*
>
> *(a) trees within the "designated area" that have a trunk with a circumference of 2.0 metres or more or, in the case of trees with multiple trunks, that have trunks with a total circumference of 2.0 metres or more and an average circumference of 625 millimetres or more, measured at a point 1.0 metres above natural ground level."*

In South Australia, each Council has a "Development Plan" containing objectives and principles which serve as guidelines for appropriate development. All development applications, including applications for "tree damaging activity" (such as tree removal, lopping, cutting of branches, etc) must be assessed against the objectives and principles of the relevant authority's Development Plan.

The following are provisions which commonly appear in Development Plans in South Australia:

> *"**Principle 1: Where a Significant Tree:***
>
> (a) makes an important contribution to the character or amenity of the local area; or
>
> (b) is indigenous to the local area and its species is listed under the National Parks and Wildlife Act as a rare or endangered native species; or
>
> *(c) represents an important habitat for native fauna; or*

(d) is part of a wildlife corridor or a remnant area of native vegetation; or

(e) is important to the maintenance of biodiversity in the local environment; or

(f) forms a notable visual element to the landscape of the local area;

development should preserve these attributes.

Principle 2: Significant Trees should be preserved and tree-damaging activity should not be undertaken unless:

(a) in the case of tree removal

(1) (i) the tree is diseased and its life expectancy is short; or

(ii) the tree represents an unacceptable risk to public or private safety; or

(iii) the tree is within 20 metres of a residential, tourist accommodation or otherwise habitable building and is a bushfire hazard within the bushfire Prone Area shown on…; or

(iv) the tree is shown to be causing, or threatening to cause, substantial damage to a substantial building or structure of value; and

all other reasonable remedial treatments and measures have been determined to be ineffective.

(2) it is demonstrated that all reasonable alternative development options and design solutions have been considered to prevent substantial tree-damaging activity occurring…"

In its early decisions, once the Court was satisfied that the relevant tree met the "quantitative requirement" of the Regulations regarding trunk circumference, it would proceed directly to a consideration of Principle 2 above. In that event, unless the tree met one of the criteria outlined in Principle 2, its removal would not be approved by the Court.

In more recent times the Court has indicated that it will now initially direct its consideration to Principle 1 above. If the tree which is the subject of the dispute does not satisfy any of the criteria identified in Principle 1 above, it appears the Court is far more likely to approve its removal (irrespective of whether or not any of the grounds relevant to Principle 2 above are made out).

Gormley v City of Unley *[2005] SAERDC 24*

"In determining whether the removal of the significant tree should be allowed, it is first of all necessary to determine whether, in the terms used by Council Wide Principle 176, the tree either 'makes an important contribution to the character or amenity of the local area' or 'forms a notable visual element to the landscape of the local area' or 'contributes to habitat value of an area individually, or provides links to other vegetation which forms a wildlife corridor'. Should all three of the above questions be answered in the

negative, it is not necessary to go further. Should the tree be found to have one or more of the above characteristics, it then becomes necessary to decide whether the tree:

(a) represents an unacceptable risk to public or private safety; or

(b) is shown to be causing or threatening to cause, substantial damage to a substantial building or structure of value; and that all other reasonable remedial treatment and measures have been determined to be ineffective."

Prestige Wholesale Pty Ltd v City of Burnside *[2005] SAERDC 12*

"It is difficult to elicit the meaning of the words 'form a notable visual element to [sic] the landscape of the local area'. On one view, every significant tree, as defined, would fit this Category, because it will generally constitute an obvious visual element in the landscape by its size alone. However, as the Court said in Summers v City of Unley [2002] EDLR 445 at 456 (paragraph 43):

'They may be a notable element, too, from one or more parts of the local area, in that by their height, they are noticeable and therefore, noteworthy or notable. However, if the trees do not make an important contribution to the character, which logically includes a consideration of the interplay between the elements of an area, including landscape, physical and social, should they be retained, simply because they are a notable element, visually, in the local area? I think not. An item can be a notable element in the landscape in both negative and positive senses. It would be inconsistent with Objective 54 to retain a significant tree on the sole ground that it forms a notable element in the landscape because it presents a negative aesthetic element or otherwise stands out as a jarring element in the generally uniform landscape character of the local area.' "

LIABILITY FOR DAMAGE, LOSS AND INJURY ARISING FROM TREES

Who is liable?

Brodie v Singleton Shire Council; Ghantous v Hawkesbury Shire Council (2001) 180 ALR 145

Gaudron, McHugh and Gummow JJ

…on occasions, the powers vested by statute in a public authority may give it such a significant and special measure of control over the safety of the person or property of citizens as to impose upon the authority a duty of care. This may oblige the particular authority to exercise those powers to avert a danger to safety or to bring the danger to the knowledge of citizens otherwise at hazard from the danger. In this regard, the factor of control is of fundamental importance.

….financial considerations and budgetary imperatives may fall for consideration with other matters when determining what should have been done to discharge a duty of care.

In some of these cases, the so-called "misfeasance" appears to consist of omissions to take certain steps while carrying out some positive actions. Indeed, on such a reading, anything done which "has in fact increased the risk of accidents" will be misfeasance, even where that risk has been increased solely by omissions to act …if the authority has taken some steps, then its actions are to be examined using the ordinary principles of negligence.

Timbs v Shoalhaven City Council [2004] NSWCA 81

The Court held:

The Council was not bound to express any opinion about whether the tree was dangerous. The Council, through its officer, took unto itself the responsibility of determining whether the tree was dangerous and, on the basis of its own finding that it was safe, refused to consent to the tree being cut down.

The factor of control is of fundamental importance in discerning a common law duty of care on the part of a public authority. In this case, the Council held a significant and special measure of control over the safety of homeowners who brought to the Council's attention their fears that overhanging trees were dangerous. This was particularly so, as the Council opted to advise the particular homeowner about whether the trees in question were dangerous.

Having accepted the responsibility of advising on the safety of the tree, what was described as a routine visual inspection, was not a sufficient inspection, where the risk, if the inspection was insufficient and the opinion was wrong, was not only to property but also to life, if the tree were to fall.

When the Council officer took it upon himself to express a positive view as to the safety of the tree, he was representing a capacity to do so based upon his expertise and experience. In those circumstances, the requisite standard of care required of him was higher than that of a layman and, like a general practitioner, the sufficient level of expertise he professed to have, required him to make a reasonably informed diagnosis or to admit the need for referral to a specialist.

<u>Common law principles</u>

Swain v Waverly Municipal Council [2005] HCA 4

Gleeson CJ:

In legal formulations of the duty and standard of care, the central concept is reasonableness. The duty is usually expressed in terms of protecting another against unreasonable risk of harm, or of some kind of harm; the standard of conduct necessary to discharge the duty is usually expressed in terms of what would be expected of a reasonable person, both as to foresight of the possibility of harm, and as to taking precautions against such harm. Life is

risky. People do not expect, and are not entitled to expect, to live in a risk-free environment. The measure of careful behaviour is reasonableness, not elimination of risk. Where people are subject to a duty of care, they are to some extent their neighbours' keepers, but they are not their neighbours' insurers.

Mulligan v Coffs Harbour City Council [2004] NSWCA 247

Tobias JA:

> *In* Rosenberg v Percival *(2001) 205 CLR 434 at 453 ([61]) Gummow J, in a medical negligence case in which it was alleged that the medical practitioner owed a duty to warn the patient of a material risk inherent in the proposed treatment, posed for himself the question "what 'risk' is being spoken of here"? His Honour answered it as follows:*
>
> > *"Put another way, it is 'what are the facts and circumstances, the possibility of the occurrence of which constitutes that 'risk'? Once that question is answered one may turn to consider whether the risk is 'material'. Where the action is brought in negligence and the plaintiff is seeking compensation for injuries suffered, the relevant risk is the possibility that the proposed treatment will result in the injury that in fact occurred. It is not, for example, the risk that the patient will make an uninformed decision or choose the wrong option, although that may well underpin the rationale behind the duty."*

Drawing the analogy, Council officers declining to allow allegedly dangerous trees to be removed, need to assess the risk of the tree actually falling and causing the damage complained of.

In general

- Take reasonable actions
- Make informed decisions

How can exposure to liability be minimised?

Gaudron, McHugh and Gummow JJ in *Ghantous* (above)

> *If the risk be unknown to the authority or latent and only discoverable by inspection, then to discharge its duty of care an authority having power to inspect is obliged to take reasonable steps to ascertain the existence of latent dangers which might reasonably be suspected to exist.*

Timbs v Shoalhaven City Council *[2004] NSWCA 81*

Hodgson JA:

> *I would wish however to make it clear that this does not mean that a Council officer, who is asked informally for advice or consent in relation to a potentially dangerous tree, is obliged to give expert advice. In the present case, for example, the Council officer could have said words to the effect that, on the basis of his inspection, the tree appeared safe and he would not then*

give permission to remove it, but that it was open to the deceased to obtain his own advice and to make a formal application for permission to remove it; and also that, if the tree was dangerous, it could be removed without Council consent. In my opinion, there would then have been no breach of duty.

However, because the Council officer did undertake the responsibility of giving unequivocal advice in relation to the tree, in circumstances where it was plain that wrong advice could have disastrous consequences, he had a duty to exercise a high degree of skill and care, which was not discharged by a routine visual inspection.

In light of the above decision, Council should approach any application for tree removal on the grounds that the tree is dangerous, in one of the following manners:

If no expert opinion has been given as to the danger of the tree,

- Council officers should say to the applicant that based on the information provided they are unable to determine the application on an informed basis and require that the applicant provide a qualified expert's opinion in relation to the condition of the tree; or
- Council officers should to say to the applicant that having made a preliminary inspection, the tree appears to be safe (provided that it does)and permission to remove it would not be given without further expert opinion being provided.

Are there any potential legislative solutions?

Governments may consider introducing sections in relevant legislation to indemnify Council and/or officers for making decisions in good faith that deny approval to remove trees which subsequently fall and cause damage.

When is a risk "acceptable"?

Gleeson CJ (above)

"In legal formulations of the duty and standard of care, the central concept is reasonableness. The duty is usually expressed in terms of protecting another against unreasonable risk of harm, or of some kind of harm; the standard of conduct necessary to discharge the duty is usually expressed in terms of what would be expected of a reasonable person, both as to foresight of the possibility of harm, and as to taking precautions against such harm. … The measure of careful behaviour is reasonableness, not elimination of risk."

Chief Justice Gibbs in *Turner v the State of South Australia* (1982) 56 ALJR 839

"Where it's possible to guard against a foreseeable risk which, although perhaps not great nevertheless cannot be called remote or fanciful, by adopting a means which involves little difficulty or expense, the failure to adopt such means will in general be negligent"

Under s39(2) of the Development Act 1993 (SA):

A relevant authority may request an applicant

(a) to provide such additional documents or information (including calculations and technical details) as the relevant authority may reasonably require to assess the application;

This section enables Council to request the applicant to provide an expert report in relation to the potential risks presented by a particular tree (as per Hodgson JA above)

ENFORCEMENT

Difficulties in Enforcement of legislation

Criminal and Civil enforcement are available in South Australia.

However prosecutions can be complicated as any alleged offence must be proved "*beyond reasonable doubt*."

In respect of civil enforcement, the available remedies to Council in South Australia are unclear.

South Australia's Sustainable Development bill incorporates a number of proposed amendments to the Development Act to address some existing problems.

Section 106A was proposed so as to enable the making of appropriate and effective orders in relation to Significant trees in both civil enforcement and criminal proceedings. It may also act as a deterrent for those contemplating unlawful activities in relation to Significant trees.

Proposed section 106A represents a significant amendment. It provides as follows:

"106A—Make good orders

(1) If in any proceedings under this Act a court finds that a person has breached this Act by undertaking a tree-damaging activity, the court may, by order, direct a specified person to do 1 or more of the following:

(a) to establish a tree or trees of a kind specified by the court in a place or places specified by the court;

(b) to remove any buildings, works or vegetation that have been erected, undertaken or planted at or near the place where the regulated tree was situated since the breach occurred;

(c) to nurture, protect and maintain any tree or trees until they are fully established or for such period as may be specified by the court, or to make a payment or payments towards the maintenance of any tree or trees.

(2) A court acting under subsection (1) may make any ancillary order as the court thinks fit.

(3) A court must, before making an order under subsection (1) directed at a person who is not an owner or occupier of the relevant land, ensure that reasonable steps have been taken to give notice of the relevant proceedings to an owner or occupier of the land.

(4) If a person to whom an order under subsection (1) applies is not an owner or occupier of the relevant land, or ceases to be an owner or occupier of the relevant land, the court may authorise the person (or a person authorised by him or her)—

(a) to enter the land with such materials and equipment as are reasonably necessary to comply with the order; and

(b) to enter and cross any land specified in the order with the materials and equipment referred to in paragraph (a) for the purpose of gaining access to the relevant land.

(5) A court that has made an order under this section may, on application, vary or revoke the order.

(6) A person who fails to comply with an order under subsection (1) or (2) is, in addition to any liability for contempt, guilty of an offence.

Penalty: Division 4 fine.

(7) An owner or occupier of land, or any other person, who hinders or obstructs a person in carrying out the requirements of an order under subsection (1) or (2) or entering or crossing land under subsection (4) is guilty of an offence.

Penalty: Division 5 fine."

Advantages of this amendment for local authorities include the following:

- The Court will be able to exercise its powers in both criminal and civil enforcement proceedings (which have a lower burden of proof);
- The local authority will have a clearer understanding of outcomes it may achieve in such proceedings;
- The Court can order the establishment of new trees in strategic locations to ensure no commercial advantage is obtained from unlawful activity;
- The Court may make appropriate orders to ensure such trees are properly maintained;
- The amendments will act as a practical deterrent to potential offenders;
- Orders may be made against persons who are not owners or occupiers of land (such as offending contractors).

THE EXPERT WITNESS IN COURT

The opinion expressed by an expert must be his or her own opinion. It must not be that of another person or that of a corporate body: *Tysoe*

An expert's role in giving evidence is to assist the Court and this is not best achieved by an aggressive or impatient defence of his or her own opinion: *Hayes v Murray Bridge RC* [1998] EDLR 742

An expert planning witness is qualified to comment on matters addressed by the Development Plan. The opinion of the expert is to be supported either by research or comparative knowledge or opinion of another suitably qualified expert. The evidence given must be within the witness' expertise: *Tysoe v Unley City Council* [1998] EDLR 613

Example:

Whether a fence that …would lead to an unsafe traffic situation were it to be erected, with the safety of life and limb at stake, requires consideration not by a lay observer nor by observation by those with expertise in examining landscapes, streetscapes and physical phenonoma generally, such as town planners, architects, landscape architects and civil engineers, but by those with detailed and specialist training in traffic engineering: *Smart v The Barossa Council* [1999] SAERDC 29

The evidence of an expert witness will have more force if it demonstrates that the expert has taken all of the provisions of a Development Plan relevant to an assessment of a proposal into account.

An expert is not an Advocate

Barossa Region Residents v DC Angaston & Grosser [1996] EDLR 667

*"**We do not accept that the role of a professional planning expert, in preparing and giving evidence to this Court should extend to being an advocate for his or her client's proposed development**. While it is not for us to comment on the role of a planner advising his or her client prior to the matter coming to this Court, we would be surprised if the planner's role in preparing and advancing a statement of effect, should extend to one of advocacy. We comment thus because it seems to us that the **credibility of the evidence of a professional expert** in this Court **might be affected by evidence that tends to show that** the same professional expert, by his action prior to the matter coming to this Court, clearly **acted as an advocate** for his or her client's proposed development **and not as a independent professional expert**.*

*Secondly, this case has given us cause to **comment on the lack of precision in factual statements contained in the statements of evidence of professional planners**. A **certain looseness of expression pervaded** … statement with the consequence that he referred to the subject land as an "industrial estate" which was "created in 1986" with the "sheds ... (having been) constructed between 1986 and 1990". He also referred to the "long-standing use of the estate for industrial and commercial purposes" and the subject land "having been divided and developed almost ten years ago for industrial and commercial (uses)".*

*… statement **suffered from an excess of emotive language**. Statements such as "the proposal and these two design issues display an inordinate arrogance (or naivety) in respect of the rights of other property owners and land uses (sic)" **do not assist us**. We have already commented about the value of some opinions proffered by these planning witnesses outside the realm of their expertise. **An opinion from a person who is not an expert in the subject matter of the opinion is of no value to the Court and wasteful of its time and that of the parties**."*

Unley Property Development v Holdfast Bay CC [1998] EDLR 796

"I further add that a flavour of advocacy crept into some of (the) evidence. Authorities on the role of expert witnesses are many but perhaps the best summary is that of the Federal Court of Australia's Guidelines for Expert Witnesses issued on 15 September 1998. Inter alia, it states:

> *". an expert witness has an over-riding duty to assist the court on matters relevant to the expert's area of expertise;*

. an expert witness is not an advocate for a party; and
. an expert witness' paramount duty is to the Court and not to the person retaining the expert."”

Alvaro v City of Charles Sturt [1999] SAERDC 6 (26 February 1999)

It is well-established that a professional person, in giving evidence as an expert to the Court, needs to be conscious of, and avoid as far as is practicable, being seen as a representative of or agent for a party in an action before the Court - whether that party is the appellant, a planning authority, a representor or an advising agency - as distinct from the role which the same person is to perform in providing independent expert assistance to the Court. This is not to say that a professional person should not, prior to coming before the Court, have given professional advice to a client or employer, either as an individual or in the capacity of an employee of a consultant firm or a department of a public agency. Whether such prior involvement compromises the professional independence of a witness before the Court as an expert is for the Court to determine on the facts relating to that involvement.

….Thus it will normally be appropriate to explore the independence of an expert witness only if, prima facie, there is an indication given in the evidence or in the known past actions of the witness in relation to the matter before the Court of actual or possible bias or a lack of independence. In my view, such bias or lack of independence does not follow, necessarily, from the witness having been previously engaged by a party to the appeal:

** to provide a professional opinion to that party; or*
** to provide advice of a professional opinion to others; or*
** to communicate facts to others on behalf of the party, be they facts as to the particulars of an application or facts as to the decision of a planning authority or other public agency.*

It is, however, not conductive to a perception of independence for a consultant engaged by an applicant, who may someday be called as an expert witness, to sign the form of application for consent (as happened in this case) or a notice of appeal, but such actions do not, in these terms, vitiate that consultant's actual independence.

All expert witnesses are before the Court as individuals. They are most at risk of a perception of bias or lack of independence when there is some evidence that in expressing professional opinions prior to or during the proceedings in the Court, they have, or may have, said something they had been instructed or advised to say (other than in relation to matters of fact), as distinct from expressing an objective and individual expert opinion.

The Director of Planning & The District Council of Meadows (1969) SAPR 89, at pages 105-107, the Planning Appeal Board addressed itself to the position of expert witnesses. The statements in that determination are as relevant to the position of expert witnesses in this Court today, as they were then to expert witnesses giving evidence before the Board:

An expert witness called may have a number of duties. Sometimes he will be an employee of a party to an appeal, sometimes he will be a private consultant retained by a party to an appeal, whilst at other times he may be a person neither in the employ of a party to an appeal nor retained by that party to an appeal but a person

whose knowledge is not normally available to a private individual but is considered by a party to an appeal to be necessary (sic) *called as an expert witness so that the* [Court] *may take into account all relevant matters pertaining to the appeal in reaching its determination.*

Sometimes such a witness may come voluntarily. At other times that witness may come only pursuant to a notice issued by the [Court], *at the request of a party, compelling attendance, Not every expert witness to whom a notice is issued will for reasons elsewhere referred to, be an involuntary witness, but any one who* [summons] *an unwilling expert witness should not complain unnecessarily if that witness does not meet the expectations of the party calling him. The duty to the party calling him of an expert witness, whether he comes voluntarily or under* [summons], *is not of concern to the* [Court].

The [Court] itself is entitled to and has called an expert witness of its own motion and in that case no question of any duty to a party to an appeal arises.
Each expert witness does owe a duty, no matter how he arrives before the [Court], which concerns the [Court].

That is the duty of the expert witness to the [Court] which represents in its particular sphere a special arm or branch of the State. An expert witness, like any ordinary witness, may give evidence of pure facts, but his principal function as an expert is not to relate facts but give evidence of his opinion. The expert witness is the only kind of witness who is allowed to state his opinion. The opinion must be the expert's own opinion. It is of little use to this [Court] ... unless it is carefully formed.

Like any other witness, an expert witness, should carefully listen to a question asked of him, answer exactly that question, truthfully and as shortly as possible, without any concern at all for the apparant (sic) consequences of the answer. To the expert witness, in answering a question, it should be a matter of complete indifference what the [Court] believes about his answer. The expert is before it simply to tell the truth and to give his opinion and what weight the [Court] attaches to his evidence should be absolutely no concern of the expert.

In cross-examination every question should be answered 'yes' or 'no' by the expert, if it possible to do so. It may not be possible to do so, but in such a case, then the expert should give the shortest answer which the nature of the question allows. At the same time it should be remembered that it is quite permissible for an expert, when asked a question in cross-examination, to reply, 'Yes, but I would like to qualify that answer in the following way', and then go on to qualify the simple answer. Indeed when a general question is put to an expert and he gives a general answer 'yes' or 'no' which is true, but there are qualifications, they ought to be stated by him.

It may be that in the course of and perhaps as a consequence of being asked questions, an expert witness may be persuaded to a contrary opinion. If that happens the expert should admit it.

An unfavourable impression can so easily be given by an expert witness who considers for some reason or other, which no longer appears from his answers to questions to be justified, that he should not budge from the opinion he expressed in the first place. If during his evidence an expert witness becomes convinced that his first opinion was not quite so good as he first thought, then he should say so.

A court or tribunal will, from a nature of things (sic), take much more notice of a man who concedes that, on second thoughts, perhaps he was not quite right on a point than

it will of a man who obstinately refuses to concede what has patently been made out as a good point against him but looks around for reasons for supporting something that is all too obviously, from his own words and perhaps his demeanour, no longer supportable. An expert witness should always concede, in such a situation, what he genuinely thinks ought to be conceded. One does far less harm that way than by sticking to something which is untenable. An expert witness, like every other witness, must be sure that every answer is absolutely honest.

An expert witness may in answer to a question say that he has no opinion on a particular matter if he truly has no opinion. If he is asked a question requiring an expression of opinion outside his field he should say so.

However an expert witness must appreciate that generally speaking he has no right to refuse to answer any question put to him whilst he is before the [Court].

The expert witness is, of course, not allowed to express his opinion on what the law is, unless of course he is a qualified expert called to give evidence about foreign law, for what the law is (sic) for the [Court], after considering submissions made to it as to what the law is by counsel or other advocates, to determine.

An expert witness in answering questions is required, as we have said, to give his own opinion: it is not his obligation to express through his own evidence the policy, say, of a government department, although if a question touching such a policy is put to him and he is aware of that policy and he is authorized to reveal such policy, in planning appeals, at the least, we can see no objection to him doing so.

A member of the Public Service, if qualified as an expert and a witness, must, in our opinion, divorce himself from his position as a member of the Public Service and as an expert give to the [Court] his views as an expert untrammelled by any position he may hold. The views will be those of the expert as an expert, not the views of the Public Service or of a government department or branch of the Public Service."

Diversity of disciplines relating to trees – is a mutli-disciplinary approach required?

Experts such as landscape architects should give evidence in relation to such matters as notability, appearance and character.

Summers v City of Unleynam **[2002] SAERDC 113**

Trenorden J

> *"Before I conclude, it is appropriate that I comment on the expert evidence. It seems to me that the Court would be assisted by hearing from landscape architects in these "significant tree" cases, to assist in the assessment of the contribution a tree makes to the character and amenity of an area. The evidence of an arboriculturist is of value when consideration has to be given to whether the tree is diseased and its chances of returning to a healthy state, and the nature of the tree in the context of safety issues. On some other matters addressed by Principle 199, engineering evidence may be appropriate. What is clear is that an arboriculturist is not an expert in all aspects requiring assessment in relation to significant trees.*

A similar message has been given by this Court, in respect of expert planning witnesses, in the past. Expertise in one field does not qualify one to comment in other fields and it is unfair for an authority to expect this from its experts.

In so saying, the Court is not insisting on hearing from a panoply of experts, but reminding parties of the worthlessness of having an expert in one field comment on matters beyond his or her expertise. ..”

Making an assessment of the Development Plan Principles mentioned above may involve input from various disciplines including persons with expertise in landscape architecture and/or biodiversity etc.

DISCLAIMER

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