

**Before the Hearings Panel for the Proposed
Queenstown Lakes District Plan**

IN THE MATTER OF The Resource
Management Act 1991

IN THE MATTER OF a Submission by
Hawthenden Limited (Submitter 776)

OPENING LEGAL SUBMISSIONS ON BEHALF OF

HAWTHENDEN LIMITED

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Synopsis of Submission

1. Introduction

1.1 This submission has two issues namely first to oppose the alignment of the Outstanding Natural Landscape Line (“ONL”) through the submitters farm property as shown on the Proposed District Plan maps 18, 22 and 23 and secondly to rezone parts of the property from Rural to Rural Residential and Rural Lifestyle zone.

1.2 With regard to the first submission the basis of the submission is the ONL Line has been arbitrarily placed on the submitters property in an entirely inappropriate place and should instead follow the boundary between the Hawthenden Farm and Allwood Farms (Landscape Clearmaster Area (LCA 2)) and the Terraces LCA 1: The Alpha Range Mountainside (as indicated on sheets 5 and 6).

As outlined in the submission filed on behalf of the submitter there is a clearly discernable line that exists along the geological contact between the alluvial landforms of the submitter’s farm and the schist mountain landscape of the Alpha face as identified in the submission.

1.3 The significance of this submission is that the impact of the ONL clearly amounts to an interference with the property rights of the submitter in a situation where there is no right of compensation or recognition of any remedies for any diminution of the value of the land or even the potential loss of value having regard to the restrictions applicable to private ownership of land as in this case where the submitters operate a very intensive farm property.

1.4 The submitter’s concern has been that the imposition of the ONL Line since 2002 has created uncertainty and inhibited agricultural activities and will prevent future development proposals and activities on the property.

1.5 The evidence in this case will be first from Mr Eric Hopgood (a director of Hawthenden Limited) who will outline the history of the subject property and details of the human intervention for the past 125 years, secondly Mr Stephen Francis Leary a geologist, thirdly from Scott Edgar the planner engaged in this matter and finally Hannah Mary Ayers the Landscape Architect who will give detailed evidence regarding both submissions.

2. History of Subject Property

2.1 The subject property has been actively farmed since its establishment in about 1878, by the Studholme family and was titled in 1890.

2.2 The property was originally used for dry land farming purposes until the 1970's when the irrigation system was upgraded through water races and pipes.

2.3 Subsequently the property was used for mixed grazing, dairying and cropping and in particular the terraces and plateau areas were intensively cropped.

2.4 The farm was acquired by the submitter's (Hawthenden Limited) in 1994 and has since been used for grazing for sheep, cattle and deer as well as various crops.

2.5 The property has two fully approved residential dwellings as well as a number of farm buildings, a wool shed, an implement shed as well as an historic dairy and associated shelter structure. There is extensive deer fencing, gravel access roads and an area of pine plantation.

2.6 There are many specimen trees and shelters which were planted by the Studholme family and there is one listed tree (Heritage Tree 611) which was planted approximately 100 years ago, a Wellingtonia.

2.7 There have been at least two significant flooding events since the submitters have owned the property, namely in 1999 and in 2004. These floods occurred when Stoney Creek burst its banks and caused extensive damage to properties below the subject property. There have been ongoing negotiations with the Otago Regional Council regarding proposed mitigation plans which have stalled because of liability concerns and issues (ORC refuse to indemnify the submitters in respect of a proposed dam intended to be constructed on the subject property).

2.8 The conclusion that can only be reached is as referred to in the evidence of Ms Ayers the modification and human intervention of the Alpha Farm through 125 years of farming coupled with the absence of evidence vegetation cover has therefore resulted in a significantly lower degree of naturalness that one would expect within an ONL and in itself justifies the realignment of the ONL as per the submitters proposal.

3. Legal Principles

3.1 The statutory basis for the determination of ONL Lines comes from Sections 6 and 7 of the Resource Management Act.

3.2 Section 6 identifies matters of national importance that "*shall be recognised and provided for*" and section 7 identifies other matters which have to be taken into account under the Act.

3.3 Section 6 landscape related issues are relevant:

(b) *The protection of outstanding natural landscape features and landscapes from inappropriate subdivision use and development.*

3.4 Section 7 related issues that are relevant are:

(c) *the maintenance and enhancement of amenity values;*

(d) *maintenance and enhancement of the quality of the environment.*

3.5 The identification of ONL Lines and the term "*natural*" has been discussed in a number of Environment Court decisions and is typically attached to landscapes that retain relatively "*unmodified*" landform areas of vegetation (usually native), a presence of water and an absence of human influence. The Courts have held that parts of highly modified ecosystems including farmlands where "*the landform remains relatively intact*" and "*the perception of human artefacts are limited*". Both the *King Salmon* and *Man o War* decisions confirm this view.

3.6 Applying the Threshold of "Outstanding"

The Courts have been consistent in determining that the term "*outstanding*" takes on the ordinary meaning of the word, but it is fundamentally clear that landscapes of this standing should "*stand out from the rest*" in relation to the presence of important values qualified as such by meeting objective criteria.

3.7 The New Zealand Institute of Landscape Architects practice note defines and ONL as a "*natural landscape that is particularly notable at a local, district,*

regional or national scale” and will be “*conspicuous eminent, remarkable or iconic*”, within the context of the area concerned.

3.8 It is acknowledged that the *Man o War* decision confirms that ONL areas need not be recognised through a national comparison and need not be nationally significant, but have been developed at regional or district levels.

3.9 It is further acknowledged that there is no single recognised methodology for evaluating landscapes however the case of *Wes v QLDC (C73/2002)* an appeal decision stated:

“ascertaining an area of outstanding natural landscape should not (normally) require experts. Usually an outstanding landscape should be so obvious (in general terms) that there is no need for expert analysis”.

This reasoning seems to have been ignored in the submitters case in June 2002 when the Court determined that the line should be located through the submitters farm as a “*finely balanced*” decision preferring to follow the recommendations of Ms Lucas at that time rather than the evidence of Mr Espie who provided evidence in a report to suggest the ONL should have been on the boundary line of the farm as sought by the submitters.

3.10 Of significance in this case, the evidence of Ms Ayers is that the “*Hawthenden Farm Alluvial Fans and Terraces have a **moderate to low level of naturalness** which excludes it from being classified as an ONL*”.

4. **Environment Court Decision 2002**

4.1 In the decision of the Environment Court in respect of this matter on the 27th June 2002 which determined the placement of the ONL, the Court referred to an earlier decision namely *Wakatipu Environmental Society Inc. and Others v Q.L.D.C (200NZRMA59)* where the Court said:

“In very broad terms we make a tripartite distinction...: outstanding natural landscapes and features; what we shall call visual amenity landscapes, to which particular regard is to be had under s 7, and landscapes in respect of which there is no significant resource management issue. We must always bear in mind that such a categorisation is a very crude way of dealing with the richness and variety of most of New Zealand’s landscapes let alone those of the Queenstown-Lakes District.

The outstanding natural landscapes of the district are Romantic landscapes – the mountains and lakes. Each landscape in the second category of visual amenity

landscapes wears a cloak of human activity much more obviously – these are pastoral or Arcadian landscapes with more houses and trees, greener (introduced) grasses and tend to be on the district's downlands, flats and terraces. The extra quality they possess that brings them into the category of "visual amenity landscape" is their prominence because they are:

- *adjacent to outstanding natural features or landscapes; or*
- *on ridges or hills; or*
- *because they are adjacent to important scenic roads; or*
- *a combination of the above.*

These aspects mean they require particular regard under s 7. The third category is all other landscapes. Of course such landscapes may have other qualities that make their protection a matter to which regard is to be had or even a matter of national importance.

It must always be borne in mind that all landscapes form a continuum physically and ecologically in the many ways they are perceived. Consequently we cannot over-emphasise the crudeness of our three way division – derived from Mr Rackham's evidence – but it is the only way we can make findings of "fact" sufficient to identify the resource management issues."

4.2 Whilst it is acknowledged that the Court does not consider that parts of the relevant landscape are to be dealt with in isolation, in this case, the Court appears to have completely ignored the very distinction referred to between ONL areas and Visual Amenity Landscapes as clearly the ONL in this case includes a very significant portion of the working farm of the submitters property which obviously "*wears the cloak of human activity*".

4.3 In this case it is hard to comprehend how the Court was able to determine the placement of the ONL through the submitters property given the distinction of the types of landscape it acknowledged in the very case referred to.

4.4 The Courts have also made it clear that a rural outlook need not be maintained indefinitely and that there is a need for ongoing consideration and assessments which are always subject to a number of variables at any time.

In the case of Bunnings v Hastings District Council (2011 NZENVC330 at page 125) the Court expressly stated that "rural land owners cannot be expected to maintain their land as some form of visual amenity reserve for their neighbours".

4.5 The Environment Court has considered the landscape in the adjoining area in the Glendhu Bay and Hillend decision viz: *Wakatipu Environmental Society v QLDC C73/2002* and acknowledged that there was geomorphological and pastoral characteristics which contradicted each other, but considered the evidence of Mr Mellsop at paragraph 7.34 *“that the land owner could reverse the landscape characteristics by managing their land differently.”* The Court seem to be of the view that the farmer should be expected to effectively return the land to its natural characteristics in order to achieve outstanding natural landscape status.

4.6 Further of significance in the Environment Court decision of 27th June 2002 the Court acknowledged that there was inconsistent evidence provided by the Landscape Architect at the time (Ms Lucas) and it was clear the Court did not consider that her evidence was entirely clear when it said at page 5 (para [8]):

“We have quoted that passage because it shows both strengths and weaknesses in Ms Lucas’s evidence. Examples of the latter are that it does not seem entirely consistent to call the Mt Alpha fan both ‘strongly rolling’ and ‘smooth’. Nor are we sure what is meant by the sentence in which the ‘sloping surface’ phrase occurs. As to strength, Ms Lucas gives map information both about the geomorphology and about the context of the Mt Alpha fan.

We observe first that the Mt Alpha fan could be joined with either the ONL that arcs around it, or the VAL underneath it. There are no artificially small or strained shapes involved in this situation. The complication, is that the geomorphological and pastoral characteristics rather contradict each other. The former make the fan ‘read’ with the mountainous side, while the latter suggest it is part of the pastoral, visual amenity landscape of the flats as Ms Lucas accepted in cross-examination by Mr Parker. However, those visual amenity landscape characteristics are relatively ephemeral, and they could, if a landowner managed their land differently, be reversed. By comparison, the geomorphological characteristics, whilst ultimately also in flux, are relatively solid as a basis for the categorisation we have to make”.

4.7 Further of concern is that the Court was quite critical of the evidence of Mr Baxter (a landscape architect) who acted as expert witness for the landowners of property involved in the Damper/Waterfall Valley property insofar as his evidence seemed to be:

- *“unduly relevant on a visual assessment;*

- *to be made from the road;*
- *to be a restricted visual assessment”.*

In fact in this case Ms Lucas whose evidence was relied on had also not even entered on to the submitters property and entirely relied on a visual assessment made from the road or somewhere other than on the submitters property. This is accordingly quite an extraordinary finding, especially when even now there has been no specific landscape assessment undertaken by Council and reliance has been entirely on the basis of the ONL as defined by the Environment Court decision of 27 June 2002.

5. Plan Considerations

- 5.1 As outlined in the evidence of Scott Edgar the Planner engaged in this matter the placement of the ONL Line must also consider the obligations of the objectives, policies and goals of the Proposed District Plan, as referred to in the Strategic Direction. Chapter which seeks to inter alia *“identify and protect Outstanding Natural Landscapes”*.
- 5.2 Mr Edgar’s evidence clearly outlines in considerable detail the various relevant Objectives, Policies and Goals of the Proposed District Plan Provisions and concludes that based on the evidence of Ms Ayers and Mr Leary that the proposed realignment of the ONL Line is consistent with the objectives and policies of the Landscape Chapter.
- 5.3 The critical evidence of Ms Ayers and Mr Leary is that many of the district’s alluvial farms (including better examples from a geological perspective) are not included within ONLs and based on that evidence it is considered that the Alpha Fan is not unique or outstanding enough to be included as part of the ONL.
- 5.4 Of significant concern to the submitters is the new proposed rules that apply to ONL property. Of importance to the submitters are the requirements for discretionary consents for new farm buildings that exceed 100m² or 4 metres in height and or a density of one building per 25ha. Further under proposed policy 6.3.1.3 states that within the ONL – *“subdivision and development is inappropriate in almost all locations, meaning successful applications will be exceptional cases”*. This would have an obvious and critical impact on the submitters property and future development plans.

6. Section 42 Report

- 6.1 Ms Mellsop for QLDC has disagreed with the proposed ONL boundary position proposed by the Submitter and its planner. Ms Mellsop acknowledges that the ONL line is inaccurately drawn across the Submitters property on the Proposed District Plan maps but believes the line should generally remain in its current position to include the upper terrace of the Alpha Fan. The difference in opinion is that the Submitter's planner contends that the boundary line should follow the obvious topography, geology, land cover and land use between the Mt Alpha Face and the Alpha fan.
- 6.2 The difference in the evidence of each party is based on the different stances each planner has regarding the degree of naturalness required of a landscape in order to be determined as ONL. As already outlined the issue comes down to the degree of the natural component of the property compared to the degree of human intervention and modification and the balance of dominance of one over the other. This has been determined in a number of cases in the Environment Court that adopt a threshold approach to the valuation of a landscape. As outlined it is somewhat anomalous to determine that a dominant pastoral landscape which is so clearly observable as in this case can be the basis for an ONL classification. In this case as all of the Submitter's evidence clearly outlines, the true observable boundary is obvious.

7. Second Submission

- 7.1 The second submission of Hawthenden Limited is to seek the rezoning of parts of the farm property (Areas A, B and C referred to in the evidence of Mr Edgar), from Rural to Rural Residential and Rural Lifestyle Zone.
- 7.2 The nature of these areas is described in detail in the evidence of Mr Edgar.
- 7.3 It is clear that Ms Mellsop for QLDC does not oppose the rezoning of Area A and C to Rural Lifestyle, but Mr Barr raises a number of landscape related issues with regard to Area A.
- 7.4 Mr Scott's evidence considers all of the relevant planning issues with regard to the proposed rezoning including infrastructure, transport, natural hazards, reverse sensitivity and concludes that the proposed rezoning is appropriate.

7.5 Mr Scott's evidence is also clear that pursuant to the obligations under the Section 32 RMA report, the proposed rezoning is the most appropriate way of achieving the objectives and purposes of the Proposed District Plan and the purposes of the Act.

7.6 This conclusion is consistent with the comprehensive landscape assessment of Mrs Ayers.

Counsel for Submitters