

**BEFORE HEARING COMMISSIONERS  
IN QUEENSTOWN / TĀHUNA ROHE**

**UNDER THE** Resource Management Act 1991 ("Act")

**IN THE MATTER OF** a variation to Chapter 21 Rural Zone of the Proposed Queenstown Lakes District Plan to introduce Priority Area Landscape Schedules 21.22 and 21.23 (**PA Schedules**)

**AND IN THE MATTER OF** a submission on the PA Schedules

**BETWEEN** **HAWTHENDEN LIMITED**  
Submitter

**AND** **QUEENSTOWN LAKES DISTRICT COUNCIL**  
Planning Authority

**LEGAL SUBMISSIONS for**

Hawthenden Limited

Dated 11 October 2023

**Counsel:**

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## MAY IT PLEASE THE PANEL

### 1. INTRODUCTION

1.1. These submissions are consequent upon the direction by the Environment Court in its interim decision of *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* of 19 December 2019<sup>1</sup> (**UCESI v QLDC**) whereby Queenstown Lakes District Council (**QLDC**) was directed to identify the values of various landscape areas outlined in an early QLDC report that referred to an area of a pastoral farmland owned and operated by Hawthenden Limited (respectively, **Hawthenden** and the **Hawthenden Land**) and included that land in the Outstanding Natural Landscape (**ONL**) zone of Mount Alpha (**Mount Alpha ONL**).

1.2. The resulting report titled '*Queenstown Lakes District Proposed District Plan Section 32 Evaluation – Variation to proposed district plan – Variation to introduce into Chapter 21 schedules of landscape values for 29 Priority Area landscape*' was prepared by QLDC pursuant to the Court direction and was completed on 30 June 2022 (**QLDC Report**).

1.3. The QLDC Report referred to QLDC's strategic policies SP3.3.37 and 3.3.39, which required each of the 29 Priority Areas, including the Mount Alpha Priority Area (**Mount Alpha PA**), to be included in separate PA Schedules, and that each PA Schedule would include:

"...

- (a) *Identification and description of the key physical, sensory and associative attributes that contribute to the values of the ONFL that are to be protected;*
- (b) *Rating of the attributes identified in (a), using a 7-point scale rating from Very Low to Very High;*
- (c) *The related landscape capacity for a number of subdivision, use and development activities identified and any considered relevant to that area.*"<sup>2</sup>

1.4. Accordingly, the QLDC Report introduced new Schedule 21.22, which incorporated an assessment of the Mount Alpha PA, within which the Hawthenden

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<sup>1</sup> *Upper Clutha Environmental Society Incorporated and Ors v Queenstown Lakes District Council* [2019] NZEnvC 205 at para 525 and in accordance with para 262 (**UCESI v QLDC**)

<sup>2</sup> *QLDC Report para 3.5*

Land is situated.<sup>3</sup>

- 1.5. The QLDC Report describes the entirety of the Mount Alpha PA, which comprises the Hawthenden Land, as having:

*“... a high level of perceived naturalness despite management of vegetation and pastoral farming”.*

- 1.6. The critical issue raised by the Submitter is that the QLDC Report’s assessment that the Hawthenden Land, which is incorporated within Hawthenden’s larger pastoral farm landholding, as having a perception of ‘high level naturalness’ is fundamentally flawed. The Submitter considers the findings of the QLDC Report in respect of the Mount Alpha PA have not been assessed in accordance with its obligations, either as directed by the Court or as prescribed under case law.

- 1.7. The decision of the Environment Court in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*<sup>4</sup> (**WESI v QLDC**) reframed and affirmed certain criteria<sup>5</sup> to be considered when undertaking an assessment of a landscape meeting the rigorous requirements of outstanding natural landscape (**ONL**).

- 1.8. Under *WESI v QLDC*, the Court reframed and corrected criteria for assessing a landscape, which should include an assessment of:<sup>6</sup>

“... ”

- (a) *The natural science factors - the geological, topographical, ecological, and dynamic components of the landscape;*
- (b) *Its aesthetic value including memorability and naturalness;*
- (c) *Its expressiveness (legibility): how obviously the landscape demonstrates the formative processes leading to it;*
- (d) *Transient values: occasional presence of wildlife; or its values at certain times of the day or year;*
- (e) *Whether the values are shared and recognised;*
- (f) *Its value to tangata whenua;*
- (g) *Its historical associations.”*

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<sup>3</sup> Schedule 21.22.19 - Mount Alpha ONL

<sup>4</sup> *Wakatipu Environment Society Incorporated v Queenstown Lakes District Council* [2000] NZRMA 59 (ZEnvC)

<sup>5</sup> Criteria as originally determined in *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [1999] NZRMA 2009 (EnvC)

<sup>6</sup> *WESI v QLDC* at paragraph 80

1.9. The Court also considered the use of the word “*outstanding*” and stated:<sup>7</sup>

*“... the use of the word “outstanding” in S6(b) depends on what authority is considering it... Similarly a district council must consider what is outstanding within its district because the sum of the district’s landscapes are the only immediate comparison that the territorial authority has...”*

*“... what is outstanding can in our view only be assessed – in relation to a district plan – on a district-wide basis because of some of the district’s landscapes are the only immediate comparison that the territorial authority has ...”*

*“...The local approach is consistent with an identification of particular places: the unique landscapes that are given of the given district. There are districts without the vertical dimensions of the Queenstown-Lakes district, but that does not lead to the result that they do not have outstanding (natural) landscapes. Flatter landscapes may qualify, even though the test is still a rigorous one. A district may have no outstanding natural landscapes or features.”*

1.10. The Court went on further to consider the meaning of “*natural*” by stating:<sup>8</sup>

*“It is wrong to equate “natural” with “endemic” in the context of section 6(a) the Planning Tribunal stated, in Harrison v Tasman District Council:*

*“The word “natural” does not necessarily equate with the word “pristine” except insofar as landscape in a pristine state is probably rarer and of more value than landscape in the natural state. The word “natural” is a word indicating a product of nature and concludes such things as pasture, exotic tree species (pine), wildlife ... and many other things of that ilk as opposed to manmade structures, roads, machinery.”*

1.11. And at paragraph 89 the Court determined that the criteria of “*naturalness*” under the Act includes an assessment of:

*“...*

*(a) the physical landform and relief;*

*(b) the landscape being uncluttered by structures and/or “obvious” human influence;*

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<sup>7</sup> *WESI v QLDC* at paragraph 84

<sup>8</sup> *WESI v QLDC* at paragraph 88

- (c) *the presence of water (lakes, rivers, sea);*
- (d) *the vegetation (especially native vegetation) and other ecological patterns.*

*The absence or compromise presence of one or more of these criteria does not mean that the landscape is non-natural, just that it is less natural. There is a spectrum of naturalness from a pristine natural landscape to a cityscape.”*

1.12. Further, the Court stated:<sup>9</sup>

*“... Just to show how careful one has to be not to be inflexible about these issues we raised the question whether it is possible that a degree of subdivision into lifestyle blocks might significantly increase the overall naturalness of a landscape (and incidentally reduce non-point-source position of waters from faecal coliforms, giardia, etc.)...”*

1.13. It is submitted that it is of high relevance that nowhere within the QLDC Report is there any reference to any identifiable, tangible, or actual evidence of any ONL features in respect of the Hawthenden Land. Due to the absence of such evidence or reference to ONL features, it is submitted QLDC has failed to undertake the rigorous test required of it under *WESI v QLDC*.

1.14. The QLDC Report also acknowledges:

*“... the majority of the [Mount Alpha] PA does not have a strong sense of remoteness”.*<sup>10</sup>

1.15. From the Submitter’s perspective, that acknowledgement by QLDC is understandable as:

- a. the Hawthenden Land forms part of a larger productive pastoral farm, which has been continually and consistently developed for that purpose over approximately 130 years; and
- b. the Hawthenden farm property is situated within close proximity of, and is mostly visible from, the Wanaka township.

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<sup>9</sup> *WESI v QLDC* at paragraph 91

<sup>10</sup> Schedule 21.22.19 - Mount Alpha ONL para 39

- 1.16. It is also notable that the QLDC Report implicitly acknowledges that, in respect of the Hawthenden Land (and the lower Alpha fan<sup>11</sup>, in general), there are no tussock grasslands, no rock formations, no wetland areas, no significant native trees, and no terrain of any description that can be objectively or reasonably identified as having 'outstanding' or 'natural' qualities (either in the ordinary meaning of those words or as determined in accordance with the findings in *WESI v QLDC*).
- 1.17. Conversely, the QLDC Report describes small 'pockets' within the Mount Alpha PA that do have identifiable areas of remoteness or relevant tangible features. These areas relate mainly to gulleys, valleys and the upper Alpha fan and Mount Alpha slopes, which are physically and geologically distinct and separate from the lower Alpha fan and the Hawthenden Land. However, the QLDC Report proceeds to treat the entire Mount Alpha PA as a single contiguous ONL area, which is far from the reality (literally) on the ground.
- 1.18. On that basis, it is clear to the Submitter that, due to the absence of any identifiable actual or tangible physical attributes or any prescribed values that have been or can be identified, the QLDC Report cannot reasonably ascribe ONL values in respect of the majority of the lower Alpha fan area, including the Hawthenden Land. And if QLDC were to attempt to do so, it would not only be contrary to the rigorous test prescribed under *WESI v QLDC* but also in contradiction to its own findings contained in the QLDC Report.
- 1.19. Accordingly, it is submitted that QLDC has failed to adequately undertake a rigorous assessment or apply the relevant criteria required in accordance with *WESI v QLDC* when assessing the areas within the Mount Alpha PA, and, more particularly, in respect of the lower Alpha fan and the Hawthenden Land.
- 1.20. The QLDC Report also identifies and acknowledges only "... *Improved or semi-improved pasture below 1,100m, with varying densities of bracken, matagouri, sweet briar and scattered kānuka, and occasional shelter trees and wilding pines*" in respect of the Mount Alpha PA.
- 1.21. As outlined above, given the Hawthenden Land (and the larger Hawthenden farm area) has been developed, improved and modified by its farming occupiers over

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<sup>11</sup> The 'Alpha fan' being a well-used term describing the alluvial formation running along the face of Mount Alpha and down to the shore of Lake Wanaka. The Alpha fan is colloquially described as having 'upper' and 'lower' areas, representing geologically distinct areas within the fan formation.

approximately 130 years of commercial farming activity, the absence of any notable landscape below that 1,100m elevation is hardly surprising.

- 1.22. It is also clear from the QLDC Report that the Hawthenden Land constitutes significantly different landscape when compared to the upper slopes of Mount Alpha (i.e. at some point above the lower 'Alpha fan' and at elevations above 1,100m which has been acknowledged by the Submitter in previous hearings as constituting ONL). This stance is fully supported by the expert landscape evidence and expert geological evidence presented on behalf of the Submitter (discussed further below).
- 1.23. It is the basis of these submissions is that there is no such "high level naturalness" nor any other such measurable value capable of being 'perceived' or 'ascribed' to the Hawthenden Land. It is submitted that the expert evidence presented on behalf of the Submitter also fully supports this stance.
- 1.24. The decision in WESI v QLDC also prescribed the test for assessing such criteria is a 'rigorous test'. Under such rigorous testing, a landscape would be considered "outstanding" only if it met the standards of "... *conspicuous, eminent, remarkable...*"<sup>12</sup> within the context of the area concerned if the assessment has been undertaken for a district plan or a regional policy statement plan.
- 1.25. The above standards and criteria also form the basis of planning guidelines published by the Ministry for the Environment as published on its 'Quality Planning Website', affirming the application of the 'rigorous test' and findings in WESI v QLDC:<sup>13</sup>

*"An Outstanding Natural Landscape or Outstanding Natural Feature (often referred to as ONL and ONF) is determined through an assessment process that identifies whether the sum of its values equates to it being considered "conspicuous, eminent, especially because of excellence "or remarkable".*

*"However an ONL must be a 'natural landscape' and other values may result in the landscape being considered 'outstanding'. The Courts have recognised that a spectrum of naturalness exists which extends from pristine natural landscapes to cityscapes, within which a 'cultured nature' landscape may still be an outstanding natural landscape."*

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<sup>12</sup> WESI v QLDC at paragraph 86

<sup>13</sup> Resource Legislation Amendment Act 2017 revised guidance notes found at: <https://qualityplanning.org.nz/node/804>

1.26. Additionally, at paragraph 99 of WESI v QLDC the Court stated:

*“Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis. The question of what is appropriate development is another issue, and one which might require an expert’s opinion. Just because an area is or contains an outstanding natural landscape does not mean that development is automatically inappropriate.”*

1.27. It is submitted that there are no such “obvious” values that have been identified in the QLDC Report in respect of the Hawthenden Land.

1.28. Further, at paragraph 107 of WESI v QLDC, the Court made a pertinent observation, which the Submitter considers especially relevant to the Hawthenden Land as it clarifies a critical distinction as between ONL versus merely “outstanding landscape”:

*“We find as fact that:*

- (a) Mt Aspiring National Park is an outstanding natural landscape;*
- (b) Lake Wakatipu, all its islands, and the surrounding mountains are an outstanding natural landscape...;*
- (c) the Kawarau valley east of the Kawarau Bridge is not an outstanding natural landscape. Viticulture may be turning it into an outstanding landscape (**but not a natural landscape**).”*

(emphasis by the Submitter)

1.29. It is submitted that, even if a rigorous analysis results in the Hawthenden Land being considered ‘outstanding landscape’ (which is disputed and considered highly unlikely), the longstanding pastoral farming activities undertaken on the Hawthenden Land means it cannot objectively be determined as being ‘natural’.

## 2. ZONING HISTORY

2.1. The Submitter considers it important that the Hearing Panel is aware of the history of how the Hawthenden Land was originally zoned as part of the Outstanding Natural Landscape Zone. Until 2002, the Hawthenden Land was zoned as “Rural” and subject to the rural zoning rules in place at that time.



2.2. In its decision dated 27 June 2002 under *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council*<sup>14</sup> (**WESI v QLDC 2002**), the Court determined that the boundary line of the ONL should intersect the Hawthenden farm and include the Hawthenden Land. This is essentially where the ONL boundary line currently lies. Of significance, through no fault of its own, the Submitter was not represented or present at that hearing so no direct evidence from Hawthenden was heard by the Court.

2.3. Also of significance, the Court stated:<sup>15</sup>

*"We observe 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 the situation. The complication is that the geomorphological and pastoral characteristics rather contradict each other. The former make the fan 'read' with the mountainside, 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".*

2.4. The Court further stated:<sup>16</sup>

*"... The obvious demarcation between the Alpha face (including the fan) and the flat land to the north is not obvious from those two roads [Studholme Road East and Cardrona Valley Road] or from Wanaka. It is very visible from Mt Iron and Mt Barker: the demarcation is the river-truncated end of the fan as identified on Ms. Lucas' plan. We hold that lowest line is the limit of the ONL because it is the most clearly definable line although we accept this is a finely balanced decision".*

2.5. Matters remained as they stood in accordance with the decision in WESI v QLDC 2002 until 2019 when the matter was reconsidered by the Environment Court. In its decision of 19 December 2019 under *Lake McKay Station Ltd v Queenstown*

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<sup>14</sup> *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council* [2002] NZEnvC 230

<sup>15</sup> WESI v QLDC 2002 paragraph 51

<sup>16</sup> WESI v QLDC 2002 paragraph 52

*Lakes District Council (Lake McKay v QLDC)*, the Court upheld the ONL delineation from *WESI v QLDC 2002* but determined at paragraph 95:<sup>17</sup>

*"Overall whilst the Upper Terrace is discernibly different from the balance of the Alpha Range ONL, we find it has sufficient naturalness to remain as part of the ONL".*

- 2.6. With respect, it is submitted that, given that there was no specific evidence to justify or test such a finding, the decision in *Lake McKay v QLDC* is questionable. Of significance, there was no specific report or formal assessment prior to that hearing to determine or identify any landscape values that could be regarded as complying with the requirements of the Act on which the Court could make a proper finding.
- 2.7. The Court acknowledged that such an assessment would be necessary to explicitly identify landscape values on the relevant properties. At paragraph 100 of *Lake McKay v QLDC*, the Court stated:

*"... Although Hawthenden's relief is in regard to the repositioning of boundaries, the evidence reveals that this is partly related to the uncertainty that arises from the PDP's approach whereby ONL values are not enunciated. We acknowledge that the Hawthenden appeal concerns only a small extent of the entire Mt Alpha ONL".*

- 2.8. At paragraph 101 of *Lake McKay v QLDC*, the Court further stated (seemingly in an effort to ameliorate a potentially perverse outcome in respect of a large area situated within the Alpha fan):

*"In this particular context we find it would be appropriate to explicitly acknowledge (any ONF values schedule included in the ODP) that productive pastoral farming is compatible with those identified ONL values".*

- 2.9. It is submitted that the QLDC Report is simply the first attempt by QLDC to identify the physical attributes and values of ONL land and to address each PA in a more granular manner. Also, the QLDC Report was carried out at the direction of the Environment Court (as acknowledged by QLDC in its notice sent to affected property owners dated 9 March 2022), which arguably affords greater scrutiny of its content.

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<sup>17</sup> *Lake McKay Station Ltd v Queenstown Lakes District Council* [2019] NZEnvC 206

- 2.10. It is submitted that the QLDC Report improperly attempts to include the Hawthenden Land as part of the whole scenic and recreational attributes and values of the whole area. As indicated, there are no specific tangible or identifiable ONL values referred to or identified in the QLDC Report as being specific to the Hawthenden Land.
- 2.11. It is submitted that the QLDC Report fails to comply with the direction of the Environment Court. It is, therefore, neither appropriate nor proper to include the Hawthenden Land as part of the whole scenic outlook as no identifiable landscape attributes or values specific to the property have been identified.
- 2.12. Of further significance the QLDC Report makes no determination and does not provide any evidence to the effect that productive farming is compatible with identified ONL values as required by the Environment Court direction in UCESI v QLDC and acknowledged in Lake McKay v QLDC.

### 3. LAND USE VISUAL AND DEVELOPMENT CONSIDERATIONS

- 3.1. The QLDC Report identified 9 small undeveloped rural living lots around the southern moraine plateau on Hillend Station<sup>18</sup>. It is submitted that, once developed, any dwellings or improvements constructed on the nine lots ("Hillend Lots") will be clearly visible from the Wanaka township.
- 3.2. It is further submitted that, in comparison to the QLDC Report's assessment of the Hawthenden Land, the existence of the permitted Hillend Lots appears antithetical and contradictory to the concept of ONL values in respect of the Mount Alpha PA. In the Submitter's opinion, it is difficult to imagine anything more at odds with the concept of ONL values (whether 'actual' or 'perceived') than having rural residential dwellings constructed squarely within the Mount Alpha PA vista.
- 3.3. The Submitter is concerned that there is serious inconsistency in the QLDC Report, which purports to claim a "*high level of perceived naturalness*" in respect of the Hawthenden Land, despite the productive pastoral farming activities that have been undertaken on the property for the previous 130 years. This inconsistency is evident due to the likely outcome that, once fully developed, the Hillend Lots will clearly contradict any concept of "naturalness" as outlined in the QLDC Report or as defined in case law.

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<sup>18</sup> Proposed schedule PS21.22.19 at paragraph 16.

- 3.4. The QLDC Report concludes the Hawthenden Land forms part of the "*...visual dominance of the mountain range and landmark qualities of the ice corroded schist outcrops*". The significance of that conclusion is that QLDC's assessment of visual appearance of the land within the Mount Alpha PA conveniently ignores the reality relating to the 'nature' of the Hawthenden Land (as it is now and as developed under continued farming activity) in comparison to the inevitable visual impact to the area once the Hillend Lots become fully developed. It is therefore submitted that the inclusion of the Hawthenden Land within the ONL delineation under the Mount Alpha PA is inconsistent with the QLDC Report conclusion.
- 3.5. It is further submitted that the Panel should acknowledge that views will no longer be taken into account under the proposed legislation replacing the current Resource Management Act and related legislation.
- 3.6. In essence, under the QLDC Report, QLDC simply reiterates the original WESI v QLDC 2002 decision by classifying the Hawthenden Land as ONL based on its context as a visual backdrop as viewed from the Wanaka township, rather than undertaking a robust and rigorous investigation, and adopting appropriate methodology and the assessment criteria as outlined in WESI v QLDC.

#### 4. **GEOLOGICAL AND LANDSCAPE ISSUES**

- 4.1. The Submitter's expert geological evidence provided by Mr Stephen Leary has never been challenged, contradicted, or disputed at the Environmental Court or during submission stages. In summary, Mr Leary's evidence highlights the inconsistencies in the determination of the placement of the ONL line over the Hawthenden Land. Mr Leary considers its placement is contrary to conventional determination methods, which, in essence, should follow the ridgeline and any obvious deviations in landform gradients.
- 4.2. Mr Leary also emphasises that the proposed ONL delineation does not follow the 'geological boundary' as it does in all other places (except other places in the immediate vicinity to the Hawthenden Land and the Mount Alpha PA). It appears, therefore, the placement of the ONL demarcation over the Hawthenden Land is the 'exception rather than the rule'.
- 4.3. In accordance with expert evidence provided for the Submitter by landscape architect Ms Nicola Smetham, it is submitted that natural landscapes are not necessarily those areas untouched by human influence. Ms Smetham's evidence makes it clear that, to be considered natural landscape in respect of the Mount Alpha locality, there needs to be low levels of human modification. Due to the long

history of continued pastoral farming, this is clearly not the case in respect of the Hawthenden Land (or the lower Alpha fan, in general).

- 4.4. Ms Smetham also reiterates that the Hawthenden Land has been cleared, ploughed, cropped and pasture seeded over the many years of active and productive farming. Ms Smetham emphasises that intensive sheep, cattle and deer farming has been carried out on the Hawthenden Land along with associated improvements (including fencing, gravel access, roads and various farm structures constructed throughout the Hawthenden farm property).
- 4.5. Additionally, there was an almost complete vegetation clearance on part of the Hawthenden Land following a significant fire event on or about 1997. There have also been earth works over the ensuing years of farming, including levelling out various areas including gullies and pastoral paddocks.
- 4.6. It is submitted that, due to the above-described human activity carried out over the years, any “naturalness” on the Hawthenden Land has surely been eliminated. There is simply no ability for QLDC to objectively determine that there is a “high level of naturalness” in respect of the Hawthenden Land.
- 4.7. Mr Leary's extensively researched evidence also confirms that there have not been any consistent assessment criteria across the base of Mount Alpha. Mr Leary points to the ONL line following the geomorphological break between the upper slopes of Mount Alpha and the valley floor in other locations. However, the same ONL line inexplicably cuts across the Hawthenden Land, where no actual identifiable ONL values have been specified.
- 4.8. Mr Leary concludes by pointing out that, in its notice to residents in May this year, QLDC proposed a new location for the ONL boundary line, which proposed following the top of the ‘Alpha fan’ but not including the subject property (despite there being a continuous geological contact that runs across the upper portion of the Hawthenden farm property, which is indistinguishable from areas subject to reclassification under the repositioned ONL boundary).
- 4.9. In evidence currently before this hearing, Ms Smetham confirms that the continued management of the Hawthenden farmland (including the Hawthenden Land) is the key influence on the open character and visual coherence values that differ vastly from the upper mountain slopes of Mount Alpha.<sup>19</sup> Ms Smetham also expresses

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<sup>19</sup> Statement of Evidence Ms Nicola Smetham dated 11 September 2023 at paragraph 14.

her expert view that the inclusion of the Alpha fan forming part of the Mount Alpha ONL is questionable.

- 4.10. Further critical evidence provided by Ms Smetham is that the inclusion of the Hawthenden Land as ONL within the Mount Alpha PA is without sufficient justification as it "... *undermines the underlying rationale for the boundary line and values of the ONL*".<sup>20</sup>
- 4.11. It is submitted that the Submitter's expert evidence provided by Mr Leary and Ms Smetham is irrefutable and, on any objective measure, it is plain to see the improper distinction and contradictions provided in the QLDC Report in respect of the classification and treatment of the Hawthenden Land.

## 5. CAPACITY

- 5.1. Ms Smetham raises in evidence the critical point that the 'capacity ratings' referred to in the QLDC Report (as they relate to the Alpha fan forming part of the broader ONL and, by implication, the Hawthenden Land) is not justified due to a lack of sufficient "*outstandingness and naturalness*".
- 5.2. Ms Smetham is also at pains to point out the flawed approach in relation to the conflict between the findings in the QLDC Report and the Methodology Statement (enclosed as Appendix C1 to the report). Ms Smetham points to inconsistencies in QLDC's approach as it appears to have adopted an 'absolutist' position, contradicting its own preference that a 'less absolute' terminology be used – the example given by Ms Smetham relates to an unequivocal 'no capacity' rating in respect of the Alpha fan.
- 5.3. It is submitted that the logical inference drawn from Ms Smetham's evidence is that QLDC has not followed its own published methodology when arriving at its determinations provided in the QLDC Report.
- 5.4. Ms Smetham's evidence also highlights general inconsistencies in the capacity ratings within the various Priority Areas, and also in relation to the surrounding Wanaka context – most critically, in respect of the consented Hillend Lot development, which adjoins the Hawthenden Land and includes rural residential building sites that are clearly visible from various locations within the area.

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<sup>20</sup> Statement of Evidence Ms Nicola Smetham dated 11 September 2023 at paragraph 16.

- 5.5. It is submitted that the implication of that inconsistent and absolutist approach by QLDC conflicts with the intended application of the Priority Area schedules. The Submitter points to the introductory passage under each Priority Area schedule, which includes the following contradictory statement:

*“The capacity descriptions are based on the scale of the priority area and should not be taken as prescribing the capacity of specific sites; landscape capacity may change over time; and across each priority area there is likely to be variations in landscape capacity, which will require detailed consideration and assessment through consent applications.”*

- 5.6. Notwithstanding that passage, the Submitter is deeply concerned that, due to:
- (a) the landscape capacity scale provided in the QLDC Report (in respect of the Mount Alpha Priority Area, in general, and as it applies to the Hawthenden Land); and
  - (b) QLDC’s use of unequivocal and ‘absolutist’ terminology,

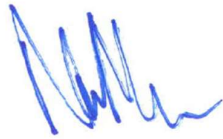
it will prove very difficult (if not impossible) to argue against the capacity scale in the future. It is submitted the adoption of “no capacity” in respect of the Mt Alpha Priority Area will, effectively, result in an onerous precedent being set when carrying out, or seeking consent to carry out, any future activities on the Hawthenden Land.

## 6. **SUMMARY**

- 6.1. Contrary to the direction of the Environment Court, no actual ONL values have been identified on the Hawthenden Land by QLDC. The QLDC Report has, at best, simply attempted to ascribe “perceived values of naturalness” which simply do not meet the rigorous assessment of a ‘high kind of naturalness’ as required by longstanding case law precedent.
- 6.2. Additionally, QLDC appears to have contradicted its own findings in the QLDC Report by ascribing ONL values throughout the entire Mount Alpha PA. The lack of distinction of the majority of the Mount Alpha PA is a breach of its obligations to undertake an assessment of ONL values within the PA.
- 6.3. As outlined in the expert landscape and geological evidence presented on behalf of the Submitter, the QLDC Report improperly includes the lower Alpha fan, including the Hawthenden Land, as ‘part and parcel’ of the upper Mt Alpha slopes and, therefore, as constituting ONL.

6.4. When making its assessment, QLDC has neglected to distinguish between distinct and varied landforms and divergent landscape values within the Mount Alpha PA, which, in respect of the less remote areas, generally align with the upper and lower Alpha fan delineation. Instead, by identifying the Mount Alpha PA as a single contiguous ONL, QLDC is in breach of its legal obligations by its failure to undertake a rigorous assessment and by its failure to assess specific criteria in respect of the Mount Alpha ONL.

Date: 11 October 2023

A handwritten signature in blue ink, appearing to be 'Nathan Graham', written in a cursive style.

Nathan Graham

**FOR AND BEHALF OF  
HAWTHENDEN LIMITED**