Variation to Chapter 21 (Rural Zone) of the Proposed Queenstown Lakes District Plan Introduction of Priority Area Landscape Schedules: 21.22 (Outstanding Natural Features and Landscapes) and 21.23 (Rural Character Landscapes)

Hearing Day 9 – 9 November 2023:

Selected Transcript of Oral Submissions of Hawthenden Limited

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Preamble/introductions

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Hawthenden: From the outset I would like to address QLDC's opening submissions and also thank the panel for issuing its minute on 31st October relating to the essentially the scope of discussions available submissions through the hearing process. So thank you for keeping an open mind essentially of what we are discussing. And I suppose the reason why we are thankful is that QLDC's submissions pointed out or were reasonably persuasive in trying to direct the panel to limit the scope of discussions to just the scheduled drafted essentially and terminology used as has been apparent.

I have dipped in and out of the hearing recordings just to see the state of the nation essentially where things are heading. I was also heartened to hear Ms Hill and Ms Baker-Galloway's submissions for Anderson Lloyd also touched on pretty much the same points as far as boundary issues, and I understand from those submissions that there are a significant number, over 25% of submitters, who have raised that issue. So again I thank the panel for hearing discussions on those points.

There are a number of aspects of QLDC's opening submissions that raise some issues for our client. And notwithstanding the fact that they are trying to limit the scope and we feel privileged in the sense that we have been named specifically in the submissions…

Chair: I think that is because you filed your legal submissions well in advance…

Hawthenden: Absolutely, so kudos to Mr Wakefield, he had wherewithal to read the submissions before he submitted his two days later. A good call on his part. It was actually beneficial in a sense because it fleshes out and opens up the avenue for discussion on these points. I'm appreciative to Mr Wakefield for that. Where we depart in our submissions essentially is that (as with a number of other submitters) we do consider that the boundary discussion is one to be had. And like my learned colleagues at Anderson Lloyd articulated probably far better than I can, the basis for that discussion using the Clearwater principles on variation to the status quo opening up discussions on all aspects of the plan change.

The other interesting point I note from the hearing recordings, I think it was one of the earlier QLDC witnesses - it might have been Ms Evans or Ms Gilbert - may have suggested that on question from the panel that this wasn't the normal way that landscape values and then boundary delineations were decided upon or at least proposed under a variation. The concept is that it is not done in a piecemeal approach. It is done in an iterative approach. But it also has a feedback component to it. So in essence policies or the variations proposed including values and identification of land that is affected including boundaries and then another reassessment of the values that are attributable to those boundaries and then reassess the boundaries. Just essentially it is a continuing loop. I think the recent case law in fact I think it was the Port Otago case. which Environmental Defence…

Chair: The Supreme Court…

Hawthenden: Yes. It referred back to reasonably longstanding views some of it as obiter essentially stating it is up to Councils to maintain control over the policy and planning and variation changes. And essentially although QLDC or a Council is the ultimate decider of the various final plans and policies, it still has to be considered in a democratic process and a transparent process.

From our client's perspective that has not occurred under this quite frankly long-winded planning approach and I'm not intending any pejorative in my use of the long-winded comment - we live in a beautiful environment, it is a sensitive topic and it is key to get this right. So the longer the better I think to make sure it is done correctly.

Commissioner: When you talk about that do you mean the entire planning process i.e. the staged district plan approach or are you talking about the variation specifically?

Hawthenden: When you say the variation do you mean the variations to the schedule or …?

Commissioner: Sorry the schedule of processing.

Hawthenden: Well, the schedules processing or variation that we are discussing here is just, I wouldn't say it's a final part of the process but it certainly forms a later part in the process, so I mean this is …

Commissioner: You are referring to the whole process.

Hawthenden: Absolutely. Yes, so it is a proposed district plan that in reality is, technically it is a variation to the existing operative plan. So it is an evolving process so we should take care to ensure it is done correctly and it is not done in a check box fashion, and I

suppose we are concerned that there is an element of predetermination on some of the outcomes and especially where in this instance where the discussions about the variation to the schedules is narrowed on discussion points down to just the drafting of the values or attributes and capacity values are within the already supposed finalised priority areas.

I think that is the wrong way to go about it. I think the Courts have actually outlined that no it is a combined approach, it is an iterative process, but it is something that is usually feeding back to itself.

Counsel for QLDC mentioned as part of his submissions on the narrowing of the discussion on just the drafting of the schedules that the Courts have already found or the Decisions I think it was 2.3 and 2.5 that, in their opinion, finalised and sealed those ONL boundary lines.

Our submission is that Environment Court is there to essentially arbitrate disputes or contentious points between parties, but the language of the Courts is quite interesting in where it determines outlines all areas that are delineated under a plan. It uses phraseology such as 'appropriateness', so it considers from two competing views or other competing views the most 'appropriate' result is this and that's based on the information hearing at that date. I think that we can infer that the Court is conscious of the fact that it is a supposed transparent and democratic process that is driven by the submissions from stakeholders not a Court driven or expert driven process, it is purely to do with the democratic transparent process, and the Court does clearly direct Council or experts or parties to undertake certain matters and they are Orders or Determinations of the Courts but they generally are on process points not on policy points. So that is a very important distinction to make and that again in affirmed in recent Supreme Court cases Port Otago, Man o War and is it King Salmon which counsel for QLDC and Anderson Lloyd helpfully referred to.

The other QLDC submissions that our client does take exception with is the, I like to think of it as the having your cake and eating it too approach. And that's discussing the broad aspect of assessment in the schedules but the reality on the ground literally is that to take a broad approach across such a stratum of varied landscape within the ONL priority area it just can't be done.
I think it is evidenced by what I consider the 'tortured language' that is coming out of some of the assessments in the schedule, especially the schedule that my client is directly affected by - the Mount Alpha priority area schedule.

I will speak to some of those points anyway through submissions but there was one other point I am trying to reconcile this with the QLDC's position. And that was in the

Lake MacKay Decision (and Mr Wakefield was also co-counsel on that) and in that Decision as part of their closing submissions which is included in the judgment there was a comment – I'll see if I can find it - it was more about the process and essentially – here it is paragraph 69, and this is a direct quote: "*Counsel in closing submissions considered the correct approach is to first assess the character and values of the land in question to determine ONL ONFL values and then secondly to determine the boundary location*"

I can't reconcile that with QLDC's current position that the boundaries have actually been set and now we are just going through the checkbox exercise of drafting and establishing the terminology within the schedules. I think that even Counsel for QLDC has become caught in that feedback loop and hit a roadblock. And we need to get back to the iterative process of constantly feeding back and reassessing. Always touching back to the original core concept under the RMA the National Policy Directive's suggested policies through that cascade of planning documents.

Chair: So your submission, and correct me if I am wrong, is that obviously the Court for the reasons that they gave in their judgments determined what the priority areas are leading to a process that determined those boundaries originally.

Hawthenden: Can I correct that because the Court doesn't determine what the boundaries are…

Chair: No well it was the experts…

Hawthenden: They considered and there are two competing views and our client's case is that the appropriate one was the status quo where the ONL boundaries sat. Now we have contention on that view and as I have said in my submissions, but we have to be careful although we respect Court's views, we respect the hierarchy of our decision making but it hasn't been fleshed out to the nth degree as far as we are concerned.

Chair: Well I think that is where I was heading so it has been through I suppose the Court the process resulted in which through the expert Courts etc. resulted in the boundaries under priority area boundaries and so then we had this process to determine QLDC's submission but then this is just really the content of those schedules within those predetermined and Court sanctioned if you like priority areas, but you are saying that it doesn't finish there that it makes sense for once those attributes and values have been determined that then you revisit the boundaries.

Hawthenden: Absolutely, and curiously that was Council's position during that exact case.

Chair: And was that based on the Lake Mackay case.

Hawthenden: Yes. So it is at paragraph 69 of Lake Mackay - counsel's closing submissions were quoted by the Judge.

Chair: But in that case did the Court determine the boundaries first or did they just leave it as a process of…

Hawthenden: This is the thing. It is such a complex and long process and the Courts, and this is purely in a pragmatic approach I believe the Courts approached its topic individually and so it has the appearance of being a determination on one point and then move onto the next point. But again, I go back to the concept that the Environment Court is merely suggesting the most appropriate outcome and endorses that based on the hearing on the day, but again it can't put any input into the feedback loop because otherwise we would be going to Court on every minor point. It is kicked back to Council who has the hearing panels going through a normal transparent democratic process with some tweaks such as joint witness scheduling or statements which again is problematic in our client's view. But the key point is that I suppose to assist the carriage of the process the Court has to come to a decision on something, but again it isn't determinative I would say it is suggestive and it's where think of it as some guard rails for the process so the Court is essentially putting in the guard rails to allow the parties or stakeholders to come to an end decision. And so we're bouncing between the two guard rails and eventually it will coalesce to a single point. And that is where will end up at the end of the process, but we are still within the guard rails of the decision making or the policy consideration process.

Chair: So are you able to within the Court's decisions are you able to take us to the paragraphs where and I think Ms Hill did do this on one but where they didn't intend it to be determinative and I think it's an interesting area...

Hawthenden: It's in the language…

Public: Excuse me can you speak up because …. bit deaf !!!!!

Chair: Oh Sorry.

Hawthenden: So the point is that generally the flavour of the judgments when they sum up at the end so they have their discussion through the judgment themselves the Courts then obviously deliberate on paper and have a discussion on the points and then they come up with their determination. Now on every point of say planning boundary adjustment all that sort of policy aspects the flavour or colour of the language is more about the most appropriate aspect that "we consider" or "we endorse" this aspect. It is never an

order unless it is to do with process and timetabling, and the nuts and bolts of the process essentially which is something that is actually a valuable aspect of the judgment.

Chair: That's interesting, so yes they didn't actually make orders as such.

Hawthenden: No, it's purely 'suggested' or 'appropriate'. I'm probably treating it a bit lighter than maybe I should but that seems to be the flavour of the judgments and case law around this topic. And I think its possibly evident because of again the large number of issues that are at play here and even though it is such a discrete matter on a variation to the operative plan it's kicking off a number of potential issues, including deprivation of rights on land use.

Chair: That could also be an argument for why they might want it to have been determinative though because they realise that these processes were a wee bit (Inaudible)…

Hawthenden: And that could be the case and I appreciate that view. I think it is our position that if that was the case they would be ordering that's where the line is, that's where these things are, this is set in stone and if there is anything about planning law, excuse the geomorphological pun, it is never set in stone.

Chair: No, no but I mean I suppose that the one option might be that they might envisage a separate process potentially around and I suppose the argument is why wouldn't you …

Hawthenden: I think that just through the flavour of, I mean we have got how many decisions 2.7 we are up to, so we have gone, and this is just on topic 2, so the number of submitters there and these are just the submitters to the Court process. The litigation process. And there will be a number of affected stakeholders who haven't even submitted because either they weren't aware, or they haven't had the ability or the budget frankly to try and have a say or have the opportunity. I do believe the Court is doing exactly the right thing because it is such a complex process we are up to topic 2 Decision 2.7. We will keep going, there will be more, but each one has been focussed on a certain point, maybe two points, that's the nature of the process and I can see why the Environment Court has approached in that matter and it is a sensible aspect because it actually makes it easier to navigate afterwards. So as a practical aspect it is really good because we get to dip in and dip out of specific topic of judgment that we need to review, assess and then resubmit on in hearings such as this. But I don't think they are determinative.

Chair: No, ok, that's helpful thank you. So was your client a party to the topic two.

Hawthenden: Yes.

Chair: So you were involved in that process.

Hawthenden: Yes, it has been a party to most of the litigation. But the key point was in the Lake MacKay Decision and it comes down to the fact that our client disputes the ONL boundary for various reasons and we can go into that but that was the discussion and the expert evidence was submitted on that Decision process 2.3 I think it is.

Chair: I see, ok, thank you.

Commissioner: So your reference to the Lake MacKay decision and stuff you seem to imply that the characteristics and attributes should be informing, should come first if you like and then the determination of the boundaries, but just because the schedules have now been created doesn't mean the characteristics and attributes have previously been assessed through those previous and there has clearly been the challenge of expert evidence on both sides in determining so the characteristics and attributes have been documented through the scheduling process and haven't been ignored previously.

Hawthenden: No, I think that is a good view to take, but what the Courts determined in I think 2.3 for essentially directing the scheduling and because it is so overwhelming I suspect that the volume of ONL within the region is so all-consuming I mean it is a massive area had to be segmented and separated out into separate areas to allow at least give it a shot at actually distilling those qualities and values for each priority area. I think the Court did a marvellous job there in coming up to that conclusion because to treat each area separately I mean that makes complete sense. I think it is a constant distillation of that process and we are getting down to a more granular level of detail on each priority area. Again I submit that basically it is the tone of our submissions that it hasn't gone far enough yet so if we are going to maintain an outstanding natural area boundary and we are not to have that discussion in the boundary line or it is determined by the Commissioners how the boundary line discussion is not had or it remains where it is which is entirely your call at this stage, then the discussion needs to be had about providing an accurate assessment within the very strata of landscape within the outstanding natural priority area. And at the moment again like I said the tortured language suggested the experts in conference are trying to use to broad language to be able to consider all of the priority area. In our clients case the Mount Alpha area as all-consuming as high level of perceived naturalness and that is a key phrase in our submissions that we really…

Chair: We should probably go to the submissions actually and we can come back with some questions, but it has been very helpful to explore that scope issue I think and we might come back with some more questions. I did have another one that crossed my mind, but I have forgotten what it was.

Hawthenden: It's been a long week.

Chair: It has.

Hawthenden: I will skim over the introduction aspect of the submissions; I think we are all well appraised of the background of this. The key point is in 1.3 and that basically it in the discussion of any Priority Area needs to include identification of those key physical sensory aspects and these are all expert analyses carried out under a joint conference but what happens is the process seems to have been possibly derailed by overly broad language used in the end schedule.

And that is no disrespect to the landscape experts who are finalising that, I just think that it is the first step in a very long task.

As evidence of the strained language that has been used that we think has essentially created a perverse outcome for our client is that our client's land is described as having a high level of perceived naturalness despite management and vegetation and pastural farming. Now that is the critical issue with our client's position is that the land that has been captured under the prior area is basically a balance of our client's farmland and a significant proportion of it leading up to the upper terrace of the Alpha Fan so the foot of the Mount Alpha Range its been extremely intensively farmed for 130 years and that is pretty much behind and I don't even know if we can see it from here.

Chair: We did have a quick drive past yesterday but it would be helpful to have a map in front of us.

Hawthenden: Yes, Mr Leary did have some excellent photos showing the …

Chair: I see in your evidence ….

Commissioner: Just to progress matters can you just point us to the paragraph in the schedule that refers to the high degree of naturalness.

Ms Smetham: I did mention to Pete that you can't actually drive past the site. You can't drive past it, you have to go into it to really appreciate the road that leads …

Commissioner: Is it paragraph 35 the high-level perceived naturalness? …

Commissioner: I was going to say that we will be doing some more site visits this afternoon so if there was a particular location you wanted to point us to and provide...

Hawthenden: I can recommend a tour guide; I had an excellent tour this morning. (laughter)

Hawthenden: So you mentioned paragraph 35 and essentially it talked about the attributes and values having a high level of perceived naturalness again despite the evidence of pastoral farming.

I suppose if we put it into perspective or context for our client the farm has been there for 130 years and it has been productive in that entire time. Everyone talks about the urban pressures, there are farming pressures too, from the reverse side. So the fact of reverse sensitivity being the key one with every encroachment of a development on the boundary of the farm it is making farming extremely difficult or increasingly difficult over a period and I suppose if you think that our client or client's directors have been in the farming and land use game for decades and decades and they have existed during a very permissive regime to a discretionary regime into a restrictive regime and now it is almost turning into a prescriptive regime. And to me that's a fundamental underlining of essentially democratic rights or essentially property rights so there is a serious deprivation of the ability to use the land for what has been 130 years of continuous farming development.

Now we have to remember that despite the fact of that intensity of farming, it hasn't involved irresponsible intensive farming, there aren't large structures there that are blocking the landscape, there are exotic trees, there are no natives anymore I think that they were taken down years ago or just over the grazing or development of the land for farming purposes that has been eradicated, (except for the matagouri, that's probably the only native flora seems to be present but luckily no gorse), so there is a ....

Chair: It's still grazed isn't it?

Hawthenden: Absolutely yes.

Chair: So when you say it's gone from prescriptive to restrictive you mean the introduction of the schedules?

Hawthenden: I think that at the moment it is hedging on that discretionary restrictive aspect and definitely restrictive due to the ONL line where it currently is. What is going to happen I predict and my client is very sensitive to, is the fact that in ten years' time if the

schedules are adopted under the broad description, as they are currently and with the ONL delineated as it is currently, we will end up in a situation where whoever is responsible for making planning decisions at Council for any future land use (and we are not talking high rise skyscrapers we are just talking putting up an implement shed or maybe a farm track, even something very simple)...

Chair: So something farming?

Hawthenden: Yes but I don't want to restrict it to that because I don't think that is the intention and I do believe in future we will end up having that hillside developed at some point (sensitively because that is how things are approached these days which is excellent and it benefits everybody) but what is going to happen in say ten years' time when you have say a 'newbie' planner at Council making decisions on whether or not to approve a consent or an application for putting up a shed, or putting a fence line up?

They are instantly going to see the tone of the language under the planning schedule capacity, this being probably the key point, under the capacity ratings and see the "extremely limited" and "no ability" for development.

So it essentially will end up with, how do I say this, if we end up with planners or Council decision-makers who have no fortitude or courage in allowing things to happen based on no critical assessment of exactly what is happening on the ground, and not even attending under a site visit or going through a normal logical process or a practical process of actually approving or denying consent applications, we are just going to end up with a tick box exercise of denial, denial, denial of all consent applications. And essentially that turns it into a prescriptive regime where the schedules are then informing the actual land use ability.

And I can see it is foreshadowed in the drafting at the moment. I think there is a mention of 'recreational tracks' and 'bicycle tracks or trails' – I can't see exactly where that is - but the flavour is that those in essence will be the sole approved use of land.

Now that is contrary to the farming use of land or any private use of land, so if you buy land or own land or are a custodian of land, the only thing you are allowed to do is actually allow Council or public access to a bicycle track?

I think that's where things are heading and that is my client's deep concern.

Chair: (Inaudible)

Commissioner: Does it necessarily follow that the ONL line is determining the capacity because we have seen in other RCL's that they have a similar capacity rating to what is the case here?

Hawthenden: I suppose that is true. There is always an assessment to be carried out. But if you think of the hierarchy of permissible activities you (Council) are going to be more relaxed about a rural character landscape than you are going to be over an outstanding natural landscape.

Commissioner: Isn't the point of the schedules to inform that capacity regardless of the landscape classification?

Hawthenden: I would hope so, absolutely I would hope so.

Commissioner: As far as landscape classification and the obvious one that dropped out the Manawhenua Valley which is an RCL but it is clearly still a sensitive landscape and has quite similar capacity ratings to this piece of land.

Hawthenden: I'm glad you mention that because that is another point raised in Lake MacKay. The Manawhenua Valley was described as rural character landscape and it appears to be solely on the basis that it had already been developed. It already had farming and sheds and significant pastoral improvements, or development. It also had some dwellings placed there, not dissimilar to our client's land in that respect. So it is interesting that, but for the fact that our client has been "responsible" by not developing it while the permissive or discretionary regime was in place, it is now being punished essentially by being restricted in its land use for development in the future if the schedules are in place. If it had developed the land - this is the counter-factual I think you are missing from Lake MacKay, and this is why I believe it is not exactly an aberration as a decision but I do think it was not a fully considered decision, they omitted to consider the counter-factual of what if it was already developed or what is the capacity for the land? what are the improvements that are able to be made to the land by sensitive development? - and unfortunately I think the current Priority Area concept and then the schedule drafting precludes anyone from allowing development of the land.

Chair: Perhaps we should hear the rest of your arguments on that because then we can come back with questions, so I think we are clear as to the background.

Hawthenden: I am happy to skip over probably …

Chair: Just, you refer to the WESI Decision – was the ONL line identified in that decision?

Hawthenden: No. WESI really just goes to the character of the landscape and we talked about the naturalness so it is a discussion on the actual assessment criteria of the land itself.

We are contending that there is no possible rationale for determining that our client's land fits that description. So again it is part of a discussion on the ONL boundary. So, at the time I think the boundary itself for WESI (I have actually used the incorrect citation there, the WESI case I am referring to is the 1999 decision so it is Environment Court 417, apologies for that). That one articulated the core assessment criteria for determining 'outstanding' and 'natural' and 'landscape'. So it is important that we are mindful that in our client's situation the land does not meet those WESI criteria. So for whatever reason during the long and storied litigation it has been captured. But the reality is that due to the sensitivity around the local area (and we live in the most spectacular environment) and it is understandable there are hypersensitive aspects at play, but it has resulted in an unjust or perverse outcome, as far as delineation of the ONL as it currently sits.

Chair: And I am sure we are going to hear from Ms Smetham on that.

Hawthenden: Yep absolutely.

So my submissions essentially traverse the WESI cases so there is another case in 2002 and also it annunciates or reaffirms the criteria for landscape assessment but also points out that you don't need to be an expert to figure it out and it is essentially that it is an objective test in essence so the assessment should be self-evident and I think if you take off your land expert hats you can look out and see it is a well-developed piece of farmland that has pretty much zero level of naturalness and certainly not a perceived high level of naturalness.

Chair: I find I am completely lost in your submissions now.

Hawthenden: We are still on Point 1 so if we can scoot through to Point 1.14 so the QLDC Report which is the section 32 report, describes the areas Mount Alpha Priority Area does not have a strong sense of remoteness. Again, it is a very broad brush approach to describing that area because it is hardly surprising it does not have a strong element of remoteness because it is highly visible from pretty much every aspect around the lakefront and the township.

The contradictory aspects of the QLDC then goes on to describe small pockets of identifiable areas of remoteness within the Priority Area. So again, it is an element of having your cake and eating it too where we want to have a broad bush description of the area and then seeking to identify remote areas within the landscape. So, there is a

capacity for QLDC to provide enough description the attributes of the Priority Area but for some reason has chosen not to do for our client's subject land.

Commissioner: Isn't that just the product of the scale of what we are dealing with…

Hawthenden: Absolutely

Commissioner: And it runs all the way from Damper Bay down to the valley and … (Inaudible).

Hawthenden: Absolutely. But that just highlights the varied strata of landscape within the environment.

Commissioner: It doesn't mean those descriptions are wrong it just means that they don't necessarily apply the same to every part of the Priority Area.

Hawthenden: No, No. But the schedules are working pretty hard to capture the elements of what are some pristine natural remote areas and then treating them in the same document as the same as the pastural farmland and it is not anywhere near remote or natural.

Commissioner: Isn't that the case in every Priority Area though that they have such a broad range of things.

Hawthenden: Absolutely. That's a challenge.

Commissioner: Thanks

Hawthenden: Definitely challenging. I do feel for the experts in drafting these schedules, but these are ramifications or the effect or I suppose the unforeseen consequence of having such a broad brush approach to conferencing and coming up with a design by committee or check box exercise where your experts have a narrow field of view when coming up to drafting a schedule. And we're not here to throw experts under the bus and no offence is intended, but they are working within strictly defined parameters to come up with a description or terminology to suit what is actually an extremely varied area.

Chair: 1.17 to 1.18?

Hawthenden: 1.18 is the number. It is clear to our client 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 Hawthenden land. And if it did so it would be contrary to the rigorous tests prescribed under WESI, that's the 1999 and 2002 cases.

I think the majority of the rest of that section up to about 1.25 I think just covers a lot of the background that we have already discussed as far as the commercial activity and the development of the land thus far.

Paragraph 1.25 just reference that position of the WESI test has been adopted by the Ministry for the Environment so essentially it is a wholesale adoption and although that is not policy it is certainly a guideline for Ministry staff and policy makers. It does appear to underline every policy that comes out of the Ministry.

Commissioner: Is that 2017 when that policy (Inaudible) – in your footnote there.

Hawthenden: Yes. There is a website there and I think I put a website reference there, it is basically 'the Resource Legislation Amendment Act 2017 revised guidance notes' found at qualityplanning.org. In essence it is the Ministry's own, it's not a portal, but its published website for guidance on how to submit a planning change or a subdivision request or a consent or pretty much any planning aspect. These are the key considerations that submitters or applicants must have considered. So it is the Ministry's own guidance or the Government's guidance to submitters or applicants.

Commissioner: And was that guidance based on (Inaudible) or was it predated?

Hawthenden: No that was actually formed… it all comes back to WESI in 1999 pretty much. It's an excellent case.

Commissioner: It's almost word for word.

Hawthenden: Yes. It is word for word from the WESI case. It has lifted the judgment wording on capacity and values characteristics.

Commissioner: The quality planning information.

Hawthenden: So WESI is a key case in this and any planning jurisdiction essentially.

Commissioner: I might have a question for Ms Smetham when it comes to her turn.

Commissioner: In your paragraph 1.20 you highlight that point pastures below 1,100 metres that a …… we can probably touch on with Ms Smetham that's an unusual description to me given that is about 100 metres below the very summit of Mount Alpha.

Hawthenden: It is the QLDC report that actually includes that.

Commissioner: I have found that in paragraph 10 which includes pastures below 1100 metres, seem an unusual reference and I wonder if there is an error there, it is something that we can either check-up through Council staff …… I've just looked the topo mark up and really is a long, long way up there. It's about 100 metres below the pre-summit of Mount Alpha.

Hawthenden: Is it 100 metres, is it?

Commissioner: Yes, its 1199 is the summit. It doesn't seem to relate to the other things it prescribes there, the shelter belts and things.

Hawthenden: I suppose in essence if they are treating it as an accurate number and that the QLDC Report is including that reference to the altitude it seems that the assessment of the improvements within the area are even more broad brush that I originally envisaged. So if they treating basically the DOC land up the mountain face as the same as the pasture land at the foot of it. I think our client is incredulous that that would even be considered.

Commissioner: Understanding what they meant.

…
Evidence from Ms Smetham (Landscape Expert) and Mr Leary (Geologist Expert)
…

Responding to Commissioner Kensington posing the question to Ms Smetham during her submissions, in the nature of:

"Haven't we moved on from WESI?"

[while referring to Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines, implying those guidelines supersede case law in relation to landscape expert methodology relied on under the joint witness statement and when determining ONF/L.]

Hawthenden: There is a point which Mr Kensington mentioned when he was speaking about the landscape guidelines, and I don't think there is a departure from WESI. I think WESI forms the basis of the guidelines. So, if we look at (and I'm not super familiar with) the guidelines, they can only but be informed by case law because that is the way that common law operates. That is the beauty of it. It does evolve. It does address key points. And the points get finessed over different judgments. And one of the key

considerations in the WESI decision, the original one in 1999, is the requirement to undertake an assessment using, among other things, geological assessment. So, it is a key component of that assessment of ONL. That was affirmed in Hawthenden v QLDC in Decision 2.1…

Chair: That's right…

Hawthenden: … and, again, it reiterated and affirmed the necessity for geomorphological or geological assessment.

Now, as far as we understand, Hawthenden is the only stakeholder including QLDC who has undertaken extensive geomorphological assessment (on its land).

Commissioner: [Inaudible]

Hawthenden: No so we haven't had the opportunity to even express geomorphology through the various processes, is my understanding. So that essentially is where QLDC is possibly being a little premature in its determination or finalisation of various aspects under the current Priority Areas. And that needs to be addressed.

Chair: Thank you very much …