

UPPER CLUTHA ENVIRONMENTAL SOCIETY (INC.)

SUBMITTER NUMBER 145/1034

LEGAL SUBMISSIONS

CHAPTER 27 SUBDIVISION AND DEVELOPMENT

1. Council's Chapter 27 opening legal submissions address issues raised by the Society¹.
2. In regard to the Glentarn decision Council submits:

"This is a decision on a site specific resource consent, and does not reflect an effective controlled activity status compared to the existing plan's discretionary activity status. Council disputes the relevance of this case, to this current hearing, and remains of the view that discretionary activity status is acceptable for responding to residential subdivision in ONLs/ONFs."

3. I explained the implications of the Glentarn decision² in my submissions and evidence to the Chapter 21 hearing where I said³:

"the District Plan Rural General Zone Monitoring Report suggests that the Operative District Plan should be strengthened to give primacy to landscape outcomes where it says⁴ (my underline):

"...one matter which needs to be carefully monitored and considered by the Council into the future [is] the Glentarn vs. Queenstown Lakes District Council decision C10/2009 whereby policies relating to rural activities were given considerably more weight than had previously been the case and affected the interpretation of the landscape policies.... it may need to consider making the plan more explicit in its presumption against development (and the primacy of landscape outcomes) in such areas."

4. It can be seen here that this was an issue raised in a Council report where concern was expressed that landscape policies would become ineffective after the Glentarn decision. The Society believes that Glentarn drives a coach and horses through the Operative District Plan landscape objectives, policies, assessment matters and rules. The problem is reflected in the following passage from Glentarn:

"Few serious farming ventures are unlikely to be without a farmhouse on or near the farm, and the detail of this development should allow it to sit comfortably in the rural setting of the valley floor without compromising the ONL."

5. The decision holds that a 55 ha block constitutes a "serious farming venture". In my submission, in the context of this district where traditional farms in Outstanding Natural Landscape would measure in the region of say 1500-3000 ha, Glentarn is not a "serious farming venture". I stand by my Chapter 21 submission/evidence where I said:

"The decision set a precedent under the Operative District Plan rural provisions for any landowner in the Queenstown Lakes District to argue that any proposed new residence on about 50 hectares with a barn and some stock present (at least until consent is granted) will be a farmhouse. Under the decision residences claiming some farming connection effectively become controlled activities on rural 50 ha lots even

¹ Paragraphs 7.1 to 7.6

² C10/2009 Glentarn Group Ltd. V. QLDC

³ Paragraph 139

⁴ Page 40

within Outstanding Natural Landscape. There was no stipulation as to how long the farming activity had to continue after the decision.”

6. Council’s legal submissions wrongly say the Glentarn site is “partly within an ONL”. The Court held that the site was entirely ONL. In my opinion not only would Glentarn seem to support the Society’s contention that residential development within Outstanding Natural Landscape should be non-complying, but also that within Rural Landscape the objectives, policies, assessment matters and rules need to be amended in a manner that is more directive to prevent the Glentarn type of development that is more akin to rural lifestyle than farming.

7. I suggest the following amendment (or similar) to the Operative District Plan:

Objective 1 - Character and Landscape Value

To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.

Policies:

- 1.1 Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.
- 1.2 Allow for the establishment of a range of activities, which utilise the soil resource of the rural area in a sustainable manner.
- 1.3 Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.
- 1.4 Ensure activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted.
- 1.5 Provide for a range of buildings allied to rural productive activity and worker accommodation.
- Residential buildings proposed on the grounds that they are allied to and necessary for a rural productive activity shall be subject to exactly the same landscape assessment as any other proposed residential building not allied to such rural productive activities.**
- 1.6 Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.
- 1.7 Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.
- 1.8 Avoid remedy or mitigate the adverse effects of the location of structures and water tanks on skylines, ridges, hills and prominent slopes.
- 1.9 Ensure adverse effects of new commercial Ski Area activities on the landscape and amenity values are avoided or mitigated.

8. A second issue commented on in the legal submissions relates to the Society’s position that residential subdivision and/or development within ONL/ONF should be non-complying. Here the legal submissions offer no legal argument but simply quote Mr. Barr’s opinion:

“...imposing a non-complying activity status has the potential to impose too great a constraint on genuine farming activities involving subdivision, and which may have associated residential activities”

9. In my opinion this argument is entirely without merit. Residential subdivision and development is not a farming activity. Where a genuine new farmhouse is needed, in a situation for instance where a 3000 ha farm was to be split in two, it would be likely to be relatively easy to find a location for a residential farmhouse on 1500 ha that would be able to meet the objectives, policies, assessment matters and rules contained in the plan (such as those quoted above), thus allowing for the continuation and development of genuine farming activities.

10. The legal submissions further state:

Further, the draft PDP that was made public for consultation prior to formal notification, has no weight in respect of the Panel's recommendations on this chapter, as suggested by Mr. Haworth at his paragraph 17

11. I do not accept this opinion. The publicly notified Proposed District Plan was not arrived at out of thin air.
12. The Draft Proposed District Plan dated December 2014 was released for public comment in early 2015. The Society first commented on a District Plan Rural Areas Discussion Document in June 2010, that is four and a half years before the Draft Proposed District Plan was released. The Draft District Plan had been the subject of, and was arrived at, after considerable public consultation over this four and a half year period; it forms part of the statutory process to arrive at a District Plan. It thus must be given some weight.