

BEFORE INDEPENDENT HEARING COMMISSIONERS IN CHRISTCHURCH

TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHI

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

**STATEMENT OF PRIMARY EVIDENCE OF DAVID LAURENCE MOUNTFORT
ON BEHALF OF THE GLENARA FAMILY TRUST
(Submitter 91 / Further Submitter 2070)**

**QUALIFYING MATTER - SPECIFIC PURPOSE ŌTĀKARO AVON RIVER CORRIDOR ZONE
ALTERNATIVE ZONING PROVISIONS FOR PRE-EXISTING RESIDENTIAL ACTIVITIES IN THE ŌTĀKARO
AVON RIVER CORRIDOR ZONE**

Dated 20 September 2023

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EXECUTIVE SUMMARY

In my evidence I have:

- a) Described the location of the Glenara Family Trust's (**the Trust**) property at 254 and 256 Fitzgerald Avenue and 5 Harvey Terrace (the property), the development and use of the property prior to the Canterbury Earthquakes Sequence and the former cross-lease arrangements with a number of other co-owners.
- b) Described the effects of this property of the earthquakes.
- c) Discussed the creation by the Crown of the Red Zone for earthquake damaged properties along the Ōtākaro Avon River Corridor, and the buyout offer by the Crown of the affected properties.
- d) Outlined the Trust's non-acceptance and the other co-owners' acceptance of the Crown's buyout offer, resulting in acquisition by the Crown of the leasehold interests for 254 Fitzgerald Avenue and 5 Harvey Terrace.
- e) Discussed the subsequent acquisition by the Trust from the Crown of these leasehold interests.
- f) Discussed the preparation by the Council of a Regeneration Plan for the river corridor, and the zoning of the corridor as the Special Purpose Ōtākaro Avon River Corridor Zone (**the SPOARCZ**).
- g) Discussed how the zone made provision for existing pre-earthquake activities on the other remaining privately-owned properties in the zone, but only for the part of the overall property identified as 256 Fitzgerald Avenue but not the balance of the property known as 254 Fitzgerald Avenue and 5 Harvey Terrace.
- h) Described the preparation of a privately requested district plan change for the property, its notification as Plan Change 11, and its placement on hold by the applicant when the Council included the substance of Change 11 in Change 14.
- i) Discussed the relevant objectives and policies of the National Policy Statement on Urban Development (**the NPSUD**) and concluded PC14, in so far as it relates to the property would be consistent with these, as it would contribute a small amount of intensification within the walkable catchment of the City Centre and would contribute to a well-functioning urban environment.¹

¹ As required by objective 1 and Policy 1 of the NPSUD

- j) Discussed the objectives and policies for the SPOARCZ and concluded that under these provisions the alternative rezoning proposed by the CCC is consistent with those, having regard to the planning, geotechnical and landscape evidence prepared for the Council by Anita Hansbury, David Little and Marie-Claude Hebert, and the corresponding evidence for the Trust of Andrew Hurley (geotechnical) and David Compton-Moen (landscape).
- k) Discussed the Trust's submission in general support of Plan Change 14 but with an additional request for a new restricted discretionary activity for potential developments not complying in all respects with the applicable building and activity standards. I accept the additional restricted discretionary activity rule proposed by Ms Hansbury is appropriate.
- l) Discussed the Trust's further submissions in opposition to the submissions 834.34 by Kainga Ora (qualifying matters and related provisions), 794 by Greg Partridge and 54 by Shirley Van Essen (earthquake risk), and concluded, having regard to the evidence for the Council and the Trust, that these submissions should be rejected. This is because:
 - i) The property is suitable for residential development, but is zoned SPOARCZ. The removal of the relevant qualifying matter and related provisions as sought by Kainga Ora might prevent residential development from occurring;
 - ii) It is premature to restrict or prevent residential activities on the Trust's land. This should be addressed by further investigations, possible deep soil strengthening and controls under the Building Act.
- m) In my opinion the Submission by Kainga Ora is not accurate where it addresses the ownership status of land in the zone by assuming the Council owns all of it, incorrectly assumes all the land in the zone is held under the Reserves Act and incorrectly addresses the relationship of the Resource Management Act 1977 and the Reserves Act 1977 by suggesting that the land in the zone could be managed solely under the Reserves Act. It is also quite unclear in the relief sought as to whether it seeks to enable intensification in the zone by deleting qualifying matters, or prevent intensification by deleting the relevant rules which enable limited residential development to occur.
- n) In my opinion the concerns about earthquake risk expressed by Mr Partridge and Ms Van Essen in their submissions are addressed by the evidence of Ms Hébert for the Council and Mr Hurley for the Trust and I prefer their evidence and rely on their conclusions.
- o) Overall, I consider that Plan Change 14, with Council's proposed amendments, is the most appropriate planning outcome for the Trust's property, that the submissions in support by the

Council and by the Glenara Family Trust should be accepted and the submissions in opposition by Kainga Ora, Greg Partridge and Shirley van Essen be rejected.

Introduction

1. My name is David Laurence Mountfort. I am a planning consultant. I hold the qualifications and have the experience set out in paragraphs 3 and 4 of my evidence.
2. I have prepared this evidence on behalf of the Glenara Family Trust (**Trust**). The Trust is a submitter and further submitter on Proposed Plan Change 14 (**Change 14**) to the Christchurch District Plan (**the Plan**). This evidence relates particularly to the Trust's property at 254 and 256 Fitzgerald Avenue and 5 Harvey Terrace.

Qualifications and Experience

3. I hold the qualifications of Bachelor of Laws (LLB) from Canterbury University and Diploma of Town Planning Auckland University.
4. I have over 40 years of experience in the fields of planning and resource management, including 3 years as a planner at the former Ministry of Works and Development, 7 years as Assistant City Planner at the former Gisborne City Council, 13 years as District Planner at the Gisborne District Council, and 7 years as a Team Leader (City Plan) at the Christchurch City Council. Since 2009 I have been self-employed as a planning consultant and until December 2022 was also a Hearings Commissioner, working in the Canterbury and Nelson/Tasman Regions.

Code of Conduct

5. While this is a Council hearing, I have read the Code of Conduct for Expert Witnesses (contained in the Environment Court Practice Note 2023) and agree to comply with it. Except where I state I rely on the evidence of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

6. Scope of Evidence

7. The purpose of this evidence is:

- a) to address the submissions by the Glenara Family Trust (**the Trust**) and the Christchurch City Council on the provisions of Change 14 to the Plan as they relate to the Specific Purpose Ōtākaro Avon River Corridor Zone (the **SPOARCZ**).
- b) To address the Trust's further submissions in opposition to the submissions of 634.34 by Kainga Ora, 694.1, 794.3, 794.7 and 794.88 by Greg Partridge and 54.2 and 54.4 by Shirley van Essen.

Documents considered

8. In considering this evidence I have reviewed the following documents:
 - The NPSUD.
 - The Plan.
 - Change 14 to the Plan.
 - The summary of submissions on the Plan.
 - The submissions on the Plan that may have been of interest to the Trust.
 - Relevant parts of the section 32A report on Change 14.
 - The technical reports and expert evidence for the Glenara Family Trust of Andrew Hurley, geotechnical engineer, and David Compton-Moen, Landscape Architect.
 - The Section 42A report of Anita Hansbury and the evidence for the Council of Marie-Claude Hébert, Geotechnical Engineer and David Little, Landscape Architect.

Background

9. The Trust's property at 254 and 256 Fitzgerald Avenue and 5 Harvey Terrace wraps around the corner of Fitzgerald Avenue and Harvey Terrace. Although there are three postal addresses, and boundaries for three lots are shown on the planning maps, in fact this is historic. Since 18 May 1984, this has been one property, Lot 1 Deposited Plan 46513. A number of Certificates of Title detail the cross-lease rights to various parts of the property, originally held by a number of co-owners but now all in the ownership of the Trust. At the time of the earthquakes, on the property as a whole there were 20 flats, a number of carports, and shared vehicular to Harvey Terrace. Much of this development bore little or no relationship to the boundaries of the three historic property addresses.

10. The significance of this is that under the Plan, the whole of the property is in the Specific Purpose Ōtākaro Avon River Corridor Zone (the SPOARCZ) but only part of it, approximately corresponding to No 256, is recognised as having what are termed by the plan “pre-earthquake activities”. The plan gives such properties an “Alternative Zoning” and on-going opportunities for residential use or redevelopment², while the balance of the property is simply in the SPOARCZ. Effectively this is a split zoning of a single property, all of which had pre-earthquake residential activity on it.
11. However, because the Trust is seeking different types of development on different parts of the property, it is convenient to refer to the three street addresses for the purposes of this evidence, while recognizing that eventually parts of the property may be developed and subdivided in different ways.
12. At the time of the Canterbury Earthquakes the Trust owned Flats 1-4, all of which were within the boundaries of No. 256, and held rights to the use of carports and vehicle accessways on the balance of the land.

The Canterbury Earthquakes

13. As a result of the earthquakes, all the buildings on the land, and the land itself were damaged, and there was considerable damage to Fitzgerald Avenue, the western side of which collapsed into the Avon River. This damage is fully described in the geotechnical evidence of Mr Hurley for the Trust and Ms Hébert for the Council. There was considerable damage to land and property along the river corridor all the way to the sea.

Creation of the Red Zone by the Crown, and the buyout offer

14. Because of the extent of the damage along the river corridor the Crown created a “Red Zone” along the corridor and offered to buy out all the property owners, in order to permanently end residential use in the corridor. Most of the owners in the Red Zone, including most of the then co-owners of the current site in the cross-lease, except the Trust, accepted the Crown buyout offer and those existing dwellings were demolished.
15. The Trust did not accept the Crown’s buyout offer, retained its ownership of Flats 1-4 on No. 256 and was able to repair the flats but not the carports which went with those flats. The Crown needed to compensate the Trust for its rights over the balance land in respect of carports, accessways etc. This was settled by allowing the Trust to acquire the balance of the

² See Permitted Activity P23 and Appendix 13.14.6.2

land at nominal value. The Christchurch City Council was consulted about this and raised no objection. Most of the land acquired by the Crown in the Red Zone has subsequently been transferred to the Council.

The Regeneration Plan and the related creation of the SPOARC

16. As described in the evidence of Mr Little and Ms Hansbury, the land in the Red Zone was initially zoned as Flat Land Recovery. The Council prepared a Regeneration Plan for the land in the river corridor, which eventually led to the rezoning of the land in the corridor as the SPOARC. These rezonings were carried out by Ministerial directives under a fast track process in the then earthquake recovery legislation, rather than by 1st Schedule plan changes.
17. The purposes of the new zone included open space, recreational, cultural, natural values, and natural hazard mitigation, but also included specific recognition and protection of remaining residential properties through Permitted Activity Status and Alternative Zoning under Appendix 13.14.6.2. No 256 was included in the Appendix but not 254 or 5 Harvey Terrace, presumably because they were by then vacant and erroneously considered to be separate properties.
18. I am not aware of whether there was any attempt to investigate whether land that was originally set aside as Red Zone because of geotechnical limitations was all suitable or required for the very different environmental, conservation and recreational purposes of the SPOARCZ. This has resulted in some anomalies in my opinion, especially for 254 and 5 Harvey Terrace. A similar anomaly would be 258 Fitzgerald, a small stand-alone pocket of land at the corner of Fitzgerald and Heywood Terrace, isolated from the river by Fitzgerald Avenue and cut off from the balance of the zone by the building on No. 256.
19. During this time the Council completed a very substantial restoration of the road and riverbank along Fitzgerald Avenue opposite No's 254 and 256, where the road had slumped into the river. The Council has built a very substantial palisade wall here, which I understand from the evidence of Mr Hurley and Ms Hébert has effectively stabilised the riverbank and road and provides support to the properties. It does not, in my opinion, enhance the visual qualities of the river corridor in this vicinity, as there is no longer a natural riverbank and the river flows against the retaining wall.

Change 11

20. The Trust wished to enable the redevelopment of its vacant land. To progress this, it commissioned the geotechnic and landscape/urban design reports, which have been provided to the Panel. Initially the Trust considered asking for the sites to be withdrawn from the

SPOARCZ and zoned RMD but following consultation with the Council it opted to work within the SPOARC zone by seeking the inclusion of the properties in Appendix 13.1.6.2, with appropriate limitations to respect the riverside setting and traffic implications. Application for the plan change was made, publicly notified as Plan Change 11, and submissions received.

21. At about that time the Government enacted the Medium Density Residential Standards and the Resource Management (Enabling Housing Intensification) Amendment Act. The Council was required to amend the Plan through a bespoke Independent Planning Instrument process (the IPI) and elected to absorb the substance of Change 11 into it. This Amendment Act also amended the National Policy Statement on Urban Development 2020.
22. The Trust then asked for Change 11 to be placed on hold while the Change 14 process took place. I **attach** an email from the Senior Planning Support Officer with the Council confirming that.

Statutory Considerations

23. The relevant statutory matters have been addressed in the s42A reports, including the Strategic Overview s42A report and the s32 reports. These have again been summarised in Ms Hansbury's s42A report. I consider those matters have been properly identified and addressed in Ms Hansbury's report.³
24. I agree with Ms Hansbury's assessment and recommendations. In my opinion, her assessment and conclusions are appropriate.

The National Policy Statement for Urban Development 2020 (the NPSUD)

25. Objective 3 of the NPSUD, as amended in 2022 provides:

Objective 3: *Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*

- (a) the area is in or near a centre zone or other area with many employment opportunities*
- (b) the area is well-serviced by existing or planned public transport*
- (c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.*

26. Policies 3 and 4 of the NPSUD provide:

³ Anita Hansbury, s42A report, paras 4.1.1 to 4.1.12 and (Christchurch District Plan) see paras 4.3.23 to 4.3.31

Policy 3: *In relation to tier 1 urban environments, regional policy statements and district plans enable:*

- (a) *in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and*
- (b) *in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and*
- (c) *building heights of at least 6 storeys within at least a walkable catchment of the following:*
 - (i) *existing and planned rapid transit stops*
 - (i) *the edge of city centre zones*
 - (ii) *the edge of metropolitan centre zones; and*
- (d) *within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.*

Policy 4: *Regional policy statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements under Policy 3 only to the extent necessary (as specified in subpart 6) to accommodate a qualifying matter in that area.*

27. Because of the Alternative Zoning the Trust's property would qualify for 6 storey development under Policy 3(b). However I note that, based on the evidence of Mr Hurley for the Trust and Ms Hébert for the Council, there are practical considerations relating to the potential effects of the significant engineering operations needed and the combined costs leads me to conclude that three storeys is much more likely to be achievable and more likely to reflect the reality. I therefore support the qualifying matter proposed by Ms Hansbury at paragraphs 5.4.25-5.4.26 of her s42A report.
28. In my opinion, allowing residential activity and the option for residential redevelopment on the Glenara Trust property, and the other properties in Appendix 13.14.6.2 would achieve the objectives and policies of the NPSUD by contributing to a well-functioning urban environment and enabling a small extent of residential intensification to take place.

Objectives and policies of the SPOARCZ zone

29. The SPOARCZ has a single objective, which is:

3.14.2.1 Objective – Regeneration

- a. *The regeneration of the Ōtākaro Avon River Corridor achieves the following priority outcomes:*

- i. *Significant areas of restored natural environment containing a predominance of indigenous planting, wetlands and restored habitat for indigenous fauna, birdlife and indigenous species, improved surface water quality and provision for the practice of mahinga kai;*
 - ii. *Flood hazard and stormwater management infrastructure that mitigates natural hazard risks for the Ōtākaro Avon River Corridor and surrounding areas and is integrated with the natural landscape;*
 - iii. *Accessibility and connectivity across and along the Ōtākaro Avon River Corridor, and with existing communities; and*
 - iv. *A predominance of natural and open spaces, with limited areas of built development concentrated in specific Reaches, residential areas, Activity Area Overlays and Landing Overlays.*
- b. *The Ōtākaro Avon River Corridor supports opportunities for other uses and activities that are compatible with the priority outcomes in a. above, including:*
- i. *Increased opportunities for recreation, cultural activities and community-based activities.*
 - ii. *A range of visitor attractions and limited small-scale retail activities;*
 - iii. *Limited residential development on the outer edge of the Zone to improve integration between the edge of existing neighbourhoods and the activities within the Ōtākaro Avon River Corridor;*
 - iv. *Varied learning, experimenting and research opportunities, including testing and demonstrating adaptation to natural hazards and climate change; and*
 - v. *Transitional activities and structures where these do not compromise the priority outcomes in a. above.*
- c. ***The continuation of pre-earthquake activities on privately-owned properties that still exist within the Ōtākaro Avon River Corridor.***

(Emphasis added)

30. Under that objective are a number of policies, including, relevantly:

3.14.2.1.4 Policy – Continuation of Pre-Earthquake Activities

- a. *Provide for residential activities and other existing activities on existing properties in private ownership in the Ōtākaro Avon River Corridor.*
- b. *Manage activities in the Ōtākaro Avon River Corridor to ensure effects on existing privately-owned residential properties within the Zone are generally consistent with those anticipated in the Alternative Zone specified in Appendix 13.14.6.2.*

31. Therefore, while the purposes of the zone, as expressed through the objective and the policies are primarily to do with conservation, natural values, open space, recreation and mitigation of natural hazards, the zone provisions clearly anticipate and provide for continued residential activity on properties that remain in private ownership. I note that the objective and policy refer to “pre-earthquake activities” rather than to residential activities still in existence after

the earthquakes. Because of this, in my opinion No's 254 Fitzgerald Avenue and 5 Harvey Terrace should have been included from the outset because they did have pre-earthquake activities and also because they are part of a privately-owned single property which still contains existing residential activities. However, because of the process adopted under the then earthquake recovery legislation, there was no opportunity for submissions.

32. In my opinion, this is not simply a codification of an existing use right, because the provision is not confined to existing buildings, but refers to residential activities, a more general term which could include both existing and new development.
33. The use of the term "existing properties" is relevant to the fact that the Trust land, in spite of its three street addresses, is a single existing property and the Change 14 simply extends the residential opportunity to the whole of that property, all of which had pre-earthquake activities on it, rather than confining the opportunity only to the part of the site with a remaining residential activity.
34. I note also the provision in Objective 3(b)(iii) for limited residential development on the outer edge of the Zone to improve integration between the core activities in the zone and the surrounding residential neighbourhoods. It does this in the form of the Edge Housing and Trial Housing Overlays. This reinforces my conclusion that housing in the fringes of the zone can be appropriate. I consider that this would be more appropriate than the alternative of the 6 storey development referred to in Policy 3(b) of the NPSUD.
35. I conclude that the rules of the Plan as modified by Change 14 together with the additional restricted activity rule proposed by Ms Hansbury⁴ are consistent with and give effect to the objectives and policies of the zone.

Suitability of the sites for residential redevelopment

36. I accept and rely on the evidence of David Compton-Moen for the Trust⁵ and David Little for the Council⁶ which demonstrates that the proposed redevelopment of the site under the rules now proposed would create only insignificant adverse effects on the open space and similar values of the zone. I also note that they both consider that at 3-6 storeys, the adverse effects on open space and similar values of the SPOARC zone would be negligible.

⁴ At paragraphs 6.23-6.23-6.23.26 of her s42A report

⁵ At paragraph 24 of his evidence

⁶ At paragraphs 30 – 35 and 45 – 46 of his evidence

37. In my opinion the Harvey Terrace frontage, particularly No 5 has no real relationship to the river. There is no visibility to or from the river in any direction. To the east it is separated from the river by the wide and heavily trafficked Fitzgerald Avenue, and the river. There is no practical access to the river itself in this direction, as the river runs against the retaining wall. To the south it is separated from the river to the south by a wide band of open space approximately 175 metres wide and another road, the former River Road, which is being redeveloped as part of the City to Sea Cycleway. That band of land is already landscaped with grass and numerous mature trees. This area of open space can be seen in the aerial photos in the DCM report. In my opinion this band is more than adequate to provide for the purposes of the zone in this vicinity, and Harvey Terrace provides a very suitable boundary. Physically, No 5 Harvey Terrace is no different from its neighbours to the east which were never included in the Red Zone or the SPZ, and under Change 14 are zoned High Density Residential.
38. The corner part of the site, broadly corresponding to the original 254 Fitzgerald Avenue has similar characteristics. However buildings on the site would be visible from the riverbanks on the far side of Fitzgerald Avenue, as described by David Compton-Moen, and that part of the site is located on the approach to the Green Spine from the north along Fitzgerald Avenue. For this reason I accept that the site at 254 Fitzgerald Avenue could provide an attractive visual lead-in to the river corridor, and it would be appropriate, although not strictly necessary, to limit the scale of development there under the rules for the Edge Housing overlay, particularly the landscaping, building height and access requirements.
39. The Building and activity standards for a site with alternative zoning under Change 14 for the site is the standard for the Alternative Zone, i.e. 11 metres height as a permitted activity, under the guide to interpretation Rule 13.14.3. I note that this contrasts with the usual building height limit of 8 metres for the Edge Housing Overlay set out in Rule 13.14.4.2.6 Building Height., but the Alternative Zone standard prevails.
40. Having regard to the landscape evidence of both Mr Little and Mr Compton-Moen (and the geotechnical evidence as referred to earlier), I consider the appropriate height limits for the property to be 11 metres (as permitted), but I would also be comfortable with a permitted activity height limit for 254 of 8 metres. I again note that the landscape and urban design evidence addresses the effects on the SPOARC as negligible. Development up to six storeys would be able to be applied for as a restricted discretionary activity under Ms Hansbury's proposed new RD8.⁷

⁷ Anita Hanbury s42A report at paragraph 6.23.5 and Appendix 2 at page 148

41. For geotechnical matters I accept and rely on the evidence of Mr Hurley for the Trust and Ms Hébert for the Council and conclude that there is no need at the district plan level to prevent or restrict the level of development proposed at the sites for geotechnical reasons. Instead, individual proposals should be investigated and considered at the design and building consent stages.

CCC proposed amendment

42. I have carefully considered Ms Hansbury's s42A report. The Trust's submission sought additional provision for proposals that do not comply with all building and activity standards. and would be non-complying activities as a result. In my opinion this would be onerous, and disproportionate to the way the Plan provides for such cases throughout the residential and other zones. Obvious examples would be minor exceedances of building height and boundary setbacks. Ms Hansbury accepts that and proposes an additional Restricted Discretionary Activity rule. I accept that would provide an appropriate solution to the lack of a clear path for applications to exceed the built form and activity standards. The restricted discretionary status would ensure due consideration was given to the objectives and policies of the SPZ.⁸

The Trust's further submissions

Kainga Ora Submission No 834.34

43. This submission seeks the deletion of the Ōtākaro River Corridor qualifying matter and all relevant provisions. It specifically identifies Appendix 13.14.6.2 as a related provision but does not confine itself to that. This is the table of pre-earthquake residential activities in the zone. Other obvious related provisions would include the objective and policy quoted earlier, and Permitted Activities 2P3 and P33 in the rules. The submission also asserts that land use in the SPOARCZ can be adequately managed through a combination of the Council's ownership and the Reserves Act 1977.
44. Deleting with the latter point first, I consider this appears to be based on a complete misunderstanding of the situation. Not all the land in the zone is held under the Reserves Act and not all of it is owned by the Council. Also, in my experience, the Reserves Act has never been considered to be a complete alternative to the planning legislation. What is required has always been compatible planning and management under both. In my opinion, deletion of the relevant zoning provisions as suggested would simply leave such land and its owners in limbo, with no recourse for the use and development of their land except the non-complying activity

⁸ See Anita Hansbury, s42A report at paragraphs 6.23.3-6.23.8

process or whatever replaces it in the new legislation. Conversely there would be no opportunity for the Council to positively influence an appropriate level of development of the land through the objectives and policies of the Plan. The proposal by Kainga Ora to manage the land in this way is in my opinion completely unworkable and inappropriate.

45. Turning to the Qualifying Matter and related provisions, it is my understanding that the qualifying matter concerned was not established for the first time by Change 14. Rather it is a pre-existing qualifying matter under Section 770 of the RMA, as described by Anita Hansbury in her s42A report⁹.
46. It follows that not all the provisions of the zone that might have been considered “relevant” were proposed to be included in the Plan under Change 14. In fact, the only new provisions to be introduced by Change 14 are the inclusion of 254 Fitzgerald Ave and 5 Harvey Terrace in Appendix 13.14.6.2, the Edge Housing overlay for 254 and some minor amendments to the layout of the text. The other provisions of the zone were introduced earlier when the Plan was amended to introduce the SPOARCZ.
47. For that reason, I consider that this submission point is not “on” the plan change. It seems to seek the deletion of something that is not in the plan change and the relief sought should not be granted.
48. I note also that the terms “qualifying matters” and “pre-existing qualifying matters” did not exist prior to the amending legislation. They were not in existence and not needed when the SPOARCZ zone and its provisions were originally included in the Plan. Qualifying matters are essentially a mechanism to enable specific areas to be exempted from the intensification mandate of the amending legislation.
49. However, since the amending legislation there is now a reason for there to be a qualifying matter for this Specific Purpose Zone. This set out in Ms Hansbury’s s42A report at paragraph 6.22.1. Here she sets out that due to the wide breadth of the amendments, their scope is not confined to purely residential zones, but applies to any lands that are capable of being developed for residential use under the Plan. Therefore, without the qualifying matter and the related rules, and subject to geotechnical constraints, all the sites in the pre earthquake residential activities table would be able to be developed to a very high level of intensity that might well be inconsistent with the purposes of the SPOARCZ. As well as the Trust’s properties, there are a number of other sites scattered across the zone which could be intensified, some of

⁹ At paragraph 6.22.1

which are more prominent in the zone and would have a greater ability to adversely affect the zone. Examples of this include No 238 Fitzgerald Avenue and 527 River Road which are close to the river and to the shared pedestrian and cycle path along the former River Road.

50. It appears to me that the submission point by Kainga Ora is internally contradictory. In general terms, the absence of a qualifying matter would enable a greater level of intensification. However in this case the simultaneous removal of related provisions would prevent any intensification at all of the pre-earthquake residential sites listed in Appendix 13.14.6.2. I am unable to understand whether Kainga Ora is seeking to promote or prevent such intensification because it seems to be suggesting both.
51. I agree with Ms Hansbury's conclusion that a qualifying matter for the SPOARCZ zone is necessary to ensure no more than an appropriate level of development is able to occur on these sites to protect the amenities sought by the zoning. I also accept her conclusion that the earthquake risk for buildings over 3 storeys is sufficient to amount to a qualifying matter and that the Alternative Zoning of Medium Density Residential is appropriate for this site.¹⁰

Submission Points 794.1, 794.3, 794.7 and 3 794.8 by Greg Partridge and Submission Points 54.2 and 54.8 by Shirley Van Essen

52. These matters relate to the submitters concerns about geotechnical matters. The issues raised are covered in the Council's s42A report by Ms Hébert and the evidence of Mr Hurley which I accept and rely on. I consider that these submission points should be rejected.

Section 32 of the Resource Management Act

53. Change 14 makes no changes to the existing objectives and policies for the Specific Purpose Ōtākaro Avon River Corridor Zone set out in Clauses 14.13.2 and 13.14.3 of the Plan.
54. Change 14 makes only minor changes to the rules and Appendices for the zone by:
- a) the addition of an Edge Housing Overlay for 254 Fitzgerald Avenue the plan in Appendix 13.14.6.1, and some minor technical changes to the layout of the provisions;
 - b) the addition of an additional Restricted Discretionary rule,

¹⁰ Anita Hansbury, s42A report, para 5.4.25 and 5.4.26 at page 47

- c) The addition of the areas known as 254 Fitzgerald Avenue and 5 Harvey Terrace to the table in Appendix 13.14,6.2 of sites having pre-earthquake residential activities with an alternative zoning of Medium Density Residential and a height limit of 11 metres.
55. In conclusion, for the reasons already given, I consider that Change 14, with the proposed amendments to the Chapter 13 rules and appendices recommended in Ms Hansbury's report are the most appropriate way to achieve the objectives and policies of the NPSUD and the objectives and policies of the Plan for the Specific Purpose Ōtākaro Avon River Corridor Zone set out in Chapter 14.13 of the Plan.
56. I have read and agree with the s32 evaluation of the amended provisions in the s42A report by Anita Hanbury and I accept and adopt that evaluation for the purposes of this evidence. Therefore, I consider the requirements of section 32 applicable to this process have been met.
57. As a result, I consider that Change 14, with Council's proposed amendments, is the most appropriate planning outcome for the sites , and that the submissions in support by the Council and the Glenara Family Trust should be accepted and the submissions in opposition by Kainga Ora, Greg Partridge and Shirley Van Essen should be rejected.

David Mountfort

20 September 2023

Attachment 1

Email from Council confirming Change 11 is on hold.

Denise Hamlin

From: INPC Business Support <INPCBusinessSupport@ccc.govt.nz>
Sent: Friday, 23 December 2022 11:30 am
To: david@mountfortplanning.co.nz; David Caldwell
Cc: Denise Hamlin
Subject: Status of Private Plan Change 11 – Harvey Tce/Fitzgerald Ave - On hold

Hello,

Glenara Family Trust, the applicants for Private Plan Change 11 (PPC11), have notified the Council that they wish to put the plan change on hold and adjourn the hearing scheduled for 27-28 February 2023 until the proposed Plan Change 14 (Housing and Business Choice) is publicly notified, which may be in the first half of 2023.

Christchurch City Council has been considering how it will give effect to the Government's directive to amend its District Plan to enable housing intensification under the National Policy Statement on Urban Development (NPS-UD) and the Medium Density Housing Standards (MDRS) outlined in Schedule 3A of the Resource Management Act (RMA). A draft Plan Change 14 (PC14) was prepared, but not adopted by the Council earlier this year and discussions and investigations are currently underway as to how this matter will be resolved.

Plan Change 14 is likely to affect the sites at 5 Harvey Tce/ 254 Fitzgerald Ave as that land is within the 1.2km walkable catchment from the Central City commercial centre, which is identified by the Council as suitable for intensive housing development (NPS-UD, Policy 3). Although PPC11 sites are located within the Specific Purpose (Ōtākaro Avon River Corridor) Zone, they are privately owned. Therefore, they are unlikely to be able to be excluded from the housing intensification proposal through a qualifying matter that would apply to publicly accessible open space, such as the publicly owned land in the Ōtākaro Avon River Corridor.

At this time, it not entirely clear how PPC11 will be affected by the forthcoming intensification plan change. Once the effect of PC14 on the Harvey/Fitzgerald sites is known, the applicants will notify the Council as to whether they will continue with the PPC11 process or withdraw it.

All submitters and other relevant parties will be notified of the applicant's decision in due course.

Kind regards,

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