

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 and
further submissions on Plan Change 14
(Housing and Business Choice) to the
Christchurch District Plan

**LEGAL SUBMISSIONS ON BEHALF OF 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 12 October 2023

MAY IT PLEASE THE COMMISSIONERS:

Introduction and Summary

1. These submissions and the evidence to be called are provided on behalf of the Glenara Family Trust, Submitter No 91 and Further Submitter 2070 (**the Submitter**).
2. These submissions and the evidence relate to discrete issues around the relationship of the Submitter's land located within the Special Purpose Ōtākaro Avon River Corridor (**SPOARC**) and the Fitzgerald Avenue Geotechnical Constraint Overlay.
3. I have read and considered the legal submissions for the Christchurch City Council dated 11 October 2023 addressing the approach to the SPOARC Zone in the District Plan and the proposed approach in PC14 which provide a helpful summary.¹
4. Plan Change 14 proposes a number of amendments to the SPOARC which are relevant to the Submitter's properties. The Submitter owns land at 254 and 256 Fitzgerald Avenue and 5 Harvey Terrace. 256 Fitzgerald Avenue is listed in Appendix 13.14.6.2. It contains 4 residential units which were repaired after the Canterbury earthquakes. The properties at 254 Fitzgerald Avenue and 5 Harvey Terrace are vacant as the earthquake damaged residential units which existed on the sites were demolished. They are not listed in the appendix in the operative District Plan but Plan Change 14 corrects that. They are now listed with an alternative zone of MRZ.
5. The Submitter was the proponent of Plan Change 11 which, in summary, sought the inclusion of the sites at 254 Fitzgerald Avenue and 5 Harvey Terrace within Appendix 13.14.6.2 to provide for an underlying zoning to enable residential development on those sites. Mr Mountfort addresses this in more detail in his evidence.² Plan Change 11 and its present status is summarised in Mr Mountfort's evidence.³
6. The Submitter is supportive of the approach taken by Plan Change 14 and particularly the approach taken to 254–256 Fitzgerald Avenue and 5 Harvey Terrace – alternative zoning MRZ. It considers, overall, the MRZ zoning as the alternative zone is appropriate. That, combined with the additional restricted discretionary activity rule for applications that do not meet the built form and activity standards, provide an appropriate planning framework.

¹ Legal Submissions for the Christchurch City Council on Proposed Plan Change 14: City-wide Qualifying Matters 11 October 2023 at para [10.1] – 10.13]

² Statement of Primary Evidence of David Laurence Mountfort dated 20 September 2023 at paras [9] – [11]

³ Statement of Primary Evidence of David Laurence Mountfort dated 20 September 2023 at paras [20] – [22]

Submissions

7. The Submitter's primary submission is in support of Plan Change 14 but sought an addition to Rule 13.14.4.3 of a restricted discretionary activity rule for the construction of residential properties on a site listed in Appendix 13.14.6.2 that does not comply with the applicable activities and built form standards, or alternatively, an omnibus RDA.
8. The Submitter also made further submissions. In relation to the Council's submission, which related to the title of Appendix 13.14.6.1 and the edge housing overlay over 254 Fitzgerald Avenue, those were supported. It submitted further on the primary submission of Kianga Ora opposing, in part, Kianga Ora's submission as it related to the SPOARC zone. I note Kianga Ora is no longer pursuing those matters. And for completeness, it was also a further submitter on submissions by Greg Partridge, Shirley Van Essen and Margaret Stewart relating to geotechnical issues and matters related to the SPOARC.

Reason for its Involvement

9. The focus of the submission and further submissions, and the reason for its involvement in this process, is to seek an appropriate planning framework that recognises the private ownership of the properties by providing for the development of that land for residential housing. The sites are located within the SPOARC but are very much on its edge and are well separated from the corridor itself by Fitzgerald Avenue and Harvey Terrace.
10. This location both in relation to the corridor and the Central City within the walkability catchment mean that locationally it is within the coverage of Policy 3(c) of the NPS-UD. Prima facie the building height should be of at least 6 storeys. However, while it is recognised that the geotechnical issues may be able to be addressed in a technically feasible manner, realistically they are unlikely to eventuate. The restricted discretionary activity rule would provide a consenting pathway if such were to be considered.

Statutory Framework

11. I do not propose to take the Panel through the relevant statutory framework. That has been fully addressed in the opening legal submissions of the Council in terms of the general framework relating to plan changes, and that framework specific to IPIs.⁴ Intensification planning instruments must incorporate the Medium Density Residential Standards (**MDRS**). Relevantly, they must give effect to Policies 3 and 4 of the NPS-UD.
12. Pursuant to s77I development can be made less enabling to the extent necessary. The Submitter accepts for these properties, the MDZ is appropriate.

⁴ Opening Legal Submissions for Christchurch City Council Strategic Overview Hearing dated 3 October 2023

The Evidence

13. In undertaking your assessment, you will need to carefully consider effects, including effects on the SPOARC. For that reason, these submissions identify the relevant evidence on the key issues being geotechnical and landscape/urban design.

Geotechnical

14. Ms Hēbert's evidence addresses, relevantly, 254-256 Fitzgerald Avenue and 5 Harvey Terrace. In her view, based on the information provided in the Geotech Consulting report and the assessed ground conditions that both 2 and 3 storey developments are feasible at this site with site-specific geotechnical design aspects considered in detail at the consenting and detailed design stages.
15. She states further that in her opinion, development up to 3 storeys would be feasible in this area, so long as input from a suitably qualified geotechnical engineer/engineering geologist during the building consent stage is secured.⁵
16. In terms of development up to 6 storeys, she considered that may be feasible so long as a detailed geotechnical analysis and design information is provided at the consent stage and notes that the likely specifically designed deep ground improvement could have wider implications and constructability concerns.⁶
17. Mr Hurley considers there are no geotechnical issues which would prevent development of the site with 3 storey structures provided that there was appropriate specific foundation design and consideration of ground conditions.⁷ Mr Hurley addressed Ms Hēbert's evidence referred to earlier and agreed that development of up to 6 storeys is likely to be technically feasible with appropriate additional detailed geotechnical analysis and design. Mr Hurley addresses 3 storey development and 4-6 storey development in the body of his evidence at paragraphs [23] through to [29].
18. The geotechnical issues were addressed through expert conferencing. The agreed position records agreement with the evidence of Mr Hurley that the relevant site was acceptable for 1-2 storey structures and also more significant buildings of between 3 and 6 storeys with suitable foundations and/or ground improvement. There were no areas of disagreement.⁸

⁵ Statement of Primary Evidence of Marie-Claude Hebert on Behalf of Christchurch City Council dated 11 August 2023 at para [37]

⁶ Statement of Primary Evidence of Marie-Claude Hebert on Behalf of Christchurch City Council dated 11 August 2023 at para [40]

⁷ Statement of Primary Evidence of Andrew James Hurley dated 20 September 2023 at para [11]

⁸ Joint Statement of Hazards Experts dated 5 October 2023

Landscape/Urban Design

19. The evidence relevant to this matter has been led by Mr Little for the Council and Mr Compton-Moen. Mr Little considers potential impacts of a 6 storey residential development at 254-256 Fitzgerald Avenue and 5 Harvey Terrace would yield “*negligible impacts on the corridor proper, beyond those reasonably anticipated from other properties along Harvey Terrace*”.⁹
20. In terms of impacts, if the property is developed in accordance with the underlying MRZ, they would be insignificant and limited.¹⁰
21. Mr Compton-Moen considers the site is separated from the SPOARC by Fitzgerald Avenue to the west. He concludes that the site is physically separate from the rest of the special purpose zone and is not considered part of the corridor proper and there is no benefit from retaining an open space zoning across the site from an urban form/design perspective. In his opinion, rezoning the site for high density residential does not create any adverse effects greater than anticipated for adjoining properties in the SPOARC. Ultimately he concludes that there is potential for positive urban design outcomes resulting from enabling residential development in accordance with either the MRZ or HDR standards.¹¹ Mr Little and Mr Compton-Moen conferenced and produced a Joint Witness Statement dated 5 October 2023.

Planning

22. The planning evidence of Ms Hansbury¹² and Mr Mountfort¹³ is considered, comprehensive and thorough. Ultimately they both reach the same conclusion.
23. As noted by Ms Hansbury, as the sites at 5 Harvey Terrace and 254 Fitzgerald Avenue are not currently listed in the operative Appendix 13.14.6.2 and do not have an alternative residential zoning, the proposed alternative zoning and the applicable rules are more enabling than the currently applicable SPOARC provisions. The proposed provisions would provide for additional development capacity that best fits with the sites’ location within green spine while taking into account the land’s geotechnical constraints.¹⁴
24. Mr Mountfort agrees with the s32 evaluation of the amended provisions in Ms Hansbury’s report. He accepts and adopts that evaluation for the purposes of his evidence and

⁹ Statement of Primary Evidence of David John Little on Behalf of Christchurch City Council dated 11 August 2023 at para [31]

¹⁰ Statement of Primary Evidence of David John Little on Behalf of Christchurch City Council dated 11 August 2023 at para [46]

¹¹ Statement of Primary Evidence of David Compton-Moen dated 20 September 2023 at para [24.3]

¹² Planning Officer’s Report of Anita Wieslawa Hansbury under Section 42A of the Resource Management Act 1991 dated 11 August 2023

¹³ Statement of Primary Evidence of David Laurence Mountfort dated 20 September 2023

¹⁴ Planning Officer’s Report of Anita Wieslawa Hansbury under Section 42A of the Resource Management Act 1991 dated 11 August 2023 at para [5.4.26]

ultimately concludes that Change 14, with Council's proposed amendments, is the most appropriate planning outcome for the sites.¹⁵

Conclusion

25. Overall, in my submission the planning framework now before the Panel, in so far as it relates to the sites, is the most appropriate. There is in essence no material disagreement between any of the relevant experts. The addition of the two properties to the appendix, combined with the identification of the MRZ as the alternative zone, are more enabling than the status quo. Those measures, together with restricted discretionary activity status, in my submission, represent the most appropriate method.
26. The Submitter asks that the Panel recommend its acceptance.

Dated: 12 October 2023



D C Caldwell
Counsel for the Glenara Family Trust

¹⁵ Statement of Primary Evidence of David Laurence Mountfort dated 20 September 2023 at paras [56]-[57]