

BEFORE THE PORIRUA CITY COUNCIL

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

Porirua City Proposed District Plan
and a submission by BRANZ
Incorporated

**SUPPLEMENTARY STATEMENT OF EVIDENCE OF PETER ALAN
COOP**

Dated: 26 May 2022

INTRODUCTION

- 1 My name is Peter Alan Coop. I am a self-employed Resource Management Consultant.
- 2 This supplementary statement of evidence is made on behalf of BRANZ and is in addition to the statement given by me at the hearing on 23 May.
- 3 My qualifications and experience are set out in my initial statement of evidence dated 4 May 2022.
- 4 I confirm on-going adherence to the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2011.

CONTEXT FOR THIS SUPPLEMENTARY STATEMENT

- 5 During the hearing of BRANZ's submission on Monday 23 May 2022 the hearing panel requested that I prepare a supplementary statement of evidence to provide what I consider to be:
 - A Special Purpose Zone (SPZ) policy and Controlled Activity rule to give effect to BRANZ's submission;
 - An amended SPZ building height diagram; and
 - A s32 evaluation of the policy, rule and diagram.

POLICY, RULE AND DIAGRAM

- 6 In my evidence in chief I expressed the opinion that *it "would be useful if a specific policy was added to the SPZ-BRANZ that supports the replacement of the buildings should that need arise"* (para 25).
- 7 I have reviewed the existing SPZ policies and consider that rather than add an additional policy, SPZ-P2 could simply be amended by adding the phrase that is underlined below:

SPZ-P2 Appropriate buildings and structures

Enable buildings and structures that are compatible with the purpose, character and amenity values of the Special Purpose Zone (BRANZ), including two tall buildings within specified footprint areas and within specified building height standards.

- 8 The above reference to *"tall buildings"* and *"footprint areas"* is consistent with and will implement the strategic objective SPZ-O2

which states that the character and amenity values of the SPZ BRANZ includes "*a large scale campus*" with "*tall buildings with large footprints*".

- 9 The large footprint and tall building height that SPZ-O2 provides for in the SPZ BRANZ is not presently implemented by any SPZ policies or by the SPZ building height standard.
- 10 Instead, SPZ-S1 applies a 10m building height across the whole of the SPZ-BRANZ. A 10m building height for the SPZ-BRANZ is the same building height standard that applies to the adjoining Rural Zone (where there are no objectives that support "*tall buildings*") and is only 1m more the 9m building height standard for houses with pitched roofs within the General Residential Zone that the Proposed District Plan states is for "*low rise built form*" (GRZ-P8).
- 11 The diagram submitted with my supplementary evidence and dated "*May 2022*" shows two "*large footprints*" and two "*tall building*" heights that BRANZ's submission seeks to be reflected in a proposed Controlled Activity rule. These are the only locations within the campus for the "*tall*" buildings and reflect the maximum building height that has been consented.
- 12 SPZ-R1 is the rule for "*Buildings and structures, including additions and alterations, excluding fences and standalone walls*". It currently provides for permitted activity status for buildings if compliance is achieved with SPZ-S1 to S4 (S1 building height, S2 building height in relation to boundary, S3 building coverage, and S4 boundary setback) and restricted discretionary activity status if compliance is not achieved with SPZ-S1 to S4.
- 13 To give effect to BRANZ's submission, SPZ-R1 therefore needs to be amended by inserting:

2. Activity status: Controlled

Where:

a. Compliance is achieved with the footprint and maximum building standards shown on SPZ-BRANZ Controlled Activity standards diagram dated May 2022.

b. Compliance is achieved with SPZ-S2, SPZ-S3 and SPZ-S4.

Matters for control are the adverse visual and landscape effects generated by the extent to which the building(s) exceeds 10m in height.

- 14 The above proposed rule still requires compliance with SPZ-S2 to S4 (S2 building height in relation to boundary, S3 building coverage, and S4 boundary setback) and restricted discretionary activity status if

compliance is not achieved with SPZ-S2 to S4. So, effects of building height in relation to the adjoining and adjacent properties such as dominance, shading and extent of buildings (coverage) are already specifically controlled by these standards and restricted discretionary activity status if compliance is not achieved. For this reason, I am satisfied that "*matters for control are the adverse visual and landscape effects generated by the extent to which the building(s) exceeds 10m in height*" is both appropriate and sufficient in the circumstances that prevail.

- 15 The proposed rule will enable the Council, for proposed buildings in compliance with the submitted diagram, to assess the adverse visual and landscape effects of building height above 10m and be able to impose conditions of resource consent to avoid, remedy or appropriately mitigate the potential adverse visual and landscape effects.
- 16 The proposed rule will importantly give positive support to BRANZ that "*tall buildings with large footprints*" that are intended by strategic objective SPZ-O2, and which are in compliance with the submitted diagram, can be replaced or rebuilt, subject to resource consent conditions to avoid, remedy or appropriately mitigate the potential adverse visual and landscape effects.
- 17 The proposed rule will also relieve the nationally important BRANZ from being exposed to the risks and uncertainty associated with either having to rely on the existing resource consent for building replacement or rebuild, or failing that, having to rely on the existing use right provisions of the RMA, or failing that, having to repeat the limited notified application for resource consent process which would seem to me to be unreasonable in the circumstances that now prevail.

SECTION 32 EVALUATION

- 18 The law in relation to s32 evaluation lies outside my area of expertise and I defer to legal submissions advanced by Mr Gordon for BRANZ.¹
- 19 But my understanding is that in summary, a s32 evaluation should in this case assess whether the proposed Controlled Activity rule is the most appropriate way to achieve the objectives of the SPZ-BRANZ and in doing so, consider other reasonably practicable options for achieving the objectives (such as making no change to SPZ-R1), and consider the efficiency and effectiveness of the proposed Controlled Activity rule in achieving the objectives.

1 ¹ That said, I have read the passage in the 2017 Environment Court case of *Royal Forest & Bird v Whakatane District Council* at paragraph [59] referred to by Commissioner McMahon during the hearing.

- 20 There are three SPZ-BRANZ objectives.
- 21 SPZ-O1 is to provide *"for the operation and development of nationally important research activities which support the health and wellbeing of the community"* and SPZ-O2 seeks to *"maintain a large-scale campus, tall buildings with large footprints, open car parking areas and a spacious and open environment"*.
- 22 These two strategic objectives sensibly support the development and use of the campus for BRANZ's activities and specifically support tall buildings with large footprints necessary for nationally important research functions, including fire and structural testing.
- 23 SPZ-O3 is to avoid, remedy or mitigate adverse effects of within the zone particularly at zone boundaries. This objective is not specific to the SPZ-BRANZ and is shared with number of other zones, including the Rural Zone, Open Space Zone, Sports and Recreation Zone, and the Hospital Zone. In that sense, it is not a strategic objective.
- 24 I consider that change to RPZ-R1 to introduce the proposed Control Activity rule is the most appropriate way to achieve the above objectives because:
- It will support the operation and development of nationally important research activities which support the health and wellbeing of the community (SPZ-O1).
 - It will provide specific provision for tall buildings with large footprints within the large-scale campus (SPZ-O2).
 - It will provide the Council with the ability to avoid, remedy or mitigate adverse effects (SPZ-O3) by imposing appropriate resource consent conditions.
- 25 Other options include making no change to the SPZ-R1 rule in which case a taller building than the height standard would be restricted discretionary. This is consistent with most rules in other zones. However, in my opinion it would not be the most appropriate way to achieve SPZ-O1 and SPZ-O2 because:
- It does not support the operation and development of nationally important research activities (SPZ-O1) because of the added risk and uncertainty associated with restricted discretionary activity status, and the failure to recognise that nationally important facilities should be more enabled.
 - It does not provide specific support for taller buildings that are necessary for nationally important research activities (SPZ-O1 and SPZ-O2).

- 26 I understand that what is the "*most appropriate*" rule has been held to be the least restrictive regime necessary. Or, put another way, restrictions such as activity status should only be to a level that is necessary to implement the objectives.
- 27 In this regard, the use of Controlled Activity status in the Proposed District Plan is very limited, perhaps reflecting my experience that consent authorities generally seek to maximise their "leverage" when assessing applications for resource consent. The more important point I wish to make, however, is that there is already precedent for Controlled Activity provision for proposed SPZ-R1 – it will simply add another Controlled Activity rule into the Plan.
- 28 My experience with Controlled Activity rules is that they are particularly appropriate for activities of national or regional importance where it is desirable that resource consent will be granted for development proposals but giving consent authorities the ability to impose appropriate conditions of consent. This least restrictive regime seems to me to be particularly appropriate to be applied to enable, rather than to restrict, a nationally important research provider like BRANZ, while retaining limited aspects of specified control.
- 29 In this case, there has already been a limited notified process for the two buildings in question with Discretionary Unrestricted activity status, a comprehensive hearing process undertaken, and a fulsome decision report and consent conditions granted. There is therefore already a "blueprint" for the type of consent conditions that have been held by an independent hearing panel to be reasonably necessary and practicable to remedy or to appropriately mitigate the adverse effects of the height of the buildings, the panel having considered at length the likely effects on the rural-residential neighbourhood as raised by the submitters.
- 30 In view of the above circumstances, it would not be efficient in my assessment for BRANZ to have to repeat this exercise should the need arise to have to obtain notified resource consent to replace or rebuild the buildings.
- 31 The proposed Controlled Activity rule will only apply to buildings in compliance with the submitted diagram. In this limited context therefore, Controlled Activity status is a relatively "small ask" for a nationally important facility and without any consequences beyond this special zone.

Peter Alan Coop

26 May 2022