

**Before Hearing Commissioners appointed by Porirua City Council**

**In the matter** of the Resource Management Act  
1991

And

**In the matter** of a submission by Building Research  
Association of New Zealand Inc on  
the Proposed Porirua City District  
Plan, Special Zone (BRANZ)

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**SYNOPSIS OF SUBMISSIONS OF COUNSEL FOR BRANZ**

**20 May 2022**

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1. **Introduction and summary**

1.1 The submitter, Building Research Association of New Zealand Inc (**BRANZ**), is New Zealand's lead provider of independent research and testing for building products. Its work informs industry best practice and the Building Code standards. It is the only independent building research institute in New Zealand.

1.2 Through the introduction of a bespoke zone, the Proposed Plan acknowledges the important role that BRANZ plays in the district. The s 32 evaluation identifies BRANZ as an important contributor to good outcomes in the industry and, more generally, *a key contributor to the social and economic wellbeing of communities and national economic activity. And providing a service/facility with regional and national importance.*<sup>1</sup>

1.3 BRANZ consulted with the Council as to the establishment of a Special Zone for its Moonshine Road campus (SPZ) and consensus has been reached on appropriate objectives and policies, and most standards.

1.4 The only unresolved matter is the appropriate height standard(s) for the all-important fire and structures laboratories which are at the core of the activities undertaken on the site. The permitted activity standard is 10m across the SPZ.

1.5 Following a vigorously contested hearing in 2020, the Council granted resource consent to construct a fire laboratory up to a height of 22.65m and a structures laboratory to a height of 13.26m, subject to conditions to remedy and mitigate potential adverse effects.<sup>2</sup> Work has commenced to implement the consent and, in that sense, it has been given effect to.

2. **The Original Submission**

2.1 The original BRANZ submission is **attached**. The relief sought is a permitted height standard for the footprints of the fire and structures laboratories, and the Shared Storage building as shown by the resource consent

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<sup>1</sup> Section 32 Evaluation, page 1.

<sup>2</sup> RC 8091 LU00029/20.

drawings, and such *other consequential amendments, additions, or refinements* to give effect to the submission.

- 2.2 From the s 42 A report it is apparent that this relief would not be acceptable to Council, primarily out of concern for the integrity of the conditions imposed on the resource consent.
- 2.3 In response, BRANZ, through Mr Coop, proposed a compromise whereby the permitted activity standard would remain at 10m but with (new) controlled activity status for building height between 10m and 22.65m for the fire lab footprint and 10m and 13.26m for the structure lab footprint.
- 2.4 The rationale for the proposed new controlled activity status was that, in the event that either or both building had to be replaced, BRANZ would not be confronted with the uncertainty and expense of another fully discretionary or non-complying resource consent process with neighbourhood participation **if**:
  - (a) Section 10 RMA existing use rights are not carried over into the NBA legislation; and/or
  - (b) The bulk of any replacement buildings was deemed not to meet the existing or new tests for existing use rights under whatever legislation may or may not emerge from the present legislative process.
- 2.5 Through Mr McDonnell's supplementary planning evidence, the Council is rejecting the alternative relief for reasons:
  - (a) The period of consent enabling the heights of 22.65m for the fire lab footprint and 13.26m for the structure lab is unlimited under sections 123 and 125 RMA;
  - (b) The consent conditions run to 12 pages and could not reasonably be repeated as standards or rules;
  - (c) The principles would have to be carried over to all other over height buildings in the district; and
  - (d) Section 10 existing use rights are a viable alternative, and if they go, Council will be able to *develop new plans* to reflect (existing use rights).

### 3. **Legal framework**

- 3.1 Section 32 calls for identification of the most effective and efficient way to achieve the purpose of the Act and the Proposed Plan's strategic objectives. This test is sometimes paraphrased as identification of the most appropriate or optimal provisions.
- 3.2 Section 32AA enables an alternative outcome based on a further evaluation of the s 32 principles. Section 32AA(d)(ii) enables the further evaluation to be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
- 3.3 For BRANZ, Mr Coop confirms that he has undertaken a re-evaluation as required by s 32AA.<sup>3</sup>
- 3.4 There is no issue as to scope given that controlled activity status is more constraining and less permissive than the permitted activity status sought in the original submission.
- 3.5 RMA is under review and alternative legislation is being prepared to go to select committee. Section 10 as to existing rights is absent from the exposure draft but said to be included in the full Bill, once that is drafted to be considered at select committee. The same applies to the s 123 and 125 methodologies to provide for some enduring consents.

### 4. **Discussion**

- 4.1 There is no certainty that the sections 10, 123 and 125 mechanisms will be carried over to the new legislation. Given the new emphasis on environmental outcomes it seems entirely possible that they could be diluted or even extinguished. And even if they are carried over, they would call for an exact rebuild or at least a rebuild within scope (s 10) whereas controlled activity status would enable more flexibility for replacement structures and revised/bespoke conditions to mitigate effects.

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<sup>3</sup> Attached correspondence from Peter Coop.

- 4.2 The controlled activity rule proposed would not need rules and standards equivalent to the present 12 pages of conditions as opined by Mr McDonnell. All of those conditions go to remedying or mitigating potential adverse effects, and a single blanket provision to that effect would be efficient and effective.
- 4.3 As for Mr McDonnell's third argument, the SZ BRANZ provides for nationally important activities. The other special zone does not. There would be no ripple effect that would call for *amending all the bulk and location standards in the Plan to reflect resource consents already granted*. That would not be necessary to address an unreasonable precedent effect.
- 4.4 The final point against the proposal is that s 10 existing use rights are a viable alternative, and if they go, Council will be able to *develop new plans to reflect (existing use rights)*. It is submitted that also introduces unnecessary uncertainty which could be avoided by accepting the proposal for controlled activity status as sought.
- 4.5 This is an opportunity to acknowledge that one of the district's only nationally important activities warrants a bespoke zone that includes a sensible degree of certainty in an otherwise uncertain legislative environment. It would be affective and efficient to do so.
- 4.6 If the mechanisms of sections 10, 123 and 125 RMA1991 are carried over to the new legislation to the extent that the preferred controlled activity status is deemed surplus, council could review its Plan.



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Ian Gordon  
Counsel for BRANZ

20 May 2022

RMA FORM 5



# Submission on publicly notified Proposed

## Porirua District Plan

Clause 6 of the First Schedule, Resource Management Act 1991

To: Porirua City Council

1. Submitter details:

Full Name	Stephenson	Kaetrin	
Company/Organisation <i>if applicable</i>	<b>BUILDING RESEARCH ASSOCIATION OF NEW ZEALAND (BRANZ)</b>		
Contact Person <i>if different</i>			
Email Address for Service	<b>Kaetrin.stephenson@branz.co.nz</b>		
Address	<b>1222 Moonshine Road, RD 1</b>		
	Porirua	5381	
Address for Service <i>if different</i>	<i>Postal Address</i> <b>Private Bag 50 908</b> Porirua 5240	<i>Courier Address</i>	
Phone	<i>Mobile</i>	<i>Home</i>	<i>Work</i>
			<b>04 238 1336</b>

2. This is a **submission** on the **Proposed District Plan** for Porirua.

3. I could  I could not   
gain an advantage in trade competition through this submission.  
(Please tick relevant box)

If **you could** gain an advantage in trade competition through this submission please complete point four below:

4. I am  I am not   
directly affected by an effect of the subject matter of the submission that:  
(a) adversely affects the environment; and  
(b) does not relate to trade competition or the effects of trade competition.  
(Please tick relevant box if applicable)

Note:

If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991.

5. I wish  I do not wish   
To be heard in support of my submission  
(Please tick relevant box)

6. I will  I will not   
Consider presenting a joint case with other submitters, who make a similar submission, at a hearing.  
(Please tick relevant box)

Please complete section below (insert additional boxes per provision you are submitting on):

<b>The specific provision of the proposal that my submission relates to:</b>
SPZ – Special Purpose Zone (BRANZ)
<b>Do you: Support? Oppose? Amend?</b>
Support the SPZ- Special Purpose Zone (BRANZ) and seek amendment to SPZ-S1.
<b>What decision are you seeking from Council? What action would you like: Retain? Amend? Add? Delete?</b>
Confirmation of SPZ-Special Purpose Zone (BRANZ) with amended SPZ-S1 to provide for permitted building heights for the Structures Laboratory building, Shared Storage building and Fire Laboratory building shown by drawings RC.A00.102 Rev B, RC.A02.001 Rev B and RC.A02.002 Rev B.  Such other consequential amendments, additions, or refinements to the SPZ-Special Purpose Zone (BRANZ) deemed necessary to give effect to this submission.

**Reasons:**

SPZ-Special Purpose Zone (BRANZ) appropriately recognises and provides for the regional and national importance of BRANZ's research and testing activities and the importance of BRANZ to the economy and wellbeing of Porirua City.

The Section 32 Evaluation Report prepared by the Porirua City Council is an appropriate evaluation under the RMA and is supported by BRANZ other than in respect of the specific building height issues raised by the proposed amendment.

The proposed amendment to SPZ- S1 will better provide for the sustainable management of the Zone and permit nationally important testing and research activities to be undertaken within the required height of the Structures Laboratory building, Shared Storage building and Fire Laboratory building.

Please return this form no later than **5pm on Friday 20 November 2020** to:

- Proposed District Plan, Environment and City Planning, Porirua City Council, PO Box 50-218, PORIRUA CITY or
- email [dpreview@pcc.govt.nz](mailto:dpreview@pcc.govt.nz)

18 November 2020



Signature of submitter  
(or person authorised to sign  
on behalf of submitter):

Date: \_\_\_\_\_

*A signature is not required if you  
make your submission by  
electronic means*