BEFORE THE MANAWATU-WANGANUI REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of submissions and further submissions made by **the OIL COMPANIES** on the Proposed Horizons One Plan – Infrastructure, Energy Waste – Chapter 3.

STATEMENT OF EVIDENCE OF DAVID LE MARQUAND ON BEHALF OF THE OIL COMPANIES: CHAPTER 3 INFRASTRUCTURE, ENERGY AND WASTE

1.0 INTRODUCTION

1.1 My name is David le Marquand and I am a Director of Burton Planning Consultants Limited. My qualifications are a Bachelor and Master of Arts degree in Geography from Auckland University. I have practised resource management for over twenty-eight years: fifteen of those years in Central Government including six years as a Scientist in the Planning Section of the Water and Soil Directorate (MWD) Wellington, and two years as a Policy Analyst and five years as a Senior Policy Analyst with the Ministry for the Environment in Auckland. I have spent the last thirteen years as a Resource Management Consultant with Burton Consultants.

1.2 I have been the Account Manager for the Oil Industry Working Group (OIEWG) for more than twelve years. OIEWG currently comprises of Shell

New Zealand Limited, BP Oil New Zealand Limited, Chevron New Zealand and Mobil Oil New Zealand Limited (the Oil Oil Companies). In that role I have been responsible for providing resource management advice to the Oil Companies on a national basis, on relevant district and regional plan provisions and various environmental issues of collective interest including contaminated land, air and water discharge provisions, hazard substances and risk management provisions. OIEWG has been responsible for generating a number of guidelines including "Guidelines for Assessing & Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand (MfE 1997)", "Above-Ground Bulk Tank Containment Systems - Environmental Guidelines for the Petroleum Marketing Oil Companies (MfE 1995)" and "Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand (MfE 1998)". I have also been involved in a range of joint venture oil industry projects relating to new and existing infrastructure (e.g. joint operated bulk terminal facilities) involving various regional and district council consents.

2.0 BASIS OF EVIDENCE

2.1 My evidence generally supports the submissions and further submissions lodged by the Oil Companies to the Proposed One Plan.

2.2 I have read and am familiar with the Proposed One Plan provisions, the staff report in relation to the Oil Companies submissions and further submissions. My evidence primarily focuses on the recommendations in the Planners Report on Chapter 3 as they relate to the concerns of the Oil Companies.

2.3 I have read the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the code and am satisfied the matters I address in my evidence are within my expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.

3.0 SUBMISSIONS

Objective 3-2 (submission 267/3)

3.1 The Oil Companies sought the retention of Objective 3-2 without further modification. The Planners Report supports the submission (p 92) and recommends no changes to the provisions. I support the staff recommendation.

My recommendation: That the Committee adopt the staff recommendation in terms of Objective 3-2.

Policy 3-12 (submission 267/4, further submission 516.1 and 2)

3.2 The Oil Companies sought:

Retain Policy 3-12 without further modification except for an amendment to 3-12 (c) as follows:
(c) is subject to a change of land use that is likely to increase the risks to human health or the environment (e.g. being zoned for future residential subdivision or a specific development is proposed).

3.3 The staff report (p 205) recommends rejecting the Oil Companies submission. However, it is noted that only one minor change to Policy 3-12 is proposed in the staff recommendations. That change is acceptable to the Oil Companies.

3.4 Policy 3-12 (c) currently states:

(c) is likely to be subject to a change of land use within the next 10 years - in particular to residential subdivision, likely to increase the risks to human health or the environment.

3.5 The Oil Companies submission effectively seeks the omission of the reference to the 10-year timeframe through their rewording. In my opinion, the policy as currently worded, will apply to all land that could conceivably be the subject of a land use change. For instance there is no caveat on where land use change is reasonably known or anticipated (e.g. future urban areas shown on District Plan maps, or where land is subject of a specific development proposal). While the explanation to the policy identifies that the 10-year timeframe is primarily targeted at rural areas where further subdivision is likely to happen, this is not clear in the policy and I agree that the 10-year timeframe could as such, be applied to any and all land use changes. This in turn could then lead to a widespread remediation requirement independent of any actual risk from residual contamination. The proposed rewording by the Oil Companies, which I support, removes the potential concern in relation to speculating on whether a land use change can

be forecast within the next 10 years, and more properly clearly focuses it on the potential level of risk.

3.6 The Oil Companies also lodged a further submission supporting in part and opposing in part the Horticulture NZ (submission 357/44) which sought to :

Amend Policy 3-12 as follows:
Identification of contaminated land
Contaminated land shall be identified if:
a) the land meets the thresholds of contaminated land and*
b) through an assessment process has been listed on a register of known contaminated land held by Regional Council or a Territorial Authority.

3.7 The Oil Companies opposed in part this submission on the basis that the exceedance of a threshold will not necessarily mean there is always a risk of an adverse effect arising. The Oil Companies supported the reference to the register, which is what is referred to in part (a) of 3-12 in any event.

My recommendation: That the Committee retain policy 3-12 without further amendment except for the removal of the 10 year timeframe for land use change and replace the wording of 3-12 (c) with wording identified in the Oil Companies submission or similar. Make no other changes.

Policy 3-13 (submission 267/5 further submission 516/4)

3.8 The Oil Companies sought:

Retain Policy 3-13 without further modification except for the following changes to (b) and (c) so they read:
b) ensure land is "fit for purpose" through an appropriate level of remediation or management (including engineering) controls.
(c) ensure land remains "fit for purpose" through adequate monitoring of residual contaminant levels and associated risks and/or requirement for management controls.

3.9 The Planner's report recommends accepting in part the submission, although no changes are made. Currently Policy 3-13 states:

Policy 3-13: Management of priority contaminated land
Where land-use changes are likely to increase the risks to human health or the environment from priority contaminated land (as identified under Policy 3-12) the developer shall:*
(a) fully investigate the extent and degree of contamination prior to the granting of consent allowing development (assistance with investigations may be provided by the Regional Council in some cases)
(b) remediate the site to an appropriate level prior to any development occurring
(c) undertake adequate ongoing monitoring of contaminant levels and associated risks.

3.10 The Oil Companies sought the amendment to 3-13 (b) to clearly introduce the concept of management in dealing with contaminated sites. I support the submission. Remediation is one form of management response to dealing with contaminated land. It is not, cannot and should not be presented as the sole approach to addressing contamination issues. It is not necessary to remediate land, for example, in every instance where contamination is identified. It all depends upon the risk and, the potential receptors and likely pathways. For example, sometimes land can be managed without remediation (e.g. it could be capped by an impervious layer), or there could be an engineering solution to a specific issue (e.g. a requirement to ventilate an underground carpark in order to avoid issues with vehicle fumes may be sufficient to address vapours from residual contamination).

3.11 Furthermore the policy should not, in my opinion, be requiring the timing of any remediation or management to be a prerequisite prior to all or any development occurring. If land is to be remediated by dig out, for example, it would make little sense to excavate the contaminated soil and replace it with clean fill only to have the clean fill dugout again to accommodate a particular development. Remediation may, in such cases, be best addressed at the time the foundations of a new development are undertaken. In my opinion there needs to be some flexibility as to timing. Timing can be an important issue in many land transactions. The timing issue is, in my opinion, better dealt with on a case by case basis and in relation to the potential effects that may arise, it should therefore be removed from the policy.

3.12 Another concern is that the policy is effectively constraining development over a whole site, yet contaminated land may only represent a small proportion of a particular site. If the outcome of the policy was to render the ability to develop non contaminated land on the basis that there is some extent of contaminated land and/or level of contamination within the site boundary, this is likely to have significant implications for landowners and may indeed be counter productive to getting good environmental outcomes. The clear policy imperative should be that the land is "fit for purpose", that is, for the use that is occurring on the land at the time, including at the time that any new land use occurs. In many instances this requires the appropriate management of land, including during any land use change, and in particular where a more sensitive land use is being proposed.

3.13 In the MfE paper "Working Towards a Comprehensive Policy Framework for Managing Contaminated Land in New Zealand (2006) MfE identified the following:

Although a formal statement of goals and objectives is not proposed for contaminated land in this paper, the Ministry work programme has been informally guided by the outcomes summarised in Figure 1 and described below.

*• At the highest level the programme contributes to having the **environment protected** from the effects of contaminated land.*

*• Our use of land is maximised by having **fit-for-purpose land** − land that is used appropriately, with use restricted if the land is contaminated. This outcome is consistent with our effects-based legislation and risk-based approach to contaminated land management.*

• Fit-for-purpose land is achieved by maintaining good quality land (avoiding land contamination), and by ensuring contaminated land is managed/remediated to the greatest extent practicable.

3.14 These effective MfE goals are currently driving the MfE programme on contaminated land. In my opinion it is appropriate that the One Plan policy framework on contaminated land align as closely as it can to these goals, at least until such time as further formal guidance occurs by way of a national policy statement and/or national environmental standards. In my opinion the relief sought by the Oil Companies more appropriately addresses these effectively current (albeit defacto) national goals and there appears to be no particular reason why the Council should depart from them.

3.15 The Oil Companies sought the amendment to Policy 3-12 (c) to effectively ensure that "ongoing" monitoring is not a policy requirement in all circumstances. It is accepted that in some circumstance monitoring will be required, but this should not be a blanket requirement nor should it be specified as "ongoing" For example, such a requirement would not be necessary where contaminants have been removed from a site. Any monitoring should be tailored to the specific circumstances. It may be also be necessary, or more appropriate, to ensure that any management conditions to address site risks are appropriately tracked or reported rather than monitored (e.g. requirement to keep capping in place or specific engineering requirements for venting etc). If such conditions were, for example, registered on a certificate of title, there should be no need to monitor the situation on an ongoing basis. The policy should more clearly allow such matters to be addressed on a case by case basis. In my opinion the proposed rewording by the Oil Companies provides a broader and more flexible means by which to

attach appropriate controls. However, on reflection, I would support a further amendment to that wording to ensure that any monitoring is "appropriate" rather than adequate. Consequently I suggest the provision be reworded as follows:

(c) ensure land remains "fit for purpose" through <u>appropriate</u> ~~adequate~~ monitoring of residual contaminant levels and associated risks and/or requirement for management controls.

My r**ecommendation:** That the Committee retain policy 3-13 without further modification except for the proposed changes to (b) and to (c) through the Oil Companies submission as outlined in this evidence.

Methods (submission 267/6 and 267/7)

3.16 The Oil Companies sought the following relief in relation to the methods:

Include a new specific method that involves the Regional Council working with Territorial Authorities to determine where rural subdivision is most likely in the next 10 years and to identify the risks associated with contaminated land.

Retain the methods in 3.5 and in particular the projects relating to Contaminated Land – Information Systems and Contaminated Land - Identification of Priority Sites.

3.17 The Planner's report recommends accepting in part submission 267/6 and accepting 267/7. No changes are, however, recommended as a result of the submissions. In my opinion, submission 267/6 is reasonably covered by the project: "Contaminated Land – Identification of Priority Sites". Consequently I support the staff recommendations in relation to the Oil Companies submissions on the methods.

My recommendation: That the Committee accept the staff recommendations in relation to 267/6 and 267/7 and make no further changes to the provisions.

4.0 CONCLUSION

4.1 The objective and methods relating to contaminated land are acceptable and should remain unchanged. The policy dealing with contaminated land requires further modification to ensure that it clearly and appropriately embraces a broader approach to dealing with contaminated land than just remediation. Remediation is effectively only one form of management and

consequently the policy needs to be amended to clearly enable other management options to apply at the policy level. The policy should clearly signal that other options may be equally valid. It is also appropriate that the policy more clearly align with the national goals/principles followed to date by Ministry for the Environment and that it identifies that the intent is to achieve "fit for purpose" land. The amendments outlined in this evidence will assist decision makers and applicants in addressing contaminated site issues.

David le Marquand

5th August 2008.