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 – Water Quality, Beds of Lakes and Rivers.

STATEMENT OF EVIDENCE OF DAVID LE MARQUAND ON BEHALF OF THE OIL COMPANIES WATER (QUALITY) HEARING

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-nine 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 fourteen years as a Resource Management Consultant with Burton Consultants.

1.2 I have been the Burton's 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 Companies). As the Account Manager, 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.

2.0 BASIS OF EVIDENCE

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

2.2 I have read and am familiar with the Proposed One Plan provisions, and with the staff report and relevant background reports in relation to Oil Companies submissions and further submissions. My evidence primarily focuses on the Planner's Report recommendations on the topics of Water Quality.

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 WATER QUALITY

Submissions 2678-9; Recommendations WTR 72

3.1 The Oil Companies sought the following:

- include a clear statement in the Plan that the Council is not controlling inputs into District Council infrastructure, only the outputs from that infrastructure.
- retention of policies 13-1 to 13-4 without further modification except for an inclusion, by way of a reference, to industry standards and code of practice, along similar lines to that included in Policy 12-1 (c) and 12-2.
- specific recognition of the MfE Guideline (*Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand (1998))* and other relevant industry guidelines.

3.2 The staff report states, on page 179:

The Oil Companies want Policies 13-1 to 13-4 retained but seek a reference to industry standards and Codes of Practice and specific recognition for the Ministry for the Environment Guideline for Water Discharges from Petroleum Industry Sites in NZ (1998). The submitters also seek to have a clear statement in the Plan that only outputs from District Council infrastructure are being controlled. I am not clear exactly why the submitter considers this to be an issue as I consider the Plan focus in terms of Council infrastructure focuses on outputs. I will work though both these issues further with the submitters.

3.3 I note that it is intended to address these issue in a Supplementary paper. I will make any further comment on these issues at that time however I wish to set out the basis of the concerns raised in the original submissions.

Control of Inputs

3.4 While I accept that the intent of the Plan provisions may be to focus on the "end of pipe" discharges for stormwater from territorial authority infrastructure, this is not clear in the Plan. In my opinion it is necessary to make this explicit otherwise there will remain some uncertainty in the way the rules may be applied over time. Some other jurisdictions are controlling inputs into such infrastructure e.g. ARC, but most regional councils are controlling discharges at the "end of pipe". I am aware that some regional Council's have also been relooking at their discharge to land provisions as a means of controlling inputs into such systems. When this occurs it creates a significant degree of uncertainty. If the intention is to control "connection" into territorial authority infrastructure by treating stormwater discharges to the reticulated system as a discharge to land, then the provisions will have much more significance and effect, and will probably trigger a significant number of resource consents.

3.5 I agree with staff that it appears the Plan has been crafted to address discharges at the "end of pipe", and I support that approach. I would therefore urge the Committee to make it clear in the Plan that the intent of the rules relating to territorial infrastructure is that the Council will not be controlling inputs but rather only controlling "end of pipe discharges".

Policies 13.1-13.4

3.6 The staff report has generally accepted the submissions relating to the retention of policies subject to some minor modifications relating to other submission requests. I support the staff recommendations in relation to the wording proposed in relation to those policies.

MfE Guideline

3.7 The Oil Companies sought a more specific reference to the recognition of industry codes of practice in the water quality policy framework and, in support, referred to the way industry codes of practice have been included in Chapter 12 as follows:

> ***Policy 12-1: Consent decision-making for vegetation clearance and land disturbance***
> *When making decisions on resource consent applications, and setting consent conditions, for vegetation clearance* and land disturbance* the Regional Council will have particular regard to:*
> *(c) any industry standards that are relevant to the activity in accordance with Policy 12-2*
>
> ***Policy 12-2: Recognition of industry standards***
> *The Regional Council will examine relevant industry-based standards and codes of practice, including those for production forestry, and will accept compliance with industry standards as being adequate to avoid, remedy or mitigate adverse effects to the extent that such standards address the matters in Policy 12-1.*

3.8 In my opinion it is appropriate to include similar provisions in Chapter 13, as there are guidelines and codes of practice where it would be appropriate to accept such codes as a means of adequately addressing the adverse effects of discharges. The MfE Guideline, *Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand (1998),* is one such Guideline. Indeed it is noted that Environment Waikato includes a specific provision in its Regional Plan deeming stormwater discharges from premises complying with the guideline to comply with the permitted activity conditions. Similarly in the case of any discharges relating to contaminated land, it is very important to ensure that the appropriate guidelines are used and referred to. Indeed MfE *Contaminated Land Management Guideline No 2* establishes a hierarchy of guidelines to be applied to discharges from contaminated land. In my view it is important that there is a policy link to bring these matters to bear when drafting rules and/or considering consent applications.

3.9 I consider that the inclusion of similar provisions in Chapter 13 to those in Chapter 12, will also encourage industries to develop appropriate guidance. Consequently I suggest the following amendments to Policies 13-1 and 13-2 and new policy 13-5 as follows:

Policy 13-1:

(e) *any industry standard that is relevant to the activity in accordance with Policy 13-5*

Policy 13-2

(g) any industry standard that is relevant to the activity in accordance with Policy 13-5

Policy 13.5

Recognition of industry standards
The Regional Council will examine relevant industry-based standards, (including guidelines and codes of practice), and will accept compliance with industry standards as being adequate to avoid, remedy or mitigate adverse effects to the extent that such standards address the matters in Policy 13-1 or 13-2.

3.10 I would support Council including a list or register in the Plan of what it considers "appropriate" standards of practice (i.e. that would complement the implementation of the plan, to give effect to the policy provisions).

Stormwater discharges (submissions 267/10-12); Recommendations WTR 97 - 99, WTR107 - 108

3.11 The Oil Companies sought to retain permitted stormwater rules 13-15 and 13-16 without further modification except:

- amend condition (a) of 13-15 and 13-16 to read as follows:

(a) The discharge shall not include stormwater from any:

(i) industrial or trade premises where hazardous substances are stored or used may be entrained by stormwater

(ii) contaminated land where the contaminants of concern may be entrained by stormwater

(iii) operating quarry or mineral extraction site

unless there is an interceptor system* in place.

- Delete references to "rare or threatened habitat", or "at-risk habitat", from Rules 13-15 to17, 13-24-25.

Condition (a) (i) "entrained"

3.12 I support the intention of the submissions. The reason the inclusion of "entrained" was sought is because the rule, as currently worded, could be seen to only provide for stormwater discharges from industrial and trade premises where all stormwater discharges from such a premise are passed through an interceptor system. It is not necessary to pass all stormwater from a site using or storing hazardous substances through interceptor devices.

3.13 The staff report states on page 236:
The issue I have is that the current wording of the Permitted Activity standard is certain and the introduction of the word "entrained" provides less certainty as there has to be a judgement made by someone on the ground as to whether it is or not. The approach taken in the One Plan is, in part, less restrictive than the approach taken in the Land and Water Regional Plan which requires any stormwater from an industrial or trade premises to be considered as a Controlled Activity under DL Rule 15. In relation to discharges of stormwater to water the Land and Water Plan likewise automatically requires these discharges to be considered as a Controlled Activity under DSW Rule 4.

3.14 The staff report identifies that there is a lack of certainty because the term "entrained" implies that there is a judgement to make. I understand that the inclusion of the reference to "entrained" was intended to increase certainty rather than reduce it, because it focuses on the at risk areas. However I accept that it may not be necessary to include such a reference, as the rule needs to be interpreted in terms of the scope of the definition of "interceptor system" which is:

Interceptor System, in relation to stormwater discharges of stormwater means a facility designed into a stormwater management system with the purpose of:

a. *preventing deliberate or accidental releases of any hazardous substances in the stormwater system, or*
b. *in the event of stormwater contamination by a hazardous substance, reducing all such substances in the stormwater prior to discharge to concentrations that will not result in contamination of either water or sediments to such a degree that is likely to result in significant adverse effects on aquatic life or on the suitability of the waters for potable water supply.*

3.15 The definition clearly applies a qualitative effects standard and indicates that the "interceptor system" is a subcomponent of a wider stormwater system thereby indicating that an interceptor can, and should be, targeted only to those "at-risk" areas. Indeed the approach in the MfE Guideline

Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand (1998) is to only target "at-risk" areas for treatment. In relation to contaminated land, one method sometimes used to ensure contaminants are not liberated by subsequent infiltration is the use of "capping", providing an impervious layer over contaminated land. In such a case the "capping" is both the facility and the storm water management system. There should be an ability to argue, and in my mind it would make sense to allow, the likes of "capping" or other forms of appropriate (engineering) management of contaminated land where the matters in a) and b) of the definition of an "interceptor system" are addressed. Provided this interpretation is clear and is capable of a consistent interpretation and application over time it should not be necessary to qualify the rule any further. However I seek confirmation from the Committee that this is the intent of the provision and that the rule will deliver consistent interpretation (even by way of policy explanation).

Controlled Activity Rule 3-16

3.16 The staff report (p238) makes the following comment in relation to the controlled activity rule 13-16:

> *The Rule contains as a Standard the same wording as contained in Rule 13-15 that the discharge does not contain stormwater from a site where hazardous substances are stored unless there is an interceptor system in place. Clause (a) within the Controlled Activity Rule is the same as the Permitted Activity Rule. If an activity is unable to meet the Permitted Activity Standard then it will not be able to meet the Controlled Activity Standard and therefore the Controlled Activity Rule is redundant. I want to consider carefully the re-framing of this Rule in conjunction with Rules 13-15 and 13-17. I will return to the submissions of the territorial authorities and Transpower NZ.*

3.17 I note that the permitted and controlled activity standards are the same for both rules. I have reviewed the remainder of the staff report and the redline version of the changes to the Plan and it does not seem that the restructuring issue highlighted in the staff report has been revisited. I am not opposed to an industrial and trade premise discharging to land without an "interceptor system" (i.e. where matters in a) and b) of the interceptor system definition are not achieved) requiring a consent that can be refused. I am, however, surprised that for a discharge to land a full discretionary activity consent is required whereas for a direct discharge to water, a restricted discretionary

consent is required. This would appear to be at odds with the policy direction to promote, preferentially, discharges to land.

Rare or Threatened Habitat

3.18 The Oil Companies opposed the inclusion of reference to "rare or threatened habitat" in the provisions. As a matter of principle I am not opposed to including conditions that will protect high valued areas from potential adverse effects of discharges. However the reason underlying the submission is that the process for identifying such areas in the Proposed Plan is far from certain, and a significant degree of judgement must be applied to identify such areas. To a considerable extent the hearing process to date, in particular the changes proposed to Chapters 5, 7 and12, has raised (and potentially addressed) many of those concerns. While there is still a level of uncertainty as to where these areas may be, I am reasonably comfortable with where the identification process has got to and provided that is carried through in decisions should be acceptable.

4.0 CONCLUSION

4.1 The Oil Companies submissions and this evidence has sought to:

- Clarify and confirm the approach to stormwater discharges as an "end if pipe" approach (which will be further addressed via the supplementary report);
- Ensure appropriate policy support for industry guidelines and codes of practices in Chapter 13 an include a specific method of recognition of such codes/guidelines/standards (which will be further addressed via the supplementary report);
- Clarify and confirm that the permitted stormwater rules will be interpreted consistently over time and that interceptor systems are to only apply to "at risk" areas and for contaminated land includes engineered management solutions that achieve matters a) and b) of the definition of interceptor system.

David le Marquand

28th September 2009