BEFORE THE PROPOSED CANTERBURY AIR REGIONAL PLAN HEARINGS PANEL

IN THE MATTER of Public Hearings under the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Canterbury Air Regional Plan (pCARP)

STATEMENT OF EVIDENCE OF DAVID LE MARQUAND FOR Z ENERGY LTD, MOBIL OIL NZ LTD, BP OIL NZ LTD (THE OIL COMPANIES) (Submission #62906 and Further Submission #103697)

18 September 2015

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1. EXECUTIVE SUMMARY

1.1 This evidence focuses on the key matters of difference arising from the Oil Companies submission and the s42A report.

1.2 In terms of definitions my evidence supports the s42A report recommendations in terms of “hazardous substance”, “petroleum product” and “regionally significant infrastructure”. I do not consider that a definition of reverse sensitivity is absolutely necessary as case law can be relied upon. If one is to be included in the Plan then it needs to on a broader base than that recommended in the s42A, refer to the potential for constraints arising now and in the future from potential complaint. A broader definition is provided.

1.3 Concerns are raised with the definition of sensitive activity which includes a mixture of sensitive receptors and areas. It is not considered good practice to refer to areas (such as residential zones) as activities. Furthermore it creates interpretative difficulties for activities that are located in such areas that are discharging (e.g. it would mean service stations in a residential zone are a sensitive activity). It is recommended that sensitive area and sensitive receptor have separate definitions and appropriate consequential amendments made throughout the Plan.

1.4 The objectives 5.3, 5.4, 5.5 and 5.6 as recommended in the s42a report are supported. Objective 5.8 is opposed in its current form as it is not drafted as an objective or outcome statement. The form and wording proposed in the submission by Horticulture New Zealand is preferred.

1.5 The amendments in the s42A report for Objectives 5.1 and 5.2 are opposed. The s42A amendments do not appear to clearly articulate the intended outcome sought from the pCARP, include unnecessary repetition and arguably set an unnecessarily low quality trigger threshold before improvement is to occur. The objectives are recommended to be combined into a single, simpler objective.

1.6 Amendment is sought to Objective 5.7 to clearly link the nature of regionally significant infrastructure to the management of air discharges. Objective 5.9 is not supported on the basis that spatial location is only one means of addressing discharges near encroaching and sensitive activities and while separation may be a preferred option there can be other means of managing such discharges.

1.7 Policies 6.1, 6.4, 6.6, 6.8, 6.12, 6.14, 6.19, 6.20, 6.22, 6.23 and 6.24 are supported without further amendment as recommended in the s42A report.

1.8 Policy 6.2 and 6.3 is sought to be deleted and replaced with a simpler single policy relating to ambient air quality guidelines to avoid the implication that the guidelines are to be applied as a defacto standard at the point of discharge.

1.9 Amendment is sought to Policy 6.5 in relation to offensive and objectionable odour, to ensure that it provides improved guidance and better reflects the intended process detailed in Schedule 2.

1.10 Policy 6.7 is sought to be deleted or at least amended to more clearly focus on legacy issues as the policy sets up a clear relocation expectation for compromised industry. It is important that there is sufficient countervailing policy within the Plan to ensure such situations do not occur in future.

1.11 Policy 6.10 is sought to be amended so that consideration of BPO is not limited to (only) when cumulative effects are an issue.

1.12 Policy 6.11 is sought to be amended to ensure that the regionally significant infrastructure matters are clearly linked to air discharge matters. Furthermore a new policy on reverse sensitivity is proposed, based on submissions by Carter Holt and Lowe Corporation.

1.13 The s42A report recommends amendments to Policy 21, however the consequential rewording of the policy is not clear. In light of the intent of the s42A report and initial concerns the Oil Companies' had with the submission, I have suggested amended wording.

1.14 The evidence supports retention of rules 7.47 and 7.59.

1.15 In relation to rules 7.3, 7.28 and 7.34, the evidence seeks a different pathway to the management of odour, moving away from a non-complying activity requirement for offensive and objectionable odour and the preparation of an odour management plan for all activities where that is specified. I recommend restricted discretionary activity status (7.28) for any odour discharge beyond the boundary associated with any activity not specifically mentioned in rules 7.29 to 7.59. It is considered that an odour management plan should be the outcome of a Schedule 2 process not the starting point. I also seek to delete the default rule 7.28 as the effect of the rule is to require high compliance costs for what are likely to be technically minor air odour issues beyond the boundary, and given that the major part of the rules (7.29 – 7.59) are already specifically targeting and controlling those activities that are at greatest risk of causing a nuisance. It is proposed to achieve this change in approach through establishing a permitted threshold rule that, if not achieved, would trigger a Schedule 2 process and for which an approved odour management plan would be required. The permitted rule would also ensure that subsequent ongoing discharges from such premises were required to comply with the approved plan.

1.16 All amendments sought in this evidence are set out in **Attachment B.**

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2. INTRODUCTION

Qualifications and experience

2.1 My full name is David William le Marquand and I have practised resource management for over 30 years. I am a Director of Burton Planning Consultants Limited. I hold the qualification of Bachelor of Arts in Geography and Master of Arts in Geography from Auckland University. Relevant qualifications and experience are set in **Attachment A**.

3. CODE OF CONDUCT: ENVIRONMENT COURT OF NEW ZEALAND PRACTICE NOTE 2014 – EXPERT WITNESSES

3.1 I have read the Environment Court's Practice Note 2014 as it relates to expert witnesses. While this is not an Environment Court hearing my brief of evidence was prepared in compliance with the Code of Conduct and I agree to comply with the Code in giving my oral evidence. I am not, and will not behave as, an advocate for the Oil Companies. I am engaged by the Oil Companies as an independent expert and my Company provides planning services to the Oil Companies collectively and separately along with a range of other infrastructure, corporate and public agency clients. I have no other interest in the outcome of the proceedings.

3.2 My qualifications as an expert witness are set out in **Attachment A**. The issues addressed in this brief relate to the planning implications of the Proposed Canterbury Air Regional Plan (pCARP) and are within my area of expertise.

3.3 The reasons for my opinions are set out in the subsequent sections of this document and I confirm I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3.4 In preparing this evidence I have reviewed the Council's primary s42A report and the relevant sections of the pCARP, s32 Report and relevant sections of the background reports, various relevant submissions and further submissions. I have also considered the following documents:

(a) The notified Natural Hazards Proposal
(b) The Joint Statement of the technical experts
(c) The joint statement of Planning Caucusing
(d) The tracked changes version from the Planning Caucusing
(e) The Council Section 32 evaluation report and relevant sections of the background reports
(f) New Zealand Coastal Policy Statement (NZCPS)
(g) The Canterbury Regional Policy Statement (2013)
(h) The Oil Companies submissions and further submissions on the PCARP
(i) The Resource Management Act 1991 (RMA).

4. SCOPE OF EVIDENCE

4.1 My evidence addresses the following matters:

- Definitions in Chapters (Definitions and Interpretation),
- Objectives 5.1-5.9,
- Policies 6.1 to 6.14 and 6.19 – 6.24.
- Rules 7.3, 7.28, 7.34, 7.47, 7.48, 7.49, 7.59
- Schedule 2

5. DEFINITIONS

Petroleum Product and Hazardous Substances

5.1 The Oil Companies sought that the definition of "Petroleum Product" (pCARP-3087) be retained on the basis it is an appropriate definition of the product. The s42A report recommends in R-T2-1 retaining the definition in Table 2.1 without further modification. This is supported.

5.2 The Oil Companies sought the definition of "Hazardous Substances" (pCARP-3085) be retained but to ensure that the full version of the HSNO 1996 definition be included, as the following text was missing:
Which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any 1 or more of the properties specified in paragraph (a).

5.3 The s42A report recommends in R-T2-1 retaining the full HSNO definition in Table 2.1. This is supported.

Reverse Sensitivity

5.4 The Oil Companies supported in part and opposed in part the inclusion of a definition of "reverse sensitivity" proposed Horticulture New Zealand (pCARP-1065). The proposed definition is as follows:
Reverse Sensitivity - Means the vulnerability of an existing lawfully established activity to complaint from other activities located in the vicinity which are sensitive to adverse environmental effects that may be lawfully generated by

the existing activity, thereby creating the potential for the operation of the existing activity to be constrained.

5.5 The Oil Companies supported the intent to have a definition to deal with reverse sensitivity but opposed the narrow scope. I support in part the Oil Companies' submissions. The s42A report in R-T2-1 Table 2.1 states the following:

While inclusion of a definition for reverse sensitivity is not recommended, if the Hearings Panel considers that a definition should be included, a simplified version of the definition suggested by Horticulture New Zealand is recommended as follows:
Reverse sensitivity
Means sensitivity of new land uses to the established effects of existing activities, resulting in constraints on the operation of existing activities.

5.6 In my opinion I am not certain that it is necessary to have a definition as reverse sensitivity has largely been defined by case law. While at this stage it is used in the Plan in a limited way (e.g. policy 6.8) it is a key concept that is important in managing discharges to air. I think the definition proposed in the s42A report is too limited. It does not adequately provide for the concept of coming to a nuisance or encroachment. It does not indicate that it is about the potential for complaint (which could include submissions opposing consents or changes to plan provisions as well as complaints to Council) which in turn changes the operating environment for the discharger. It is also limited in that it implies the focus is on the actual immediate constraint imposed on an existing activity and does not adequately deal with the possibility that an activity may not pose immediate issues but would limit further development at a particular premise. In my view it is not necessary to try and redefine case law, however if there was to be one I would support a broader definition. Such a definition could be along the following lines:

*"*means the effect on established activities from the introduction of new activities into the same environment, where the new activities may raise concerns or complaints which could constrain the established activity through additional , restriction or limitation on operations or mitigation of effects.

Regionally Significant Activity

5.7 The Oil Companies opposed the Canterbury Aggregate Producers Group (*CAPG*) submission (pCARP-3019) seeking a new definition of Regionally Significant Activity as follows:

"Regionally Significant Activity:
Means an activity that has a significant contribution to the social, economic and cultural well-being of the Region."

5.8 The Oil Companies opposed the submission on the basis that the definition was too broad and does not actually feature in the pCARP or anywhere else in the submitters' submission. I support the Oil Companies submission.

5.9 The s42A report has addressed this matter and identified (page 6-9), appropriately in my view, that the definition is superfluous. Then in response to the CAPG submission and others recommends that Table 2.1 be amended as follows:

Regionally significant infrastructure
Regionally significant infrastructure has the same meaning as set out in the Canterbury Regional Policy Statement 2013.

5.10 While I support the reference to regionally significant infrastructure in this way (consistency with CRPS) I note that the definition makes no specific reference to quarries and aggregate extraction sites, so I anticipate that it may not address the concerns of CAPG. I am not opposed to some specific recognition for quarries and aggregate extraction sites as regionally significant, if that is what the Panel decides is appropriate, but in my view that may be better addressed through specific provisions (refer CAPG submission on Policy 6.11) than by establishing a broad and non-specific definition that may well capture and apply to many non-intended activities, or by amending the CRPS definition specifically in relation to the pCARP. The former is uncertain and would probably go beyond the intent of the submission, while the latter could create an unnecessarily complex planning framework, for example when considering both the CRPS and the pCARP while undertaking a statutory assessment under Section 104.

Sensitive Activity

5.11 The Oil companies sought amendment to the definition of "Sensitive Activity" (pCARP-3086). The primary reason for the suggested amendment was to seek to focus the definition on activities not areas and to explicitly focus on those activities considered sensitive to air discharges. I support the intent of the submission. The proposed amendment by the Oil Companies was as follows:

Activities sensitive to air discharges:

Activities sensitive to a reduction in ambient air quality.

Includes:

- *Dwellings*
- *Accommodation facilities*
- *Facilities for education, community, worship, entertainment and healthcare and other care purposes*
- *Marae Complex*

5.12 The s42A report addresses the Oil Companies submission (p6-6) as follows:

The Mobil, BP Oil & Z Energy seek simplification of the definition of sensitive activity. The proposed simplification does not adequately capture all sensitive activities and therefore it is not considered appropriate.

5.13 The s42A, in R-T2.1 Table 2, proposes amendments to the notified version of 'Sensitive Activity' as follows:

Means
Any non-target crop that will actually or potentially be adversely effected (sic) by a discharge; or
an activity undertaken in:
(a) the area within the notional boundary of an occupied dwelling; or
(b) a residential area or zone as defined in a district plan; or
(c) a public amenity area, including those parts of any building and associated outdoor areas normally available for use by the general public, excluding any areas used for services or access areas; or
(d) a place, outside of the Coastal Marine Area, of public assembly for recreation, education, worship, culture or deliberation purposes.

5.14 In my opinion the comments in the S42A report indicate that the Council has misunderstood the Oil Companies submission in terms of the need to differentiate between area and activity. What is being proposed in the s42A report for the pCARP is a definition of Sensitive Activity which is, in my view, problematic and non-sensical. It will create potential confusion and administrative complications.

5.15 The definition is purportedly about sensitive activities (i.e. includes receptors that will be sensitive to air discharges), yet manages to mix up some specific activities and areas, presumably on the basis that such areas can anticipate a higher level of air amenity than other areas. In my opinion an area, whether it be residential or public amenity area, is not an activity per se. . Within an area there will be many activities that occur and not all will be sensitive to air discharges or sensitive receptors. For example, in Christchurch City, a significant number of the service stations are located within and on residentially zoned land. That should not, however, make them a sensitive activity.

5.16 One consequence of this broad definition is that it may cause some confusion in developing an odour management plan (OMP) in accordance with Schedule 2.The content of an OMP has to provide the location of sensitive activities as well as sensitive receptors – the latter of which are identified as dwellings, schools, meeting places, retail premises. Arguably a service station in a residential zone would have to be identified as both a sensitive activity and sensitive receptor (on the basis it is also a retail premise). The justification for this is not clear, and the Section 32 report gives no specific support for this approach. Further I note that in the Christchurch Replacement Plan a definitional distinction is drawn in that Plan between sensitive activities and sensitive areas. Therefore there may be some potential interface issues between plans if the current approach is continued.

5.17 While the definition is only used in relation to the Rules and Schedules it is not, in my opinion, good planning practice to identify blanket land areas as activities, and certainly not to identify them as sensitive activities. In my opinion it would be better to separate out sensitive activities (i.e. receptors) and sensitive areas (i.e. where a higher level of ambient air quality may be anticipated compared to some other areas e.g. industrial) . This would assist in drawing a clearer distinction between sensitive receptors and areas when dealing with individual discharges and any relevant plans produced in accordance with the matters in Schedule 2.

5.18 I also note the pCARP includes a definition of Sensitive Site (means a site where a sensitive activity takes place). The wording is only used in relation to Rule 7.54. The Oil Companies did not make a submission on the definition of sensitive site, but in my opinion it would be better to replace that definition, along with the definition of sensitive activity, and make any consequential amendments to the rules and schedules as required so that it is clear whether it is an activity or area that is being referred to and or being managed for. The separation between areas and activities could be achieved by making the following changes:

Sensitive Activities: *Activities sensitive to air discharges:*

Includes:

- *Dwellings*
- *Accommodation facilities*

- *Facilities for education, community, worship, entertainment and healthcare and other care purposes*
- *Marae Complex*
- *Non target crops*

Sensitive Area: means:
(a) the area within the notional boundary of an occupied dwelling; or
(b) a residential area or zone as defined in a district plan; or
(c) a public amenity area, including those parts of any building and associated outdoor areas normally available for use by the general public, excluding any areas used for services or access areas.

5.19 It will likely be necessary to make consequential amendments through the pCARP where these definitions are used.

6. OBJECTIVES

6.1 The Oil Companies supported retention of the objectives 5.3 (pCARP-3091), objective 5.5 (pCARP-3092); objective 5.6 (pCARP -3093) and Objective 5.8 (pCARP-3094).

6.2 The s42A Report has made the following recommendations in relation to the respective objectives as follows:

Recommendation R-5.3

Air quality ~~protects~~ is managed to ensure the mauri/life supporting capacity of ~~the environment~~ air is maintained for future generations

Recommendation R-5.5

Discharges to air ~~do not adversely effect~~ are managed in a way that recognises and provides for the relationship of Ngāi Tahu with their culture and traditions.

Recommendation R-5.6

Developments and innovation in technology ~~are enabled to~~ which have the potential to provide solutions to air quality issues are recognised and appropriately provided for.

Recommendation R-5.8

It is recognised that air quality expectations throughout the Region differ depending on the location and the characteristics of the receiving environment, including the underlying landuse patterns or zoning, and discharging activities are located appropriately within the receiving environment.

Objective 5.8

6.3 I support the reworded objectives 5.3, 5.5 and 5.6. I consider that 5.8 is not drafted as an objective. Further the proposed amendments appear to introduce a sub objective in terms of locating discharging activities appropriately, which does not appear to be directly related to any submissions. In my opinion, the management of discharges in relation to amenity is already appropriately addressed in Objective 5.4 and locational aspects are addressed in 5.9. I have a concern with a focus being solely on the location of discharging activities without any context relating to the nature or mitigation of discharges as the provisions will only ever apply to discharging activities. The s42A report attributes the proposed changes to TIM Nominees, yet my review of the relevant documentation is that it did not seek any specific relief in relation to the objective.

6.4 What the redrafting in the s42A report is attempting to do is to recognise that different areas will have different expectations in terms of ambient air quality. Lower levels of amenity can be expected in industrial areas compared to residential areas and that difference can be essential for the functioning of many of those industries. Similarly in rural areas there will be expectations of certain aspects of amenity that wouldn't otherwise be considered acceptable in residential areas. In my view the Horticulture New Zealand submission (pCARP-1068) provides more appropriate wording for identifying what the outcome should be in managing effects. While the Oil Companies did not further submit on this submission I consider that 5.8 could be improved by using its drafting as a basis for the objective as follows:

Manage air quality to reflect the different receiving environments across the region, taking into account the location, expectations and characteristics of the background receiving environment.

Objectives 5.1 and 5.2

6.5 The Oil Companies sought that Objectives 5.1 and 5.2 be amalgamated into on simpler objective (pCARP-3090) as follows:

~~Where~~ Ambient air quality that provides for people's health and wellbeing ~~it~~ is maintained where it is of good quality, and enhanced where it is of poor quality.

6.6 I support the Oil Companies submission. The s42A report does not specifically address this Oil Companies submission. It proposes, in Recommendation R-5-1 and R-5-2, that Objectives 5.1 and 5.2 be drafted as follows:

Where air quality provides for people's health and wellbeing, it is maintained such that it continues to provide for people's health and wellbeing.

Where air quality is degraded so that it does not provide for people's health and wellbeing, it is improved over time to ensure it will provide for people's health and wellbeing.

6.7 In my opinion the s42A amendments do not appear to clearly articulate the intended outcome sought from the pCARP, include unnecessary repetition and arguably set an unnecessarily low quality trigger threshold before improvement is to occur. In my opinion, air provides fundamental life support for humans, it will always provide for 'people's health and wellbeing' to a greater or lesser extent, irrespective of the quality, by virtue of the fact one needs air to breathe. It seems to me that to have air quality degraded to the point where it does not provide for people's health and wellbeing before improvement occurs may be a very low threshold. In my view a simpler combined objective, as proposed by the Oil Companies, subject to a minor amendment, may provide better overall guidance to air quality management. The objective could be drafted as follows:

~~Where~~ Ambient air quality ~~provides for people's health and wellbeing~~ ~~it~~ is maintained where it is of good quality, and improved over time where it is of poor quality.

Objective 5.4

6.8 The Oil companies sought (pCARP-3095) that Objective 5.4 be amended as follows:

Discharges to air are managed ~~to maintain~~ in accordance with the amenity values of the relevant receiving environment.

6.9 The s42A report has recommended that the Objective be amended as per the Oil Companies submissions. I support Recommendation R-5.4. The amendments proposed will, in my view, acknowledge that Objective 5.4 needs to recognise that different areas, or zones, require different responses to manage discharges - notwithstanding the range of effects

discharges may have on the various environments exposed to the discharge.

Objective 5.7

6.10 The Oil Companies had concerns that Objective 5.7 did not clearly relate to air discharges and significant infrastructure. They sought (pCARP-3096) that Objective 5.7 be deleted and replaced with the following:

Air discharges on nationally and regionally significant infrastructure should not result in adverse effects. Air discharge from nationally and regionally significant infrastructure arising from the operation, maintenance, repair, development and upgrading is enabled where that infrastructure is resilient and positively contributes to economic, cultural and social wellbeing.

6.11 I support the intent of the Oil Companies submission. The s42A report (Recommendation R-5.7) recommends retaining the provision without further amendment as follows:

Nationally and regionally significant infrastructure is enabled and is resilient and positively contributes to economic, cultural and social wellbeing through its efficient and effective operation, on-going maintenance, repair, development and upgrading.

6.12 I do not support the s42A report. I consider the provisions should be improved to at least clearly focus on air discharges. The question needs to be asked what outcome in relation to air discharges and nationally and regionally significant infrastructure is to be sought? The wording of the objective does not appear to link to air quality matters. At the very least it would seem appropriate to try and make a clear connection to air discharges. The Oil Companies submission sought that the objective address both discharges onto (i.e. for other sources) nationally and regionally significant infrastructure where that infrastructure could be adversely affected by those and also discharges arising from that infrastructure. In my opinion, if the provision is sought to be retained in its current form then the following amendment would at least achieve a connection to air discharges and be more clearly outcome focused in that regard. The provision could be worded as follows:

Air discharges are managed so that nNationally and regionally significant infrastructure is enabled and is resilient and positively contributes to economic, cultural and social wellbeing through its efficient and effective operation, on-going maintenance, repair, development and upgrading.

Objective 5.9

6.13 The Oil Companies sought replacement of Objective 5.9 with an objective that provides for reasonable protection for industrial activities / zones against reverse sensitivity, and sensitive activities are reasonably protected from air dischargers and sought the following (pCARP-3097):

Sensitive and discharging activities are protected from each other.

6.14 The s42A report has recommended the following amendment:

Discharging and sensitive activities are spatially located so that ~~they result in~~ appropriate air quality outcomes are ~~being~~ achieved both at present and in the future.

6.15 I have a number of concerns with the provision as drafted. The efficacy of any such objective is tied up with the definition of sensitive activity - over which I have already raised concerns. There is an implication here that discharging activities and sensitive activities should not mix. This is problematic in that there will be many discharges which are acceptable even in sensitive areas and which are, in fact, permitted by the Plan irrespective of location. There are many discharges that occur in residential areas in any event, so locational constraint or separation should not necessarily apply to all discharging activities. As a consequence my view is that the objective is better focused on those discharges that are likely to be a potential issue and therefore should require resource consent in the first instance.

6.16 The provision also is only applying or promoting one method (separation) above other mitigation means. While separation for certain discharges from sensitive receptors and areas may be a primary means of achieving appropriate air quality outcomes, there will be other forms of mitigation that may be appropriate. In my view the objective is really seeking good land use planning outcomes which will ensure compatible activities are grouped together. Of course that is difficult to achieve through a Plan that only can have rules that relate to air discharges. It is also somewhat ironical that it is the sensitive areas which are causing the most significant discharge issue (through domestic fires) yet the focus through the provisions appears more weighted against industrial activities. Therefore in drafting the objective one needs to be mindful that these are likely to only apply, or be most relevant to,

an industrial discharge consent, unless some non-regulatory methods relating to sensitive receptors and zoning locations are included.

6.17 As a consequence it is my view that this objective may be better focused on the juxtaposition of industrial discharges versus sensitive areas and activities and that separation by spatial location may be a preferred means of addressing such discharges but where that is not practicable then they need to be appropriately managed. This could be achieved as follows:

Industrial discharging activities near or in sensitive activities and/or areas should preferably be ~~are~~ spatially located or otherwise managed so that ~~they result in~~ appropriate air quality outcomes are ~~being~~ achieved both at present and in the future.

7. POLICIES

Policies 6.1, 6.4, 6.6, 6.8, 6.12, 6.14, 6.19, 6.20, 6.22, 6.23 and 6.24

7.1 The Oil Companies sought the retention of policies 6.1, 6.4, 6.6, 6.8, 6.12, 6.14, 6.19, 6.20, 6.22, 6.23 and 6.24 (pCARP-3099-3109) without further modification. I support the Oil Companies submission. The s42A report also supports their retention without further modification.

Policies 6.2 and 6.3.

7.2 The Oil Companies sought the deletion of policies 6.2 and 6.3 (pCARP- 3110) which state respectively:

Minimise adverse effects on air quality where concentrations of contaminants are between 66% and 100% of the guideline values set out in the Ambient Air Quality Guidelines 2002 Update, so that concentrations do not exceed 100% of those Guidelines values.

Where concentrations of contaminants exceed 100% of guideline values set out in the Ambient Air Quality Guidelines 2002 Update, action is taken to improve air quality.

7.3 The Oil Companies opposed the policies on the basis that the provisions would potentially become a defacto discharge standard that would be applied when consenting discharges. I support that submission. There is, in my view, a risk of the ambient guideline thresholds being applied to point source discharges should the policy remain. This can be particularly problematic for

industrial discharges where the ambient levels are dominated by non-regulated sources.

7.4 The s42A report (page 10-4) suggests the Oil Companies proposed policy is not as clear as the Council's proposed policy with regard to ensuring that below 100% concentrations of ambient air quality guideline values that discharging activities are enabled but closely managed to ensure no tipping point is reached. I agree the proposed Oil Companies policy does not do that but equally, neither of the notified policies make that intention clear. In any event, I think the explanation reinforces the concern that there appears to be an intention to use the ambient guideline values to become defacto discharge standards when they were not designed for that purpose. As a consequence I prefer the Oil Companies proposed policy as follows:

Manage discharges to air to ensure the Ambient Air Qualities Guidelines 2002 are complied with.

Policy 6.5

7.5 The Oil Companies sought amendment to policy 6.5 (pCARP-3112) to more accurately reflect the consent pathway anticipated through the Schedule process (non-complying) and remove the potential absolute blockage in relation to the gateway test. I support the intent of the Oil Companies submission.

7.6 The s42A report suggests (page 10-6), the intent of the policy is to provide consent applicants and decision makers with a prompt in order to identify and detail the likely levels of effects and appropriate mitigation, such that offensive and objectionable effects are avoided. Policy 6.5 states:

Offensive and objectionable effects are unacceptable and the frequency, intensity, duration, offensiveness and location of discharges into air must be identified and managed.

7.7 In my view the drafting of the policy is at odds with the identified process in Schedule 2 for assessing and consenting offensive and objectionable odours. The policy can still perform the function of requiring applicants to consider the intended mitigation but as the pCARP intends a consent pathway where offensive and objectionable odours are identified, the policy provisions should clearly guide how decision making is to occur when such odours are identified. In my opinion the provision could be improved as follows:

Offensive and objectionable effects from discharges to air should be avoided. Where such effects are identified as unacceptable ~~and~~ through assessment of the frequency, intensity, duration, offensiveness and location of discharges, ~~into air must be identified and managed.~~ t~~T~~he effects are to be reduced and managed to acceptable levels.

Policy 6.7

7.8 The Oil Companies sought deletion of Policy 6.7 (pCARP-3113) on the basis that it would encourage or enable reverse sensitivity effects to occur. I support that submission. The s42A report indicates (page 10-7) that the policy is intended to manage legacy issues and no change is recommended. The policy states:

Where, as a result of authorised land use change, land use activities within the neighbourhood of a discharge into air are significantly adversely affected by that discharge, it is anticipated that within a defined time frame the activity giving rise to the discharge will reduce effects or relocate.

7.9 In my opinion the policy is not just focused on legacy issues and as a consequence it raises a number of other issues. It is not clear what "authorised land use change" is intended to mean. That could well be a single consent or designation as opposed to a rezoning, for example. Contrary to the intent it seems to me the policy appears to enable sensitive activities to locate in industrial zones and thereby give rise to reverse sensitivity effects in the future and force an otherwise appropriately located industry to relocate. This does not seem appropriate, particularly if they are already located in an industrial area. Further, because of the uncertainty over what is an authorised land use change, the policy could drive relocation of industry from a location due to a single consented sensitive receptor (or designation) and irrespective of any programme of improvements that the discharger may be proposing to implement over time in accordance with BPO.

7.10 There are a number of legacy issues and situations where the regulatory authorities may have issued consent for a sensitive activity without fully understanding the receiving environment of an area. Without more robust countervailing policy to protect established industrial dischargers there is a risk that the policy will be used to facilitate or encourage sensitive activities

to locate in such areas, or for industry to relocate. The policy should in my view be deleted. At the very least, if the Hearing Panel is minded to retain it, then it should be amended to reflect its intention to address historical situations and to focus on those situations where rezoning has facilitated the encroachment of sensitive activities/receptors (assuming the sensitive activity definition is addressed). This could be achieved as follows:

6.7 Where, as a result of historic rezoning of land ~~authorised land use change~~, ~~land use~~ sensitive activities within the neighbourhood of a discharge into air are significantly adversely affected by that discharge, it is anticipated that within a defined time frame the activity giving rise to the discharge will reduce effects or relocate.

Policy 6.10

7.11 The Oil Companies sought amendment to Policy 6.10 (pCARP-3114) so that the application of BPO was not limited to cumulative effects as follows:

All activities that discharge into air apply, at least, the best practicable option ~~so that cumulative effects are minimised~~.

7.12 I support the Oil Companies submission. The s42A states (p10-8) applying the BPO to all discharging activities is key to reducing contaminant concentrations within polluted airsheds and maximising the air resource outside polluted airsheds. I am not clear what is meant by maximising the resource, if it is intended to ensure that the quality is maintained then I can support that intent. The s42A report in relation to the Oil Companies submission states: *It is vital that in applying BPO, it is done in the context of the receiving environment, and consideration is given to cumulative effects. (p10-9).*

7.13 In my opinion the policy as drafted does not appear to require the application of BPO in all circumstances. The policy can be read as applying the BPO only in so far as cumulative effects are minimised. Therefore if there are no cumulative adverse effects then the BPO may not need to be applied. In my opinion it is not necessary to have the reference to cumulative effects in the policy. The definition of BPO in the RMA makes specific reference to minimising adverse effects on the environment, and the definition of effect under the RMA includes cumulative effects. It is not necessary to potentially limit the BPO consideration. I prefer to see the policy drafted as follows:

All activities that discharge into air apply~~, at least,~~ the best practicable option ~~so that cumulative effects are minimised~~.

Policy 6.11 and new reverse sensitivity policy

7.14 The Oil Companies sought amendment to Policy 6.11 (pCARP-3115) to more appropriately relate it to air discharges as follows:

Recognise the contribution of nationally and regionally significant infrastructure to the regional and national economy and provide for the air discharges from the operation and development of that infrastructure.

7.15 I support the intent of the submission. The Oil Companies also supported the intent of the Lyttelton Port Company (LPC) submission (pCARP-755) seeking an additional clause requiring that reverse sensitivity effects on regionally and nationally significant infrastructure are avoided. As already indicated, ifquarries are to be recognised as regionally significant infrastructure, I consider that such recognition should be achieved by specifically referring to quarries in the policy. The s42A report in relation to the LPC submission states that:

The Air Plan can only address discharging activities and the control of land use is to be provided for through district plans, as directed by the CRPS.

7.16 In my view the Air Plan can only control or regulate discharging activities, however it can still have objectives and policies addressing such matters as reverse sensitivity and those matters can still be implemented by methods other than rules in the Air Plan. This may include, for example, a method requiring District Plans to ensure reverse sensitivity effects are appropriately managed in order to protect appropriately located industrial activities and nationally and significant infrastructure (and quarries, should the Panel so choose).

7.17 In terms of the Oi Companies submission the s42A states:

Mobil, BP Oil & Z Energy seek to amend the policy to clarify that it is referring to discharges from significant infrastructure, not the infrastructure itself. While this is an important distinction, the policy provides guidance to decision makers to consider the broad implications of decisions on the development and operation of regionally and nationally significant infrastructure which is important in ensuring the correct balance is struck. Nationally and regionally significant infrastructure requires specific consideration because it is vital to the functioning of Canterbury and New Zealand.

7.18 I can understand that specific consideration needs to be given to significant infrastructure, however in my opinion it needs to be clear that the connection is

in relation to air discharges and the aspect of air discharge that is being considered also needs to be identified. I think the policy could be improved by clearly addressing discharges to and from such infrastructure. A separate policy on reverse sensitivity effects could be included based on the submissions of Carter Holt Harvey (pCARP-3019) and Lowe Corporation (pCARP-2619). This could be achieved as follows:

6.11 The operational and developmental requirements of location specific industry, nationally and regionally significant infrastructure [and mineral extraction activities] are provided for and the adverse effects of their air discharges on human health, property and the environment are managed. Adverse effects from other discharges onto such infrastructure should be avoided.

XXX: Incompatible land uses and activities are adequately separated or discharges are appropriately managed to avoid, remedy or mitigate adverse effects of air discharges, and reverse sensitivity conflicts.

Where considering the location of sensitive activities, avoid encroachment on or constraint of established activities discharging contaminants to ensure that land uses are and remain appropriately located.

Policy 6.21

7.19 The Oil Companies sought deletion of Policy 6.21 (pCARP – 3115) or amendment for the reason that the policy requires avoidance for exceedance of ambient guideline levels and the risk that the Guideline is to be used inappropriately as a de facto point source discharge standard. I support the intent of the Oil Companies submission.

7.20 The s42A report indicates (p13-7) that the policy does not provide sufficient discretion to apply the BPO and enable industrial and large scale discharges where they are appropriate and recommend making changes in R-6.21 as follows: *Policy 6.21 is amended to provide clear guidance as to what is to be achieved in applying BPO in different receiving environments and to refer to the NESAQ as well as Ambient Air Quality Guidelines.*

7.21 Unfortunately no specific wording has been provided to ascertain whether the amended policy is acceptable or otherwise. In the absence of such wording I suggest the following:

Ensure ~~Avoid,~~ the discharge of contaminants into air from any large scale burning device or industry or trade premise, ~~where the discharge~~ will not

result in the exceedance, or exacerbation of an existing exceedance in the ambient air of the guideline values set out in the Ambient Air Quality Guidelines 2002 Update or NESAQ targets.

8. RULES

Rules 7.47 and 7.59

8.1 The Oil Companies sought to retain 7.47 (abrasive blasting) (pCARP—3120) and 7.59 (catch-all rule) (pCARP-3121) without further modification. I support the submissions. The s42A report has recommended retention without further amendment. I support recommendations R-7.47 and 7.59.

Rule 7.3

8.2 The Oil Companies sought to retain Rule 7.3 subject to making it a discretionary rather than non-complying activity. I support that submission. The s42A report states (p11-3):

Many submitters (including the group of submitters lead by Carey Barnett) seek to amend the activity status to discretionary. Discretionary activity status does not reflect the significant scale of offensive and objectionable effects and would not implement Policy 6.5 of the pCARP. Instead, discretionary activity status would suggest that there are a wide range of circumstances in which offensive and objectionable effects would be considered acceptable.

8.3 As indicated in my evidence on Policy 6.5, I consider the policy needs to be amended to more appropriately reflect the process. Clearly offensive and objectionable odours are anticipated to arise from time to time, and be identified from complaint. Schedule 2 (which the Oil Companies supported retention of and which I also support) sets out a process by which such problem odours will be assessed and managed. In my view a discretionary activity status should be sufficient for this process. The key is that there is an assessment process, via consent, to go through. Any residual issues will be managed by condition and in some circumstances this may necessitate a programme of works for improvement over time. If the remaining discharges cannot be appropriately managed then the consent can always be refused. However it needs to be borne in mind that what is likely to drive offensive and objectionable complaints at any particular time will vary depending upon nature of the land uses and/or changes in receptors, including cultural changes in the landscape. Furthermore the nature of the discharges will

depend upon the FIDOL factors. Due to that variability is it reasonable to require all such exceedances (e.g. including a one off) to be non-complying.

8.4 For existing dischargers, encroachment of sensitive activities remains one of the greatest risks to ongoing operations. A discharger may have little ability to influence the way a District Council may exercise its planning functions (granting consent for a sensitive receptor in an industrial zone, for example, including on a non notified basis). While the drive through the CRPS and this pCARP should be to improve integrated management to avoid such situations arising, they will no doubt arise from time to time. It is for these reasons that an approach through use of a discretionary activity consent is supported (and which is, incidentally, the approach agreed with the Council through the proposed Auckland Unitary Plan process).

Rule 7.28

8.5 The Oil Companies sought deletion of Rule 7.28 (pCARP-3123), with the matter it was trying to address being dealt with via a permitted activity condition from which action could then be taken and consent obtained as necessary. I support the submission, even though I consider that the Oil Companies operations are unlikely to be affected by the rule. The s42A report does not explicitly address the Oil Companies submission points. The s42A report states (p13-13):

Rule 7.28 was developed as a component of an integrated approach to achieving better management of odour discharges.

8.6 The s42A report goes on to state:

Odour discharges that are unlikely to cause significant adverse effects are provided for in activity specific rules. Rule 7.28 ensures odour effects that may be minor or more than minor are appropriately avoided, remedied or mitigated.

8.7 The rule is as follows:

7.28 The discharge of odour, beyond the boundary of the property of origin, from an industrial or trade premise is a restricted discretionary activity, except where otherwise permitted or prohibited by rules 7.29 to 7.59 below.

The exercise of discretion is restricted to the following matters:

1. *The contents of the odour management plan to be implemented; and*
2. *The frequency of the discharge; and*
3. *The intensity of the discharge; and*
4. *The duration of the discharge**;** and*

5. *The offensiveness of the discharge; and*
6. *The location of the discharge; and*
7. *The matters set out in Rule 7.2*

8.8 In my opinion the approach is flawed. It is effectively setting a zero discharge odour threshold for any other industrial and trade premise discharge not otherwise specifically provided for via a catch all rule. This appears to be a higher threshold than that which applies to the specifically mentioned activities in rules 7.29 to 7.59 and where those rules are already targeting the likely discharges with the greatest potential for nuisance. It is not clear why the Council would or should want to control minor odour effects via consent process. It is intended to act as a "call in" provision on any activity where there is a deemed issue. While I understand that it is likely to be invoked only where there is a significant issue there is a problem with this approach, particularly given the s15 presumption in the RMA that no such discharge is allowed from such premises unless permitted in a plan.

8.9 In my view the key concerns are:

- A zero tolerance threshold beyond boundary (i.e. it applies to any detectable odour);
- Creates business uncertainty as the basis for consent and threshold is not known;
- The rule is at odds with the CRPS (Objective 14.2.2 which states: '*Enable the discharge of contaminants into air provided there are no significant localised adverse effects on social, cultural and amenity values, flora and fauna, and other natural and physical resources');*
- It is not targeted at otherwise significant discharges. There are many minor activities not provided for in rules 7.29 to 7.59. These tend to be smaller businesses;
- Likely to trigger unnecessary costs for many small businesses such as fish and chip shops, restaurants, cafes and bakeries; and
- Is potentially vulnerable to being manipulated by third party complaint and trade competitors.

8.10 The s32 report states in relation to odour management (p3-10):

The starting point is that offensive and objectionable effects are unacceptable and any activity causing offensive and objectionable effects has non-complying activity status. Below this threshold, any odour or dust discharging industrial or trade activity that is not otherwise permitted by

specific rules is subject to restricted discretionary activity status. Where industrial and trade premise discharges are permitted, that is generally conditional on odour and/or dust management plans being in place or the scale is such that odour and dust effects are in most cases insignificant. This provides a mechanism for managing the effects of dust and odour below the offensive and objectionable threshold.

The restricted discretionary rules ensure avoidance, remedy or mitigation of the effects is considered and conditioned on consents so that the process is transparent and the level of effect is understood. These provisions will require assessments of effect before activities establish and this will greatly reduce the risk of a discharging activity establishing without understanding the actual and potential effects they will have on the neighbourhood in which they are establishing.

8.11 In my view the pathways for managing odour are potentially inconsistent. If one is an activity provided for by rules 7.29 to 7.59, (e.g. discharge of petroleum products from a service station in accordance with 7.34) then the discharge is permitted, subject to the discharge not causing a noxious or dangerous effect; an odour management plan is in place if there is an odour discharge (or dust) beyond the boundary and the management plan is implemented and made available to the Council on request.

8.12 In the event of an odour complaint then it is anticipated that the Council will ask for a copy of the odour management plan and undertake an assessment in terms of Schedule 2. In the event that discharge is offensive and objectionable a non-complying consent will be required in terms of rule 7.3. In the event the discharge is less than offensive and objectionable then no consent is required. It could be that there may be some discussion between the parties about amending the management plan, but there is no mechanism in the pCRAP provided for that.

8.13 On the other hand a fish and chip shop or even the service station shop serving coffee and pies is an industrial and trade premise and may well have detectable odours that go beyond the boundary. This is particularly problematic on sites where there may well be other incidental discharges but as rule 7.1 applies it will make the more stringent rule apply for the same activity. So in the case of a service station any detectable odour from the shop (e.g. coffee) beyond the boundary is the basis for requiring that service station to a restricted discretionary activity.

8.14 Where there is an odour discharge beyond the boundary, restricted discretionary activity consent is required in terms of rule 7.28, as those

activities are not specifically provided for in rules 7.29 to 7.59. It is likely that such odours will not be considered to be offensive and objectionable but may well be detectable. There is no data in the s32 analysis that identifies the nature and scale of odour issues from these activities that would appear to warrant such intervention. There are potentially thousands of small businesses which could potentially be liable for consenting under rule 7.28. While it may not be the Councils intention to require a consent for such premises unless there is a significant issue brought to its attention, the rule is not set up on that basis and therefore places a very high compliance obligation on businesses and will likely place unnecessary costs on those business that seek to otherwise comply with the relevant rules.

8.15 In my opinion an alternative framework could and should be included in the pCARP, in part along the lines identified in the Oil Companies submission. This would entail including a permitted activity condition that establishes what the permitted threshold is for all industrial and trade premises, the exceedance of which would trigger a consent and/or enable some form of enforcement action to be taken if required. It would require establishing (for odour) a clear process within Schedule 2 that, in the event of an issue arising with odours from a premise, an assessment will be undertaken in accordance with Schedule 2 and that if the odour is found to be offensive and objectionable then a discretionary consent in terms of 7.3 will be required. If the odours are less than that threshold, but remain an issue, then an odour management plan will be required to be prepared and approved by the Council. The odour management plan will set out the basis (as set out in Schedule 2) of how the issues which can give rise to nuisance odour will be managed. Compliance with any relevant approved site odour management plan would also be a permitted activity condition. This would enable further action (enforcement or consent) to be undertaken should that be required. This would also enable Rule 7.28 to be deleted. This could be achieved by amending rule 7.3 and including a new permitted activity condition as follows:

XXX *The following controls apply to all activities that discharge contaminants to air.*

1.The discharge must not contain contaminants that cause, or are likely to cause, adverse effects on human health, property or the environment beyond the boundary of the premises where the activity takes place.
2.The discharge must not cause noxious, dangerous, offensive or objectionable odour (dust or smoke), beyond the boundary of the premises where the activity takes place; or

3.Where an odour (or dust or smoke) management plan has been prepared and approved in accordance with Schedule 2 odour (or dust or smoke) discharges beyond the boundary of the property are managed in accordance with that approved management plan for that property.

Permitted activity controls do not apply to the following activities:
a. mobile sources

b. fire fighting and other emergency response activities

7.3 The discharge of odour, dust or smoke into air that is:
a) noxious, dangerous, offensive or objectionable beyond the boundary of the property of origin when assessed in accordance with Schedule 2; or
b) is not complying with an approved (odour, dust or smoke) management plan for the property prepared in accordance with Schedule 2;

is a discretionary. ~~non-complying~~ activity.

8.16 In my opinion there may need to be some consequential changes made to Schedule 2 to clearly capture and spell out the approval process.

Rule 7.34

8.17 The Oil Companies sought to retain the intent of Rule 7.34 which permits discharges involving storage and transfer of petroleum products (pCARP-3125). However they also sought the inclusion of specific reference to odour in the main part of the rule and the deletion of conditions 2 and 3 relating to the preparation of odour management plans. The Oil Companies also supported the Vector submission (pCARP—809) that sought reference to LPG in the rule. I support the intent of the Oil Companies submissions and also note that LPG is also sold at many service stations.

8.18 The s42A report states on p13-14 that:

Chevron and Mobil, BP Oil & Z Energy seek deletion of Conditions 2 and 3 and Winstone Wallboards seeks to apply conditions only where the storage or transfer is of more than 1000l of petroleum products. The conditions are in place to ensure adverse effects are avoided, remedied or mitigated. However, adverse effects of this nature are only likely to occur when bulk quantities of fuel are involved.

8.19 I do not support the conditions in relation to odour management plans as drafted. As indicated above I have set out a process by which I consider the development of an odour management plan should occur. It should be the outcome of a Schedule 2 process as and when required (i.e. not meeting the

permitted activity condition), not an automatic requirement for all permitted activities before there has been any identified issue. This is particularly relevant for the likes of service stations, of which there may be expected to be significant numbers in the Canterbury Region. To produce such a plan for every site is a significant undertaking. There is no discussion in the s32 report on the basis and reasoning for why such activities should require the management plan, including having regard to complaint history and costs (including of implementation), what the historic issue around service stations or fuel facilities have been or what the number of complaints that would justify intervention of this type is.

8.20 As indicated I have set out above a basis for addressing odour issues. In my view a management plan should be the outcome of an issue triggering the Schedule 2 process, not the beginning. Once a management plan is in place and approved then that can be the basis upon which ongoing discharges are managed while still retaining the permitted activity status. As a consequence I support the provision being amended as follows:

The discharge of contaminants, into air from the storage or transfer of petroleum products <u>and LPG</u>, including vapour ventilation and displacement, is a permitted activity provided the following conditions are met:

1. *~~1.~~ The discharge does not cause a noxious or dangerous effect; ~~and~~*
2. *~~2. If there is a discharge of odour or dust beyond the boundary of the property of origin, an odour and/or dust management plan prepared in accordance with Schedule 2 must be held and implemented by the persons responsible for the discharge into air; and~~*
3. *~~3. The odour and/or dust management plan is supplied to the CRC on request~~*

An odour discharge management plan would then only be required in the event that it was established that the permitted activity rule was not met. In that case, the options would be to obtain consent (where the odour has been assessed as offensive and objectionable and which could, amongst other things, sanction an odour management plan) or to manage odour to meet the permitted activity rule through the implementation of an agreed odour discharge management plan. In the event that the discharge could not meet the approved odour management plan it would trigger a discretionary consent in terms of rule 7.3. .

9. CONCLUSION

9.1 My evidence has identified a number of amendments to the definitions in particular that relating to sensitive activities. It is considered necessary to draw the distinction between sensitive receptors and sensitive areas. To do otherwise creates interpretative issues, especially in relation to the likes of implementing Schedule 2 (i.e. a service station in a residential zone would be both a sensitive activity and a discharger).

9.2 In relation to the objectives and policies, while a number of them are supported my evidence has focused on further amendments that I consider offer improvement and address a number of deficiencies, particularly in relation to the overall balance of the Plan, which primarily can only focus on discharging activities notwithstanding numerous issues arising from land use decision making. In the interest of business certainty and workability, a number of amendments are proposed.

9.3 In terms of the rules, I consider that there needs to be a different approach to odour management. I support establishing a permitted threshold rule that, if not achieved, would trigger a Schedule 2 process where an approved odour management plan would be required, or where a discretionary activity consent would be required (if objectionable and offensive). The permitted rule would also ensure that subsequent ongoing discharges from such premises were required to comply with the approved plan. Deletion of 7.28 would reduce compliance costs for many numerous small businesses that would otherwise be captured by the rule, as that rule requires a zero odour tolerance before consent is triggered.

David le Marquand
18th September 2015.

ATTACHMENT A

RELEVANT EXPERIENCE AND QUALIFICATIONS

I am a Director of Burton Planning Consultants Limited and have over 30 years' experience in the planning system in New Zealand. This includes experience in the public and private sectors and in consents, policy and compliance work across a range of developments.

QUALIFICATIONS AND PROFESSIONAL MEMBERSHIPS:

Bachelor of Arts (Geography) The University of Auckland 1978
Master of Arts (Geography) The University of Auckland 1980

My thesis was on The Dynamics of Some Waitemata Harbour Beaches

I am a member of the Resource Management Law Association

WORK HISTORY:
July 1995 – present
Associate then from 2003 Director, Burton Planning Consultants Limited
Various land use and regional consents for major clients. Analysis of proposed district and regional plans, plan changes and variations and submissions. Evidence preparation and presentation in various fora. Strategic policy development and participation in various fora. Appeal drafting and settlement.

1998 - May1995
Senior Environmental Policy Analyst, Ministry for the Environment
Environmental and resource management advice on Governments environmental policies to local authorities, tangatawhenua, environmental and other groups. Input to RMA development. Monitoring of RMA implementation. Analysis of proposed plans, plan changes and policy statements. Preparation of submissions and evidence preparation. Monitoring regional developments and response to Government policies identifying problems and solutions including policy development.

1983-1988
Scientist, Planning Section, Water and Soil Directorate, Ministry of Works and Development.
Advice to National Water and Soil Conservation Authority (NWASCA) on effectiveness of Government and NWASCA policy. Policy development on flood reduction, geothermal management, water and soil management planning, coastal resources survey. Management of $5m resource management grant programme to catchment authorities.

1980 -1983
Advisory Officer then Section Officer, Central Regional, Harbours and Foreshores, Ministry of Transport.
Processing and approval of consents in the coastal marine area under the Harbours Act 1950. Representation of Ministry at various Committees and other fora. Investigations, litigation and prosecutions.

My principal role at Burton Consultants has been to provide planning and resource management consenting and policy advice to clients in relation to various projects and planning instruments. This has included preparation of consent applications, AEEs, designations, policy analysis, submissions and appeals for a range clients including numerous infrastructure clients including Mobil, BP, Z Energy, Chevron, New Zealand Oil Services Limited, Wiri Oil Services Limited, Powerco, Transpower, Enerco, Telecom, TVNZ, Liquigas, Eastland Energy, North Shore Events Centre, AIAL and the Lines Company. I have 20 years specialist experience in relation to the

oil industry. This includes numerous resource consent applications (land use and discharge) and planning issues, including risk matters, for service stations and oil storage terminals in Bluff, Timaru, Lyttelton, Nelson, Wellington, Napier, New Plymouth, Tauranga, Auckland, Marsden Point and Wiri. I also provide planning advice to the Oil Industry Environmental Working Group (OIEWG), which currently comprises of Mobil Oil NZ Ltd, Z Energy Ltd and BP Oil NZ Ltd. It also includes associate members from MTA (Motor Trade Association), Refinery NZ and NZ Oil Services Ltd. OIEWG has been involved in the development of a number of guidelines, including the following:

- Guidelines for assessing and managing petroleum hydrocarbon contaminated sites in New Zealand (revised 2011)
- Environmental guidelines for water discharges from petroleum industry sites in New Zealand 1998
- Above-ground Bulk Tank Containment Systems: Environmental Guidelines for the Petroleum Marketing Companies

OIEWG has submitted on a range of regional policy statements, regional plans and district plans throughout the country in relation to matters that affect the oil industry operations, and in particular, matters relating to hazardous substances, contaminated land, earthworks, air, freshwater, stormwater, natural hazards, zoning matters and various performance-based provisions.

ATTACHMENT B

Proposed Amendments to Provisions in pCARP.

RELIEF SOUGHT –

1. **Retain the definition of Petroleum Product as recommended in s42A report without amendment as follows:**

   Petroleum Product

   Means a chemical that is produced as a result of refining or physical treatment of petroleum, or as a result of a chemical process in which petroleum is a reagent.

2. **Retain the definition of Hazardous Substances but include the full HSNO definition as included in s42A report by adding the following at the end of the definition:**

   Hazardous Substances

   Means any substance with one or more of the following intrinsic properties: substance
   1. Explosiveness; or
   2. Flammability; or
   3. A capacity to oxidise; or
   4. Corrosiveness; or
   5. Toxicity (including chronic toxicity); or
   6. Ecotoxicity, with or without bioaccumulation; or
   7. Which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in 1. to 6. above; or
   8. Which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any 1 or more of the properties specified in paragraph (a).

3. **Amend the definition of Reverse Sensitivity as follows:**

   Do not include definition for reverse sensitivity, but if so minded include a broader definition than that provided in s42A report as follows:

Reverse Sensitivity

means the effect on established activities from the introduction of new activities into the same environment, where the new activities may raise concerns or complaints which could constrain the established activity through additional , restriction or limitation on operations or mitigation of effects.

4. **Adopt s42A recommendations and do not include a definition of Regionally Significant Activity as proposed by CAPG.**

5. **Delete definition of "Sensitive site" and amend the definition of Sensitive Activity by separating out sensitive activities and sensitive areas as follows:**

Sensitive Activities

Activities sensitive to air discharges:
Includes:

- *Dwellings*
- *Accommodation facilities*
- *Facilities for education, community, worship, entertainment and healthcare and other care purposes*
- *Marae Complex*
- *Non target crops*

Sensitive Area

Sensitive Area: means:
(a) the area within the notional boundary of an occupied dwelling; or
(b) a residential area or zone as defined in a district plan; or
(c) a public amenity area, including those parts of any building and associated outdoor areas normally available for use by the general public, excluding any areas used for services or access areas.

Make all necessary consequential changes through Plan as a result.

6. **Combine Objective's 5.1 and 5.2 as follows:**

~~Where~~ Ambient air quality ~~provides for people's health and wellbeing~~ ~~it~~ is maintained where it is of good quality, and improved over time where it is of poor quality.

7. **Amend Objectives 5.3, 5.5, 5.6 in accordance with s42A report as follows:**

Objective 5.3

Air quality ~~protects~~ is managed to ensure the mauri/life supporting capacity of ~~the environment~~ air is maintained for future generations

Objective 5.5

Discharges to air ~~do not adversely effect~~ are managed in a way that recognises and provides for the relationship of Ngāi Tahu with their culture and traditions.

Objective 5.6

Developments and innovation in technology ~~are enabled to~~ which have the potential to provide solutions to air quality issues are recognised and appropriately provided for.

8. Delete Objective 5.8 and replace with amended wording based on Hort NZ submission (pCARP-1068) as follows:

Objective 5.8

Manage air quality to reflect the different receiving environments across the region, taking into account the location, expectations and characteristics of the background receiving environment.

9. Amend Objective 5.4 as recommended in s42A report as follows:

Objective 5.4

Discharges to air are managed ~~to maintain~~ in accordance with the amenity values of the relevant receiving environment.

10. Amend Objective 5.7 as follows:

Objective 5.7

Air discharges are managed so that n~~N~~ationally and regionally significant infrastructure is enabled and is resilient and positively contributes to economic, cultural and social wellbeing through its efficient and effective operation, on-going maintenance, repair, development and upgrading.

11. Amend Objective 5.9 as follows:

Objective 5.9

Industrial discharging activities near or in sensitive activities and/or areas

should preferably be ~~are~~ spatially located or otherwise managed so that ~~they result in~~ appropriate air quality outcomes are ~~being~~ achieved both at present and in the future.

12. **Retain Policies 6.1, 6.4, 6.6, 6.8, 6.12, 6.14, 6.19, 6.20, 6.22, 6.23 and 6.24 without amendment an in accordance with the s42A report as follows:**

Policy 6.1

Discharges of contaminants into air, either individually or in combination with other discharges, do not cause:
a Adverse effects on human health and wellbeing; or
b Significantly diminished visibility; or
c Corrosion or significant soiling of structures or property; or
d Adverse effects on the mauri/life supporting capacity of ecosystems, plants or animals.

Policy 6.4

Reduce overall concentrations of $PM_{2.5}$ in clean airzonesso that by 2030 $PM_{2.5}$ concentrations do not exceed 25µg/m^3 (24 hour average), while providing for industrial growth.

Policy 6.6

Discharges of contaminants into air, and the effects of those discharges, occur in appropriate locations, taking into account the distribution of land use as provided for by the relevant district plan.

Policy 6.8

Where activities that discharge into air locate appropriately to avoid the potential for reverse sensitivity effects, then longer consent duration may be available to provide ongoing operational certainty.

Policy 6.12

Recognise that there is likely to be improvement in the management of the discharges of contaminants into air over the life of resource consents and consider this for new and replacement consents.

Policy 6.14

Adopt the precautionary approach when assessing the effects of discharges where the effects are not predictable because of uncertainty or absence of information.

Policy 6.19

Enable discharges of contaminants into air associated with large scale, industrial and trade activities and nationally and regionally significant infrastructure, in locations where the discharge is compatible with the surrounding land use pattern and while ensuring that adverse effects on air quality are minimised.

Policy 6.20

Apply the best practicable option to all large scale and industrial activities discharging contaminants into air so that degradation of ambient air quality is minimised.

Policy 6.22

Within Clean Air Zones, significant increases of PM10 concentrations from discharges of contaminants are to be offset in accordance with the Resource Management (National Environmental Standards for Air Quality) Regulations 2004.

Policy 6.23

Provide for the strategic management of electricity supply by electricity network suppliers, where network generation capacity is significantly reduced due to meteorological conditions, while ensuring the use of distributed diesel generation in this circumstance is limited to the period of the supply crisis and preference is given to the use of generators outside of Clean Air Zones.

Policy 6.24

The discharge of contaminants into air from waste management processes, other than combustion of waste, is acceptable where the waste management activity is appropriately located and where offensive or objectionable effects or adverse effects on human health are avoided.

13. Delete Policy 6.2 and Policy 6.3 and replace with a single policy as follows:

Policy 6.2/6.3

~~Minimise adverse effects on air quality where concentrations of contaminants are between 66% and 100% of the guideline values set out in the Ambient Air Quality Guidelines 2002 Update, so that concentrations do not exceed 100% of those Guidelines values.~~
~~Where concentrations of contaminants exceed 100% of guideline values set out in the Ambient Air Quality Guidelines 2002 Update, action is taken to improve air quality.~~

Manage discharges to air to ensure the Ambient Air Qualities Guidelines 2002 are complied with.

14. Amend Policy 6.5 as follows:

Policy 6.5

Offensive and objectionable effects from discharges to air should be avoided. Where such effects are identified as unacceptable ~~and~~ through assessment of the frequency, intensity, duration, offensiveness and location of discharges ~~into air must be identified and managed.~~ The effects are to be reduced and managed to acceptable levels.

15. Delete Policy 6.7 or if the Panel are minded to retain then amend the policy as follows:

Policy 6.7

~~Where, as a result of authorised land use change, land use activities within the neighbourhood of a discharge into air are significantly adversely affected by that discharge, it is anticipated that within a defined time frame the activity giving rise to the discharge will reduce effects or relocate.~~

Or

Where, as a result of historic rezoning of land ~~authorised land use change~~, ~~land use~~ sensitive activities within the neighbourhood of a discharge into air are significantly adversely affected by that discharge, it is anticipated that within a defined time frame the activity giving rise to the discharge will reduce effects or relocate.

16. Amend Policy 6.10 as follows:

Policy 6.10

All activities that discharge into air apply, ~~at least,~~ the best practicable option ~~so that cumulative effects are minimised~~.

17. Amend Policy 6.11 and add a new Policy as follows:

Policy 6.11

The operational and developmental requirements of location specific industry, nationally and regionally significant infrastructure and mineral

extraction activities are provided for and the adverse effects of their air discharges on human health, property and the environment are managed Adverse effects from other discharges onto such infrastructure should be avoided.

Policy X.XX

XXX: Incompatible land uses and activities are adequately separated or discharges are appropriately managed to avoid, remedy or mitigate adverse effects of air discharges, and reverse sensitivity conflicts.

Where considering the location of sensitive activities, avoid encroachment on or constraint of established activities discharging contaminants to ensure that land uses are and remain appropriately located.

18. Amend Policy 6.21 as follows:

Policy 6.21

Ensure ~~Avoid,~~ the discharge of contaminants into air from any large scale burning device or industry or trade premise, ~~where the discharge~~ will not result in the exceedance, or exacerbation of an existing exceedance in the ambient air of the guideline values set out in the Ambient Air Quality Guidelines 2002 Update or NESAQ targets.

19. Retain Rules 7.47 and 7.59 without amendment as follows:

Rule 7.47

The discharge of contaminants into air from temporary dry or wet abrasive blasting is a permitted activity provided the following conditions are met:

1. *The discharges to air are only form the operation of a mobile abrasive blasting unit used at any one property for no more than 10 days in any 12 month period; and*
2. *Abrasive blasting is only undertaken when it is impracticable or unreasonable to remove or dismantle or transport a fixed object or structure to be cleaned in an abrasive blasting booth; and*
3. *The maximum quantity of dry abrasive blast media used does not exceed 60kg per hour; and*
4. *The free silica content of a representative sample of the blast material is less than 5% by weight; and*
5. *There is no blasting of lead-based paints; and*
6. *The discharge of particulate matter is contained within the immediate area of the abrasive blasting so that particulate does not escape into the environment; and*
7. *The discharge does not cause a noxious or dangerous effect and*

8. *If there is a discharge of odour or dust beyond the boundary of the property of origin, an odour and/or dust management plan prepared in accordance with Schedule 2 must be held and implemented by the persons responsible for the discharge into air; and*
9. *The odour and/or dust management plan is supplied to the CRC on request; and*
10. *The abrasive blasting unit discharge will be only from:*
    a. *Dry abrasive blasting using: garnet; sodium bicarbonate; crushed glass; or agricultural sourced media such as crushed corn cobs, walnuts; or*
    b. *Wet abrasive blasting using only water*

Rule 7.59

Any discharge of contaminants into air from an industrial or trade premise or process that does not comply with the appropriate permitted activity rule and conditions, and is not prohibited, and is not otherwise provided for by rules 7.3, 7.4 or 7.28 - 7.58 is a discretionary activity.

20. Delete Rule 7.28 as follows:

~~*Rule 7.28*~~

~~*The discharge of odour, beyond the boundary of the property of origin, from an industrial or trade premise is a restricted discretionary activity, except where otherwise permitted or prohibited by rules 7.29 to 7.59 below.*~~

~~*The exercise of discretion is restricted to the following matters:*~~

~~*1. The contents of the odour management plan to be implemented; and*~~
~~*2. The frequency of the discharge; and*~~
~~*3. The intensity of the discharge; and*~~
~~*4. The duration of the discharge; and*~~
~~*5. The offensiveness of the discharge; and*~~
~~*6. The location of the discharge; and*~~
~~*7. The matters set out in Rule 7.2*~~

21. Amend Rule 7.3 and include a new Policy as follows:

Rule X.XX

The following controls apply to all activities that discharge contaminants to air.

1.The discharge must not contain contaminants that cause, or are likely to cause, adverse effects on human health, property or the environment beyond the boundary of the premises where the activity takes place.

2.The discharge must not cause noxious, dangerous, offensive or objectionable odour (dust or smoke), beyond the boundary of the premises where the activity takes place; or
3.Where an odour (or dust or smoke) management plan has been prepared and approved in accordance with Schedule 2 odour (or dust or smoke) discharges beyond the boundary of the property are managed in accordance with that approved management plan for that property.

Permitted activity controls do not apply to the following activities:
a. mobile sources
b. fire fighting and other emergency response activities

Rule 7.3

The discharge of odour, dust or smoke into air that is:

a) noxious, dangerous, offensive or objectionable beyond the boundary of the property of origin when assessed in accordance with Schedule 2; or
b) is not complying with an approved (odour, dust or smoke) management plan for the property prepared in accordance with Schedule 2;

is a discretionary. ~~non-complying~~ activity.

22. Amend Rule 7.34 as follows:

Rule 7.34

The discharge of contaminants, into air from the storage or transfer of petroleum products and LPG, including vapour ventilation and displacement, is a permitted activity provided the following conditions are met:

~~1.~~ The discharge does not cause a noxious or dangerous effect; ~~and~~
~~2. If there is a discharge of odour or dust beyond the boundary of the property of origin, an odour and/or dust management plan prepared in accordance with Schedule 2 must be held and implemented by the persons responsible for the discharge into air; and~~
~~3. The odour and/or dust management plan is supplied to the CRC on request~~