BEFORE THE UPPER HUTT HEARINGS PANEL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of Proposed Plan Change 45 (Signs) to the Upper Hutt District Plan

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STATEMENT OF EVIDENCE OF MATTHEW JAMES THODE
FOR
Z ENERGY LTD, MOBIL OIL NZ LTD, BP OIL NZ LTD (THE OIL COMPANIES)
(Submitter # 3 and Further Submitter)

Finalised: 1 May 2019

For Hearing: 8 May 2019

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1. INTRODUCTION

1.1 My full name is Matthew James Thode and I have practised resource management for 11 years. I hold the qualifications of Bachelor of Arts and a Masters in Planning Practice (Honours), both from the University of Auckland. I am a Senior Planning and Policy Consultant at 4Sight Consulting, a position I have held for approaching 2 years. Initially I worked in 4Sight's Auckland office, although I have recently shifted to the company's Wellington based office.

1.2 My previous roles in resource management have included being a Planner, and consequently Senior Planner, in the Resource Consents Team at Auckland City Council and Auckland Council from 2007 until 2015. Between 2015 and 2017 I worked in the United Kingdom at both London Borough of Enfield and London Borough of Hackney as a Senior Planner, before returning to New Zealand in 2017 to take up my current position at 4Sight Consulting.

1.3 The issues addressed in this brief are within my area of expertise. I was not involved in the preparation of the submissions or further submissions but have become involved in this matter at evidence stage due to one of my colleagues being on leave.

1.4 This statement of evidence relates to the hearing of Proposed Plan Change 45 (Signs) and focuses on the submissions and further submissions of the Oil Companies. All amendments sought are set out in this evidence, however not all submissions or further submissions are addressed in detail within the body of this evidence. All submissions and further submissions are addressed in **Attachment A** to my evidence, which records the nature of each, the recommendation made in the Section 42A (*s42A*) Report and the position taken in relation to each of those submission points and recommendations.

1.5 The body of my evidence focuses on those matters where there is disagreement with the recommendations in the s42A Report. Where I disagree, in all cases I offer an alternative recommendation for the Panel to consider. For ease, I have adopted the standard track changes formatting of strikethrough for deletions and underline for additions. In all cases, my track changes are proposed to the

provisions as per the recommendations in the s42A Report (not to the provisions as proposed).

1.6 I have read the Environment Court's Practice Note 2014 as it relates to expert witnesses. My brief of evidence has been 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.

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

1.8 In preparing this evidence I have reviewed the Council's s42A Report and have also considered the following documents:

(a) The notified version of the Plan Change;
(b) The submissions and further submissions of the Oil Companies;
(c) The comments made on behalf of the Oil Companies to the draft s42A Report;
(d) The Regional Policy Statement for the Wellington Region (2013);
(e) The Resource Management Act 1991 (*RMA*).

2. SUBMISSION 3.7 – POLICY 8A.3.3.3(b)

2.1 Policy 8A.3.3.3(b) reads as follows:

8A.3.3.3 Ensure that the location and design of signs is provided for in a way that:
(a) …; and
(b) maintains the character and visual amenity of the site and surrounding area, and does not result in additional visual clutter or dominate the skyline; and

2.2 The Oil Companies sought to retain Policy 8A.3.3.3(b) subject to an amendment to acknowledge that the erection of signage will alter the visual amenity and character of a site, and that any such change should not detract from the character and amenity of the site and surrounding area.

2.3 The recommendation in the s42A Report is to reject the submission (refer Para 57, Page 12) because, in summary:

- The use of the term "maintains" is in reference to the surrounding context and therefore is not unduly restrictive or inflexible, as would be the case with use of stronger avoidance terms such as 'prevent' or 'protect'; and
- The rule framework provides a permitted baseline for comparison so that the requested amendment would be unnecessary and could result in "lowering" the intent of the policy.

2.4 I disagree with the rationale and recommendation in the s42A Report.

2.5 With respect to the second bullet point, while the existing environment must be considered in relation to the assessment of effects, the permitted baseline is discretionary in its application and therefore cannot be relied upon to provide a definitive baseline against which to assess effects: only the existing environment does that. As such the existing environment is the only thing that maintenance is guaranteed to be assessed against.

2.6 With respect to the first bullet point, the ordinary definition of 'maintains' means to cause or enable to continue. A policy directive to maintain the character and visual amenity of the site can therefore essentially be read to imply that the existing character and amenity (or the surrounding context) is to be continued. The requirement to maintain should, in my opinion, be linked to the standard of character and amenity to be maintained (eg: maintains a *reasonable / good* standard of character and amenity), rather than amenity and character per se.

2.7 Furthermore, I consider it good practice when writing policy provisions to ensure the terminology and choice of words is the same throughout the policies wherever the provision recurs and is to be read in the same way.

2.8 In this case amenity is used in three of the signs policies as follows (and with my emphasis):

8A.3.3.1 Manage the number, size and design of signs in the Open Space Zones, Rural Zones, and Residential Zones to <u>maintain the character and amenity values</u> of these zones.

8A.3.3.2 Provide for a range of signs in the Business Zones, and Special Activity Zones that support business identification and advertising, while:
(a) <u>maintaining the character and amenity values</u> of these zones; and

(b) ensuring that the character and amenity values of adjoining residential zones are not adversely affected by signs in these locations; and …

8A.3.3.3 Ensure that the location and design of signs is provided for in a way that:
…
(b) maintains the character and visual amenity of the site and surrounding area, and does not result in additional visual clutter or dominate the skyline; and…

2.9 The absence of the term 'values' after amenity in Policy 8A.3.3 could be read to mean that it is the character and visual amenity itself that is to be maintained, rather than the character and amenity values. Noting that 'visual amenity' is simply a subset of 'amenity', there does not appear to be a reason for the different terminology.

2.10 In my opinion, the term "values" should be included in Policy 8A.3.3.

2.11 I consider that the recommendation in the s42A Report should be rejected. Submission 3.7 should be accepted in part and, to meet the intent of the Oil Companies submission, Policy 8A.3.3.3(b) should be amended as follows:

… (b) maintains the character and visual amenity values of the site and surrounding area, and does not result in additional visual clutter or dominate the skyline; and…

3. FURTHER SUBMISSION - RULE 8A.3.4.6

3.1 The Oil Companies opposed a request by NZTA (submission 6.10) to include two, extensive new rules relating to temporary signs and signs visible from roads, and to also include a number of additional ("good practice") standards for illuminated signage. The Oil Companies opposed the inclusion of the standards insofar as the justification for the changes was that they would control digital signs, however the changes sought did not appear to apply only to that part of a sign which is digital, but to the sign itself.

3.2 The Oil Companies sought that if the standards were to be included, they should only be applied to that part of a sign that is digital. At a service station, for example, the pricing component of the prime sign might be subject to the digital signs standards, but the balance of the prime sign would be subject to the standards that did not relate to digital signage.

3.3 The recommendation in the s42A Report is to accept the submission of NZTA in part (refer Para 104, Page 20) and to include the rules, albeit as amended.

3.4 While I agree with the rationale in the s42A Report (that only the 'digital' elements of the sign should be assessed for purposes of Rule 8A.3.4.6) the rule does not read that way. Rule 8A.3.4.6 reads as follows (my emphasis):

Any sign (including temporary signs) which incorporates movement or changing content, and digital signage.

3.5 Acknowledging that, the s42A Report recommends that, to avoid confusion, an 'Advice Note' should be added below Table 8A.3.4 to clarify only the 'digital' elements of the sign will be assessed for purposes of Rule 8A.3.4.6 (refer Para 107, Page 21).

3.6 While I agree that the clarification is required, I do not support the recommendation to include an advice note below Table 8A.3.4 ["*For the purposes of Rule 8A.3.4.6, only the digital components of the sign will be subject to the rule*."] to provide the necessary clarification.

3.7 In my opinion, the rule itself should clearly state the activity status an activity will fall into. An advice note should not be needed to interpret a rule: the wording of the rule should be clear and certain and should convey the intent without any need for further clarification.

3.8 In this case, while the advice note is clear in how the Council (or an applicant, or a submitter in some cases) *might* approach the rule, the advice note appears to be contrary to the proper interpretation of the rule itself. As such, the advice note may well be declared invalid if challenged in a Court, such that the rule was applied to the entire sign.

3.9 I consider that the proposal in the s42A Report to include the advice note should be rejected. The further submission of the Oil Companies should be accepted, and the Activity Status Table (Rule 8A.3.4.6) should be amended as follows:

Any part of a sign (including temporary signs) which incorporates movement or changing content~~, and~~ or digital signage.

Subject to that change, no advice note would be necessary, and the proposed advice note should be deleted as follows:

~~*For the purposes of Rule 8A.3.4.6, only the digital components of the sign will be subject to the rule.*~~

3.10 The following deletions to the standards for permitted activity signs are also required as a consequential change, to recognise that any part of a sign which incorporates movement, changing content or digital signage will not be permitted and therefore that standards relevant to such signs are inappropriately included as permitted activity standards.

8A.3.4.8 Temporary signs – all zones
(a) …
~~*(d) Is not a digital sign or incorporates movement or changing content*~~

8A.3.4.11 Signs on buildings and other structures in Business Commercial Zones, Business Industrial and Special Activity Zones
…
(h) Signs must;
~~*(i) not have changing content;*~~
~~*(ii) not be in a digital format*~~

8A.3.4.13 Traffic safety - All signs
…
~~*(g) Is not a digital sign or incorporates movement or changing content visible from a state highway or road*~~
~~*(h) No sign will include any flashing and/or revolving lights*~~
(i) All illuminated ~~*and digital*~~ *signs visible from a road must be designed, installed and maintained to ensure they do not exceed the following luminance standards;*
…

3.10 In a similar vein, the s42A Report recommends amending Rule 8A.3.4.11(h) [Signs on buildings and other structures in Business Commercial Zones, Business Industrial and Special Activity Zones] to include a requirement that they [(iii)] *be situated on the site to which the sign relates*. In my opinion, such an inclusion is unnecessary because any sign (other than a temporary sign) which is not situated on a site to which the sign relates, is automatically a discretionary activity (Rule 8A.3.4.7). As such, the new standard [iii] is redundant. For completeness, the permitted activity standards for temporary signs are contained in 8A.3.4.8 (not 8A.3.4.11).

4. SUBMISSION 3.11 - RULE 8A.3.4.13(f)

4.1 The Oil Companies sought an amendment to clause 3 of condition (f) of Rule 8A.3.4.13 relating to signage visible from State Highways. The rule reads as follows:

(f) Where any sign is visible from the State Highway and the speed limit is 70km/hr or greater, the sign shall:
(i) Have a minimum letter height of 160 mm;
(ii) Contain no more than six words and no more than 40 characters; and
(iii) Be located so as to provide an unrestricted view to the motorist for a minimum distance of 180 metres.

4.2 The Oil Companies sought to clarify the nature of the 'unrestricted view' to be provided to motorists. The Oil Companies considered the intent of clause (iii) was to ensure the placement of signage does not obstruct motorists' view of the road, and an amendment to clarify that is required.

4.3 The recommendation in the s42A Report is to reject the submission (refer, Para 162, Page 30) because it is considered that the insertion of the phrase 'of the road' could result in an unintended narrowing of the scope by excluding other components such as visibility splays from driveways.

4.4 I accept the concern in the s42A Report about the unintended consequences of the rule and note that the Oil Companies concerns lay with clarity of intent.

4.5 The rule relates to *any* sign visible from the State highway where the speed limit is 70km or greater. It also relates to *any* unrestricted view including those into land on either side of the road. The concern that I have is that almost any sign visible in such circumstances will inherently restrict a motorist's view because a motorist will be unable to see behind the sign. The issue to me, is whether it is important for the motorist to be able to see behind the sign (ie: whether or not the sign needs to be controlled because it restricts the view of the motorist travelling along the State highway in a way that is unsafe). Accordingly, in my opinion, the concern about unintended consequences still needs to be addressed, because strictly speaking, retention of the current wording will mean that a sign that restricts a motorist's view in any way (including into a site, where, for example, a sign on a building would restrict a view to a building) would be captured – which is too broad in intent.

4.6 I consider that the proposal in the s42A Report to retain Clause (iii) should be rejected. The submission of the Oil Companies should be accepted, and as an alternative relief to that specified in the submission, and to address the concern about interpretation, I suggest that Clause (iii) be amended as follows:

iii. be located so as to <u>not unsafely obstruct or hinder the</u> ~~provide an unrestricted~~ view to the motorist for a minimum distance of 180 metres

5. FURTHER SUBMISSION - RULE 8A.4.3.13 (a) and (c)

5.1 The Oil Companies opposed in part a request by NZTA (submission 6.13) to insert a new standard (8A.3.4.13 (h) which sought, in addition to standards for 8A.4.3.13 (a) and (c), to add standards relating to the location of signs (amongst other things) in relation to roads.

5.2 The recommendation in the s42A Report is to reject the further submission of the Oil Companies and accept (albeit in part) the submission of NZTA (refer Para 167, Page 31). The s42A Report states that there is no duplication and recommends that the new standards be accepted insofar as they are incorporated within existing clause (c), rather than as a separate clause. In response to the NZTA submission, the S42A Report proposes amending standard 8A.3.4.13 (c) to include clauses (i) and (ii) as follows:

(c) No sign may restrict the line of sight to any intersection, bend or corner on a road, and;
(i) Within road environments with a posted speed environment of <70km/h no signs shall be located 100m from an intersection and/or permanent regulatory or warning or advisory sign and/or traffic signal, and/or pedestrian crossing
(ii) Within road environments with a posted speed environment of >70km/h no signs shall be located 200m from an intersection and/or permanent regulatory or warning or advisory sign and/or traffic signal, and/or pedestrian crossing

The concern raised about the interpretation of the phrase 'road environment' does not appear to have been addressed.

5.3 The Oil Companies considered that the additional standards sought:

- Duplicated the intention of standard 8A.3.4.13 (a); and
- Were unclear in their application because they specifically applied to signs 'within road environments' and the term 'road environment' is not defined and nor is there any submission seeking to propose to include a definition (ie: the inclusion of a definition through this process is likely to be beyond

scope). The Oil Companies considered that the phrase 'road reserve' is more appropriate than 'road environment'. A definition of 'road reserve' would not be required as it has a clear and standardised meaning.

5.4 I do not consider that the recommendation adequately addresses the concerns raised in the Oil Companies further submission.

5.5 New clauses (i) and (ii) seek to control signs within 'road environments'. 'Road environments' is not defined. I am assuming that the intention is not to limit the standard to a road reserve, or the phrase road reserve would have been used. Presumably a 'road environment' would have to be defined on a case by case basis however, and problematically, there is no criteria by which it would or could be consistently defined. I contrast this, for example, to the phrase 'coastal environment' which is much broader than the coast, which has to be defined on a case by case basis, and where clear criteria are included in policy documents relying on the phrase in order to ensure it is appropriately and consistently defined. In many cases, the 'coastal environment' is also mapped. That does not occur here. Accordingly, the application of the rule depends on how 'road environment' is defined.

5.6 If 'road environment' is broadly defined to include the road reserve and the environment adjacent the road reserve that is visible to or otherwise connected to the road, then the rule would prevent the erection of a wide range of signs that might otherwise be permitted. This includes signs on buildings, site identification signs and those required for traffic direction, for example: parking signs or directional arrow signs irrespective of whether such signs are hazardous to safe traffic movement or not. There is no Section 32 analysis to support the inclusion of such far-reaching permitted activity standards and in my view the inclusion of these clauses is unnecessary and inappropriate. The cost of all such signs having to be sanctioned via resource consent may well outweigh the benefit, particularly when you examine the existing requirements.

5.7 The existing primary standard in 8A.3.4.13 (c) requires that no sign may restrict the line of sight to any intersection, bend or corner on a road. That standard is, in my opinion, clear, simple and effective. It can stand on its own without clauses (i) and (ii). Furthermore 8A.3.4.13 (a) states that no sign shall be located so that it obstructs or obscures any traffic sign or signal, or any official road sign, which I expect to include any permanent regulatory or warning or advisory sign and/or traffic signal, and/or pedestrian crossing sign (ie: signs subject to clauses (i) and (ii) in any event.

5.8 In my opinion, the wording of clauses (i) and (ii) is unclear and uncertain, and the rule as amended is potentially and unnecessarily far reaching in its application.

5.9 In my opinion, the recommendation in the s42A Report should be rejected in part and, the most appropriate way of addressing the concern raised in the Oil Companies further submission, is to not include clauses (i) and (ii) of Rule 8A.3.4.13 (c), and instead rely on (inter alia) Rule 8A.3.4.13 (a) and (c) as proposed, as follows:

(a) No sign shall be located so that it obstructs or obscures any traffic sign or signal, or any official road sign, whether they are for regulatory, warning or advisory purposes

…

(c) No sign may restrict the line of sight to any intersection, bend or corner on a road~~, and;~~

~~(i) Within road environments with a posted speed environment of <70km/h no signs shall be located 100m from an intersection and/or permanent regulatory or warning or advisory sign and/or traffic signal, and/or pedestrian crossing~~

~~(ii) Within road environments with a posted speed environment of >70km/h no signs shall be located 200m from an intersection and/or permanent regulatory or warning or advisory sign and/or traffic signal, and/or pedestrian crossing~~

6. CONCLUDING STATEMENT

6.1 My evidence has addressed those matters raised by the Oil Companies submissions where I consider further changes to those proposed in the s42A Report are required. The matters discussed generally relate to ensuring clarity and certainty, rather than to matters of principle. I intend to be present at the hearing to answer any questions that the Panel may have.